



## Valuation of Services of Online Gaming for levying Goods and Service tax (GST)

The Government of India has set up a panel of seven members, all ministers of different state governments (**GoM**), to examine the valuation of services provided by casinos, race courses and online gaming portals in India. The terms of reference for the GoM reads that the said GoM will:

- Examine the issue of valuation of services provided by racecourses, casinos and online gaming portals from a GST perspective, to see if any change is required for better valuation of services.
- The examination of valuation of services for GST will be in reference to the current legal provisions in force and the prevalent orders from various courts in the country.
- As a part of the evaluation process, the administration of the valuation provisions presently will be examined, and if required, alternate means of valuation or recommendations suggested.
- Impact of valuation on other similarly placed services like lottery will also be examined.

The GoM will submit its report to the GST Council within six months from its date of inception. This report may then be taken up for further deliberations by the GST Council.

In case of paid online games, any fees collected by a platform is deposited in an Escrow account. When the user plays a game, at the backend, a portion of the fee (say 10%) is transferred as a 'Platform Fee' to the online host and is the revenue for the online operator. Today, in India, the online game host pays GST on this Platform Fee to the government, treating it as service revenue. The remaining 90% of the fee paid is pooled into a prize pool, and is transferred to the winner's dashboard on winning the game. Subsequently, subject to terms and conditions, this money can be withdrawn by the winner.

The industry position today on the applicability of GST on online games is as below:

- GST is paid on the 10% of the fee, as above, retained as Platform Fees by the online host
- No GST paid on the 90 % of the entry fee pooled as prize money by the online platform host, on the position that such monies are '*actionable claims*', for a game of skill.
- Further, since such actionable claim is not for gambling, betting or horse racing, but for a game of skill (like fantasy football or rummy etc.), such monies are not covered by specific valuation rules (Rule 31A) specified under the Central Goods and Service Tax Rules, 2017. Hence, they are not subject to GST, as they are not akin to games of chance, like gambling or betting.
- The actionable claims fall under the exception of Entry 6 of Schedule 3 of the Central Goods and Service Tax Act, 2017 and are not a supply of goods or services. Hence, they are outside the purview of GST valuation

The industry position above is based on various judicial precedents, predominately from the Bombay High Court, which have held that online fantasy games are games of skill and do not contain an element of chance, and hence are not akin to gambling or betting. However, the Supreme Court, on 6 March 2020, stayed the judgements of the Bombay High Court and is pending to adjudicate on the twin issues of: (a) a game of skill vs. a game of chance, and (b) treatment of GST on online gaming, i.e. whether it is applicable on the entire quantum paid by the player i.e. Platform Fee plus prize money contribution and tax rate applicable thereon



In the past, the GST Council has deliberated on whether an amendment is required in the tax structure of online gaming in India and more specifically for games of skill. The GST Council has the power to recommend an increase in the rate of GST on Platform Fees and/ or recommend the valuation norms for such games to include the prize money pool also within the ambit of GST. However, for such change in the valuation

norms to take place and capture the prize money pool, the legislature will have to amend the provisions of the GST laws to take such pool out of the exception for 'actionable claims' under Schedule 3. In such a context, the constitution of the GoM is very significant as its recommendations may influence the eventual policy recommendation made by the GST Council.

Please feel free to address any further questions or request for advice to:

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