

GST JOURNEY FOR ONLINE GAMING INDUSTRY: AN ANALYSIS

AUTHOR – QUISER AMAN, RESEARCH SCHOLAR AT DEPARTMENT OF COMMERCE AND BUSINESS MANAGEMENT, RANCHI UNIVERSITY, RANCHI

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Abstract

In India, online gaming has become a major driver of economic growth, bringing in large sums of money and raising tax revenues. The availability of new forms of online gaming and its continuous innovation have led to a complex and dynamic tax environment for online gaming in India. This research article, delves into the transformative journey of the Goods and Services Tax (GST) within this dynamic sector. The article traces the GST framework's historical context, differentiating between games of skill and chance, and examines pivotal regulatory changes leading to the uniform 28% GST on all online gaming from October 1, 2023. It also highlights the various timelines of significant event that shaped the current GST framework for online gaming industry in India.

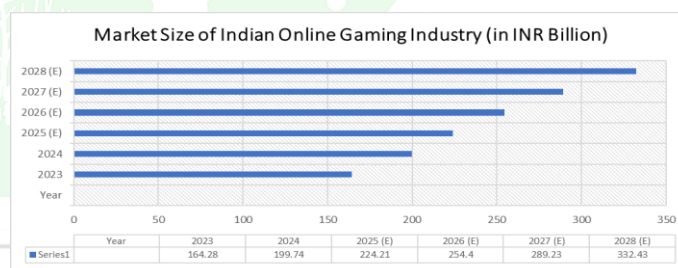
Introduction

India is poised to become a leader in technical innovation and growth as a result of its growing digitization. In financial year 2022-23 there are around 78 crore internet users in India which is 55% of entire population. India is making progress towards becoming a global hub for the Animation, Visual Effects, Gaming, and Comics (AVGC), thanks to the emergence of digital technology in general and the AVGC sector in particular, as well as a constantly expanding market.

Online gaming has emerged as a key contributor to economic growth in India, generating substantial revenue and increasing tax receipts. Moreover, it has created diverse employment prospects across sectors such as marketing, technology, and game development, stimulating entrepreneurship and fostering creativity within the gaming industry.

The online gaming (OG) market in India was valued at nearly USD 543million in FY 2016 and has grown to USD 2.6 billion in Financial Year 2022 alone. Forecasts suggest that by financial year 2016-27, it would increase to USD 8.6 billion, or at 27% compound annual growth rate

(CAGR) according to Lumikai Report 2021-2022. Another report from EY highlights that the Indian online gaming market grew at a noteworthy rate of 28% between financial year 2020 and financial year 2023, reaching a market size of INR 164.28 billion in FY2022-23. According to industry forecasts, it will grow at a 15% CAGR to reach INR 332.43 billion in financial year 2027-28. Estimates.



Source: Letter to GOI from FIFS and EGF: EY report Dec 2023.

Between FY 2019-2020 and FY 2023-2024 YTD, the online gaming business garnered investments of Rs. 229.31 billion from both local and international sources, according to database Tracxn compiled by EY. The investors include SoftBank Capital, Sequoia Capital, Tencent, Kalaari capital, GGP, GIC and others. In the past two to three years, numerous gaming startups have emerged, with three

achieving unicorn status, over six experiencing strategic exits, and one even conducting a successful initial public offering (IPO). This surge aligns with the objectives of the government's Atmanirbhar Bharat and Start-up India initiatives, which aim to foster a robust, inclusive environment conducive to innovation, self-reliance, and entrepreneurship in India, fostering a vibrant startup ecosystem.

China leads the globe in the number of online gamers with over 75 crore, but India has the second-highest number with about 42.5 crore in Financial Year 2023, expected to be around 53.8 crore gamer by 2028.



Source: EY Analysis

Broad Classification of Online Gaming Industry

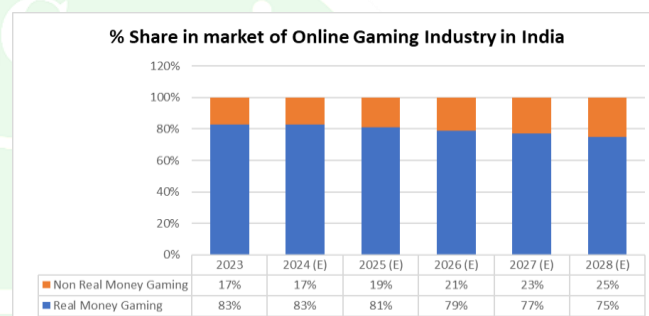
Within the gaming industry, real money gaming (RMG) and non-real money gaming (NRMG) are two different categories.

Real Money Gaming (RMG): In RMG, players place bets or wagers using real money with the possibility of winning or losing real money. This category includes all types of gambling and betting, such as real money wagering on sports, poker, online casinos, and fantasy sports platforms, where participants can earn real money or prizes. RMG platforms normally require users to make a deposit into their accounts before they can withdraw their profits.

Non-Real Money Gaming (NRMG): This category includes all forms of gaming in which there is no real money staked or won. Instead, to engage in games or gain access to extra features, players utilize virtual money, tokens, or in-game credits.

Platforms for real money gambling are driving the expansion of the gaming industry in India. At

the moment, RMG earnings account for a substantial around 83% of the gaming (online) market. Dream11, MPL and Games 24x7 all operating in the realm of real money gaming (RMG), have achieved unicorn status as Indian gaming companies. There are more than 400 startup doing business of real money gaming in India. Projections, however, show a drop to nearly 75% by FY 2028 (E), as a result of the most recent **GST amendments and related notifications.**



Source: Letter to GOI from FIFS and EGF: EY report Dec 2023.

The availability and ongoing innovation of new forms within Online Gaming have resulted in a complex and ever-changing tax situation for Online Gaming in India. When assessing the indirect tax treatment and regulatory status, factors such as the tax rate and value of supply are determined based on the regulatory framework and historical precedent in India. This distinction has consistently been made between games of chance, which involve betting and gambling, and games of skill. This differentiation has remained unchanged, spanning both the period before the implementation of the Goods and Services Tax (GST) and after its introduction.

Fundamentally GST is levied on supply of goods and services. Goods as per CGST Act means "any movable item other than securities and money but include **actionable claims** and growing crops...". Actionable claims in GST carries the same meaning of what is defined in transfer of property act, 1882 where an "actionable claim" refers to a claim for any debt, excluding those secured by a mortgage of

immovable property or by hypothecation or pledge of movable property. It also includes claims to any beneficial interest in movable property not in the claimant's possession, either actual or constructive, which civil courts recognize as valid grounds for legal action. Example of actionable claims are unsecured debts, credit card debts, betting, gambling, lottery, online money gaming.

Further when we see schedule III of the CGST Act, 2017 which is considered as negative list, it specifically mentions that actionable claims **other than**

- Online money gaming
- Lottery
- Horse Racing
- Gambling
- Casino
- Betting

are neither considered as goods nor services thus there will be no GST on actionable claims other than those specific actionable claims mentioned above. Now it is very clear that online money gaming is subject to GST being in the category of taxable actionable claim. Earlier only betting, lottery and gambling were taxable actionable claims, but after CGST (Amendment) Act, 2023 the words betting, lottery and gambling were replaced by "specified actionable claim" which added online money gaming, horse racing and casino to the list of taxable actionable claim.

GST on online gaming prior to 01st of October 2023

Till 30th September 2023, online gaming was classified into two categories namely game of skill and game of chance.

Game of skill

A game of skill is one in which the outcome is primarily determined by the player's physical or mental skill, rather than by chance. The player's knowledge, experience, and dexterity significantly affect the result. Examples: online chess, Fantasy sports, Rummy etc.

Earlier online game of skill was not in the list of specified actionable claim thus they are covered in negative list and are not subject to GST, however there is 18% GST on platform fees or Gross gaming revenue classified as OIDAR service with HSN/SAC of 998439.

Game of Chance:

A game of chance is one in which the outcome is predominantly determined by random factors or luck. The player's skill or knowledge has little to no influence over the result. Examples: Lottery, betting, Roulette, Gambling etc.

They were those actionable claims which were not covered in schedule III and thus they are subject to GST at the rate of 28%. Betting and gambling are classified under HSN/SAC 999692 and lotteries are covered under HSN/SAC 999694.

GST on online gaming from 01st of October 2023

Online gaming, casinos, and horse racing will be subject to a 28% GST on full face value recommended at 50th GST Council meeting on July 11, 2023. To implement this recommendation subsequently on 18th of August 2023 CGST Amendment Act, 2023 was enacted in which Online money gaming, casinos, and horse racing were added to the exception list of Schedule III for actionable claims and making them a taxable supply. Further notification No 48/2023 dated 29th September made it clear that this amendment shall be made effective from 1st of October 2023. Thus from 1st of October 2023 the classification of online gaming into game of skill and game of chance became irrelevant and all online gaming will attract 28% GST on the total amount paid by the player to the online gaming company.

Valuation of online gaming

According to Rule 31B inserted vide notification no 45/2023 dated 06th Sep 2023, the total amount paid or payable to or deposited with the supplier in the form of money or money's worth, including virtual digital assets, by or on

behalf of the player, shall be considered the value of the supply of online gaming, including the supply of actionable claims involved in online money gaming.

With the caveat that any money returned to the player by the supplier for any reason—including the player not using the funds they deposited or paid to participate in any event—shall not be deducted from the supply of real money online gaming. It also gives explanation that the amount that a player receives from winning a scheme, game, competition, or any other process or activity that they use to play in another event without withdrawing will not be regarded, for the purposes of rules 31B, as the amount that the player deposited with or paid to the supplier on their behalf.

Illustration of GST on online Gaming before 1st of October 2023

(A)Contest Entry Amount(CEA)		Rs.100.00
(B)Gross Revenue (GGR)/ Platform Fees(PF) assumed to be 15% of CEA		Rs.15.00
(C)GST @18% on GGR/PF		Rs. 2.70
(D) Prize Pool (A-B-C)		Rs. 82.30

GST is charged @18% only on the platform fees/GGR

Illustration of GST on online Gaming from 1st of October 2023

(A)Contest Entry Amount (CEA)		Rs.100.00
(B)GST @28% considered to be inclusive in CEA GST=CEA/128*28		Rs.21.875
(C)NET CEA Exclusive of GST		Rs. 78.125

(D) Gross Gaming Revenue (GGR)/ Platform Fees(PF) assumed to be 15% of NET CEA	Rs. 11.719
(E) Prize Pool (C-D)	Rs. 66.406

GST is charged @28% on whole CEA.

* *Gross Gaming Revenue (GGR) in online gaming is a vital metric that indicates the total amount of money online gaming operators retain from contest entry amount for their expenses and profit.*

Timeline of amendments in applicability of GST on online gaming

1. 21st June 2019– 35th GST Council Meeting.

GoM on Lottery suggested that Fitment/Law Committee be tasked with handling the rate and valuation issues related to casinos, online gaming and horse racing.

2. 20th September 2019–37th GST Council Meeting.

Taxing gross gaming revenue was suggested by the Fitment Committee, but the idea was postponed.

3. 18th December 2019– 38th GST Council Meeting held.

The GST Council resolved to forward the ongoing issue concerning online gaming, horse racing, and casinos to the Fitment/Law Committee.

4. 24th May 2021– Office Memorandum of GST council.

By Office Memorandum dated 24 May 2021, the GST Council established the Group of Ministers on Casinos, Race Courses, and Online Gaming (GoM) to examine the problems facing the online gaming industry. The GoM was reconvened on 10 February 2022, with the Chief Minister of Meghalaya serving as its convener.

5. 28th and 29th June 2022– 47th GST Council Meeting.

GoM turned in a report suggesting a 28% GST on CEA. GoM to reconsider the matter.

6. 11th of July 2023– 50th Meeting of the GST Council.

The Council made the decision to make it clear that actionable claims made in race course, casinos and online gaming are all subject to the Goods and Services Tax (GST), which levies taxes at a rate of 28% on the full face value of the claims, regardless of whether the activities involve skill or chance.

7. 2nd of August 2023 –51st Meeting of the GST Council

A suggestion to amend the IGST Act of 2017, The CGST Act of 2017, the CGST Rules of 2017, and the publication or modification of notifications concerning online gaming, casinos, and horse racing.

8. 18th August 2023 –CGST (Amendment) Act, 2023 enacted.

This act provides definition of online gaming, online money gaming and also inserted clause 102A for specified actionable claims that include online money gaming. Changes in schedule III has also been made through this act.

9. 29th September 2023– Notification No 48 issued

It stated that the provision of CGST (Amendment) Act, 2023 shall be applicable from 1st of October 2023.

10. 1st of October 2023– Implementation

New provisions of GST related to online gaming is made applicable.

Conclusion

There is a lot of discussion in the industry about the decision to impose a 28% Goods and Services Tax on online gaming in India. Though business leaders worry it might impede the industry's expansion and innovation, the government sees it as an essential revenue-generating measure. Concerns have been raised regarding the possible effects of the tax

changes affecting the gaming industry since they make it more difficult for businesses to set aside funds for R&D, higher taxes may deter investment and innovation. This could make it more difficult for the sector to develop and flourish. The industry's future will depend on striking a balance between providing the government with income and creating an atmosphere that encourages development and innovation. The industry and the government must collaborate to create fair tax laws and other regulations that support responsible gaming while maintaining the industry's viability and competitiveness. CMAs are essential in helping businesses navigate these difficulties by providing tax planning techniques, advising on the availability of ITC, and assisting with regulatory compliance.

Reference:

1. <https://mib.gov.in/sites/default/files/AVGC-XR%20Promotion%20Taskforce%20Report%20-%202022.pdf>
2. https://www.meity.gov.in/writereaddata/files/india_trillion-dollar_digital_opportunity.pdf
3. Lumikai%20Gaming%20Report%20FY21-22_Executive%20Summary.pdf
4. ey-new-frontier-online-gaming-report.pdf
5. <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/in-tax-GST-on-online-gaming-06.07-noexp.pdf>
6. CGST Act, 2017
7. CGST (Amendment) Act, 2023
8. CGST Rules, 2017 as amended.
9. Minutes of various GST council meetings.
10. GST Notification No 45/2023, 48/2023 – Central Tax