

## **Online gaming industry - Impact of recent changes in Indian regulatory & tax laws**

The Dbriefs Geography Updates series

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# Agenda

- Background of the legislative history of taxation of online gaming in India
- Amendment to intermediary rules
- Tax implication from Indian Goods and Services and Income Tax standpoint
- Regulatory changes
- Questions & Answers

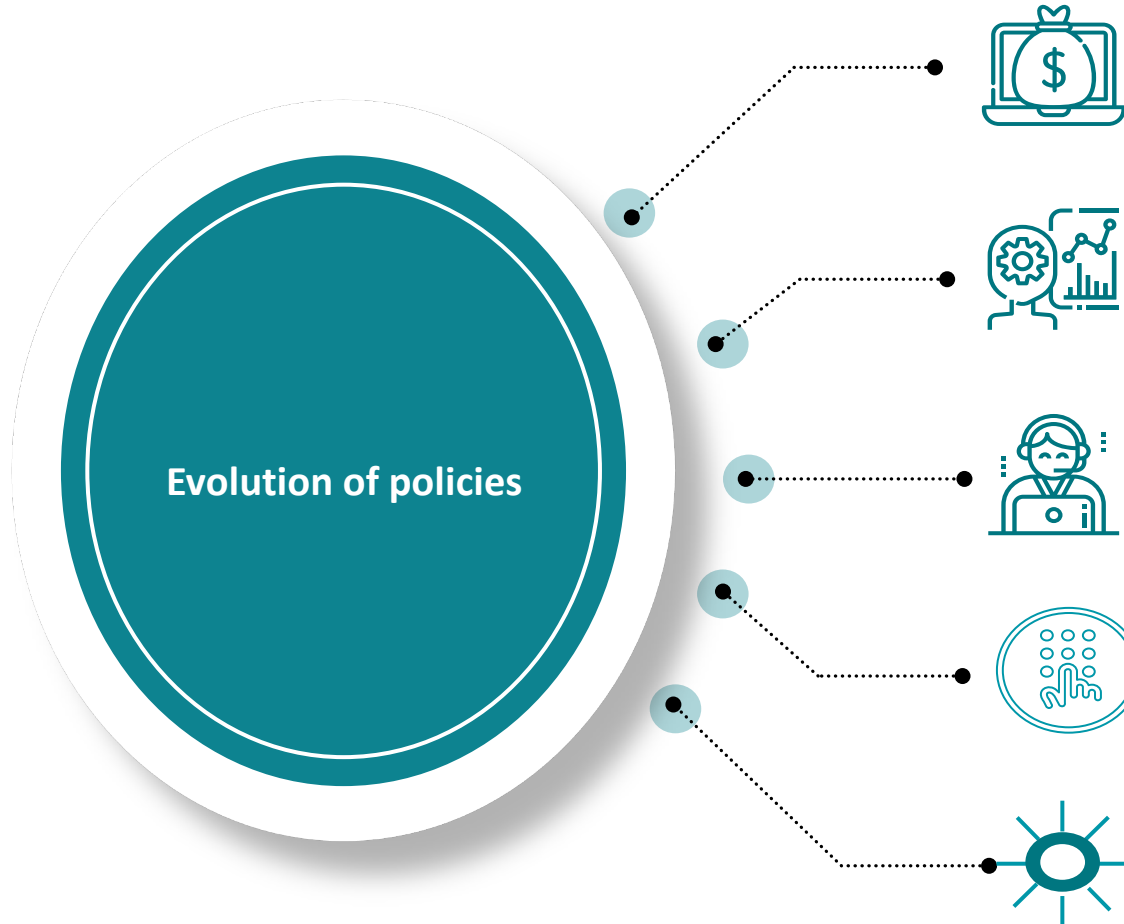
# Indirect Tax

# What we intend to cover today

- 1 Evolution of taxation policies
- 2 Amendments in GST Act
- 3 Open points yet to be addressed
- 4 Questions & answers



# Online Gaming—Evolution of taxation policies



## 2019: Evaluation of taxation referred to the Fitment Committee

Recommendation to refer the rate and valuation issue of online gaming to Fitment/Law Committee

## 2021: Assessment for requirement of change in legal provisions

Constitution of GoM to examine the requirement for change in legal provisions for valuation of services provided by online gaming

## 2022: Deferment of recommendation of 28% on CEA

GoM submitted its report to recommend GST at 28% on CEA. The GST Council suggested to re-assess the issue and hence, the matter was deferred

## 2023: Online Gaming

New Taxation and TDS regime was introduced in the Income-tax Act, 1961 ("ITA") for winnings from 'online game'.

IT Rules inserted for computing 'net winnings'

## 2023: Recommendations of council meeting and subsequent amendments

No distinction between games of skill and game of chance. Online gaming to be taxed at the uniform rate of 28%

Valuation to be basis the amount paid or payable to the supplier, excluding funds used from previous game winnings

Amendments introduced in the CGST and IGST Laws

## Polling question 1

In your country, does online gaming is classified into 'game of skill' and game of chance' in order to determine the taxability?

- Yes
- No

# Online Gaming – Amendments

## Online gaming and online money gaming distinguished

- Online gaming is defined as offering of a game on the internet or an electronic network and includes online money gaming
- Online money gaming is defined as online gaming in which players pay or deposit money or money's worth (including virtual digital assets), in the expectation of winning money or money's worth, in any event whether or not its outcome is based on skill or chance

## Specific definitions introduced / amended

- Amendment to schedule III of the CGST Act, 2017 to exclude “Specified actionable claims” from the definition of actionable claims
- Online gaming have been defined as the specified actionable claims
- Virtual digital asset definition has been borrowed from the income tax Act

## Value of supply in case of Online Gaming (including online money gaming)

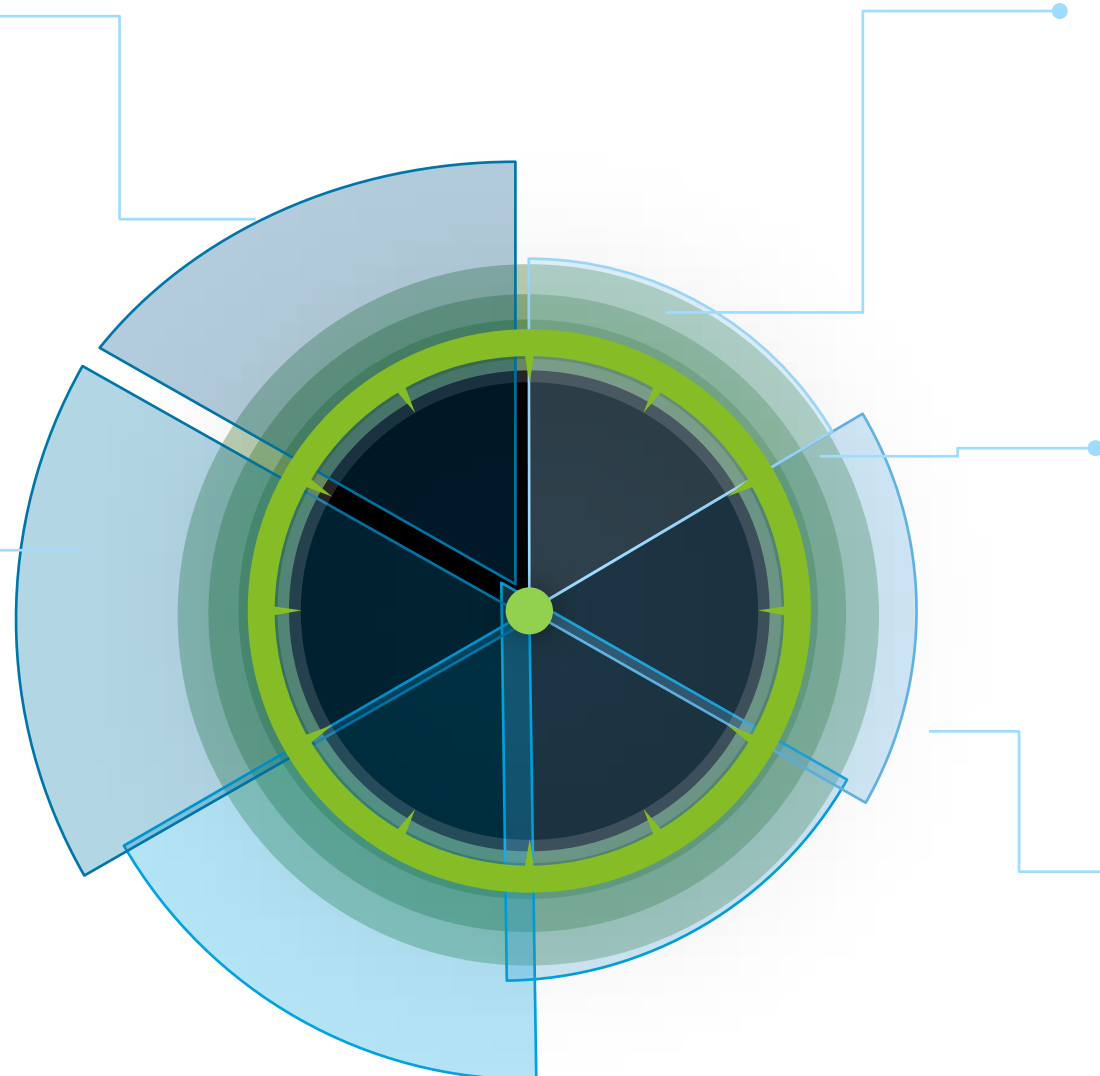
- Total amount paid, payable, or deposited with the supplier, using money, money's worth, or virtual digital assets on behalf of the player.

## Certain clarifications

- No deduction in the value of supply to be available for any amount refunded by the supplier to the player, irrespective of the reason, even if the refunded amount was essentially not utilized by the player for event participation
- Winnings directly redeposited in further events without withdrawals to not be subject to GST

## Provisions introduced to bring parity between domestic and foreign gaming operator

- Exclusion of online gaming from Online Information and Data Access or Retrieval (OIDAR) services
- Simplified registration
- Liability to discharge GST

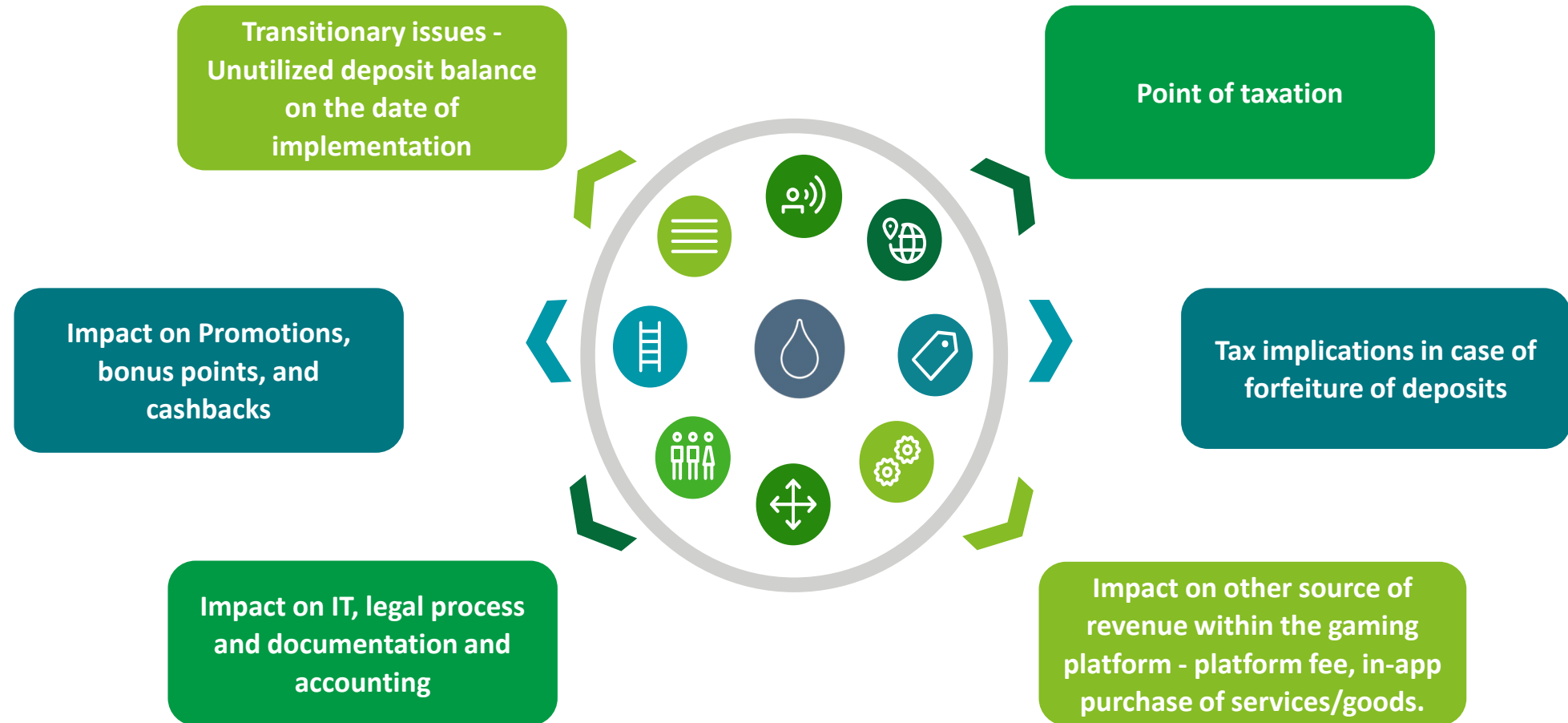


## Online gaming – Snapshot

Particulars	Classification	Examples	GST position
Online gaming excluding online money gaming	OIDAR - digital service	Casual games like ludo, chess, carrom, any other online games with no winnings (money or money's worth)	18% GST on gross consideration charged
Online money gaming	Goods - specified actionable claim	Fantasy sports, poker, rummy with winnings	28% GST on total amount paid, payable, or deposited using money, money's worth, or virtual digital assets on behalf of the player



## Online gaming – open points requiring consideration



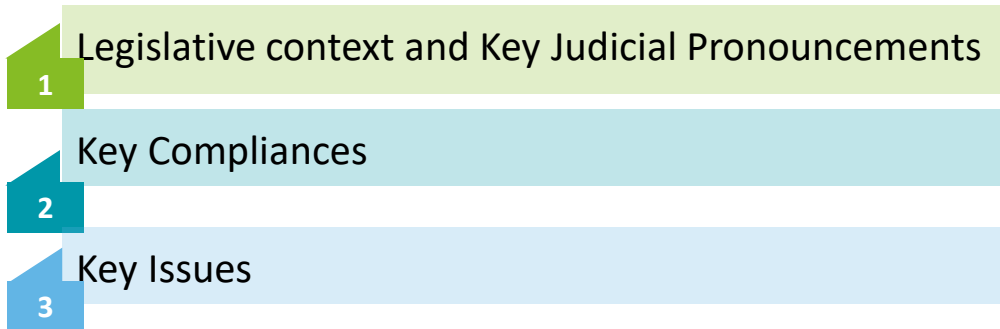
## Polling question 2

In your country, GST / indirect tax on online gaming is levied on which value?

- Contest Entry Amount (CEA)
- Gross Gaming Revenue (GGR)
- Other
- Don't know/not applicable

# Regulatory

# What we intend to cover today



## Legislative Context

Intermediary Rules 2021 (as amended in 2023)

Public Gambling Act, 1867

Section 294A, Indian Penal Code

Lotteries (Regulation) Act, 1998

Prize Competitions Act

West Bengal Gambling and Prize Competitions Act, 1957

Sikkim Online Gaming (Regulation) Act, 2008,  
Sikkim (Control and Tax) Act, 2002Casinos

Nagaland Prohibition of Gambling and Promotion  
and Regulation of Online Games of Skill Act, 2016

Karnataka Police Act, 1963

Goa, Daman and Diu Public Gambling Act, 1976

## Key Judicial Pronouncements

- **Game of Skill vs Game of Chance**
- **Amendments to state legislations prohibiting online game**

- **Intellectual property infringement**

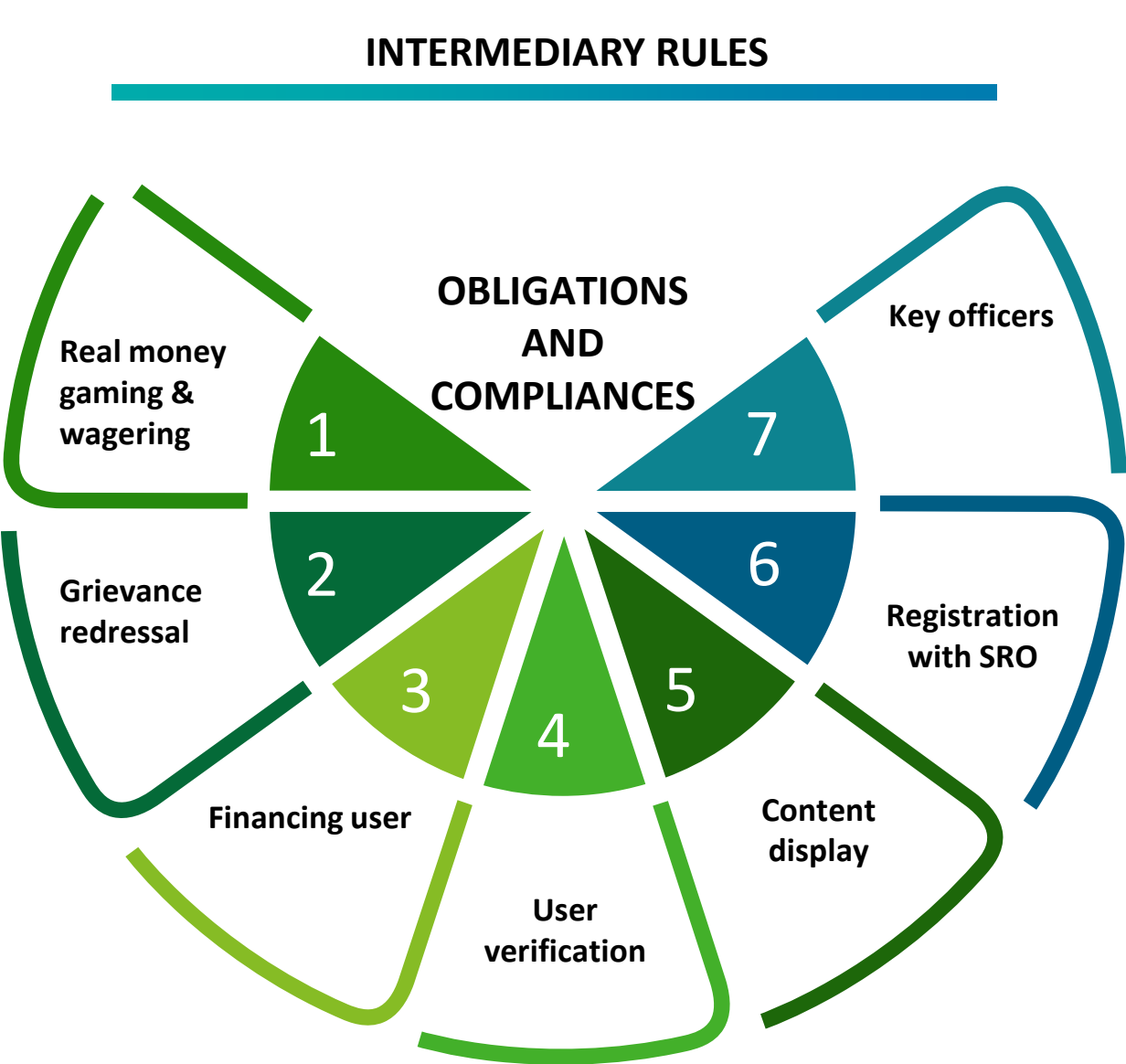
**Note:** There are certain states with separate laws, such as Telangana, Assam, Maharashtra, Tamil Nadu, Gujarat, Kerala

**\*\*Extends to Andhra Pradesh, Orissa, Uttar Pradesh, Madhya Pradesh and Punjab. States of Tamil Nadu, Maharashtra, Gujarat, Karnataka and West Bengal prohibit prize competitions vide state legislations**

## Polling question 3

Does your country have some standard principals which can be relied to determine “game of Skill” vs “Game of Chance” to bring more consistency?

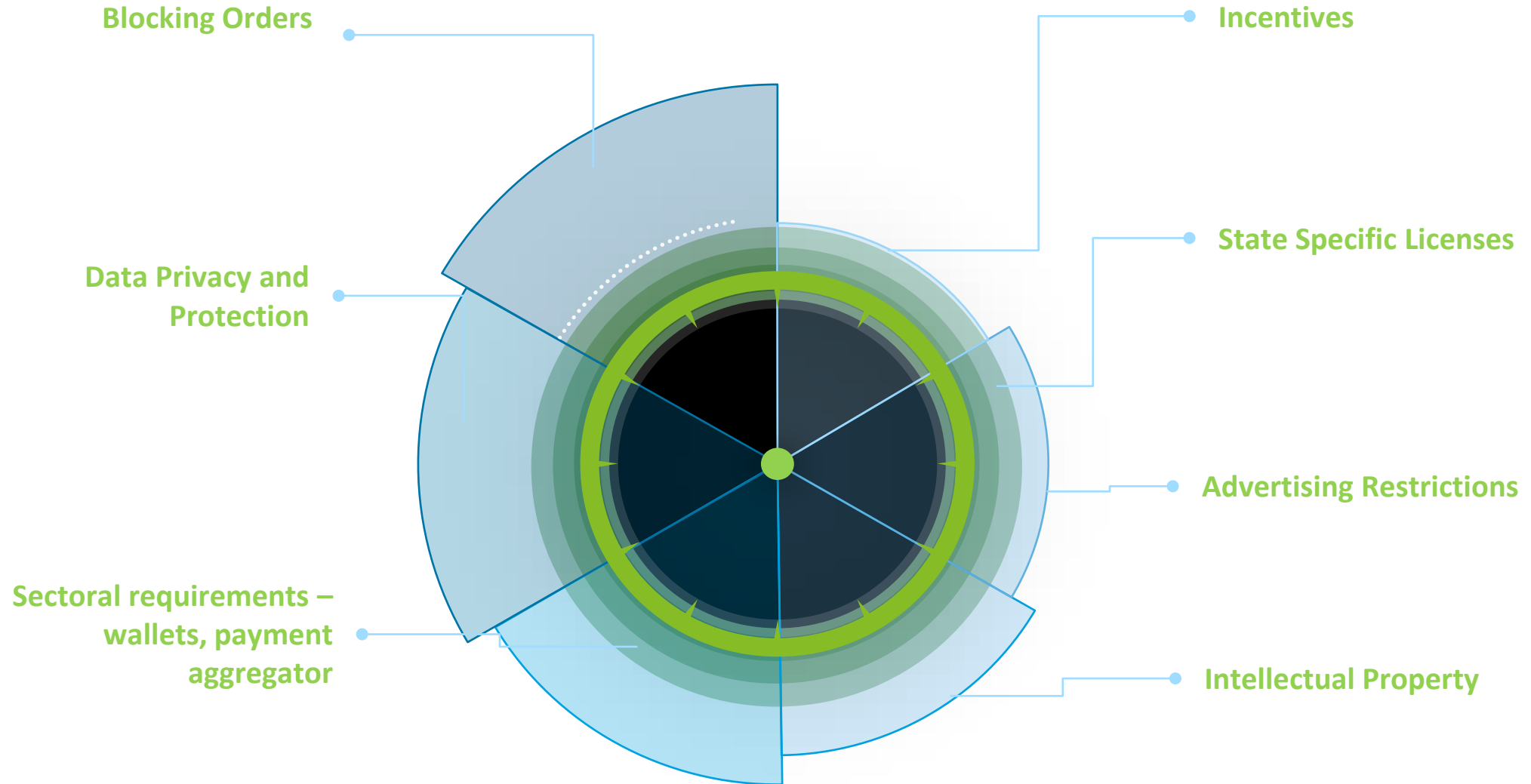
- Yes
- No
- Reliance on jurisprudences
- Don't know/not applicable



**DIGITAL PERSONAL DATA PROTECTION ACT, 2023**

- Collect, storing - reasonable safeguards
- Data Fiduciaries
- Processing of child data
- Cross-border data sharing
- Significant data fiduciaries
- Consent - specified purpose only
- Notice for processing
- Measures to delete, correct, update, grant access
- Group entities and data sharing

# Key regulatory aspects to be considered by Gaming Businesses





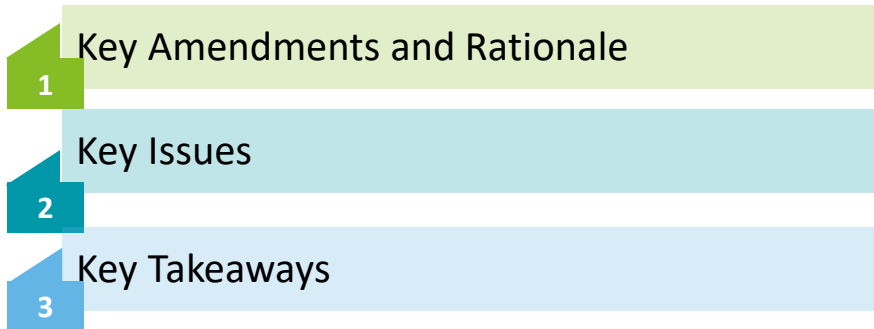
## Polling question 4

Do you believe that SRBs role would be more eminent to Industry, or will it be seen as a quasi-regulator?

- Industry eminent
- Quasi regulator
- Not sure
- Don't know/not applicable

# Direct Tax

# What we intend to cover today



# Taxation of winnings from games and related withholding tax (“WHT”) obligation

- **What has changed?**

WHT threshold

Computation of net winnings for online games

- **Rationale for Amendment – online games?**

Rise in number of users

Need for specific WHT and taxation provisions:

- ❖ Different nature
- ❖ Ease of access
- ❖ Various play and payment options

## Upto 31 March 2023

- Winnings from lottery; Crossword puzzle; Card game and other game of any sort; Gambling or betting
- Tax @ 30%\*
- Withholding tax (WHT) on winnings > INR 10,000
- Deductors applied the threshold per transaction. Possible tax evasion if winnings split into multiple transactions each below threshold of INR 10,000

## 1 April 2023 onwards

### New provisions for “Online gaming”

- Winnings from “online games” – taxed separately @ 30%\*
- WHT on net winnings
  - No material threshold

### Existing provisions amended

- Winnings from Online games carved out
- WHT on winnings
  - Aggregate amounts during financial year > INR 10,000

*\*Plus applicable surcharge and cess*

# New WHT provisions – Net Winnings from Online games

- **Online games— what is in it for me?**

Tax and WHT implications & compliances

Point of time for WHT

Computing net winnings for WHT and taxation

Regulatory/ other laws compliances – any implications?



## Key Aspects

- WHT on net winnings as per rates in force (currently 30%\*)
- “Online game” defined
- WHT obligation – person responsible for paying any income by way of winnings from online games
- Point of time for WHT
  - On withdrawal of net winnings from user account during the financial year
  - At the end of the financial year on remaining net winnings in user account
- WHT even if net winnings wholly / partly in cash / kind
- In-kind winnings— To ensure tax is paid before releasing the winnings
- Rules and guidelines prescribed to compute net winnings

*\*Plus applicable surcharge and cess*

## Polling question 5

In your country, is there a separate tax regime for withholding tax and taxation of winnings from online games?

- Yes
- No separate regime
- Separate regime only for taxation
- Separate regime only for withholding

# Rules and Guidelines to compute Net winnings from withholding perspective

- **What has changed?**  
Computation mechanism specified for net winnings

- **Why is it important?**  
Determination of net winnings may be complex depending on playing and winning options

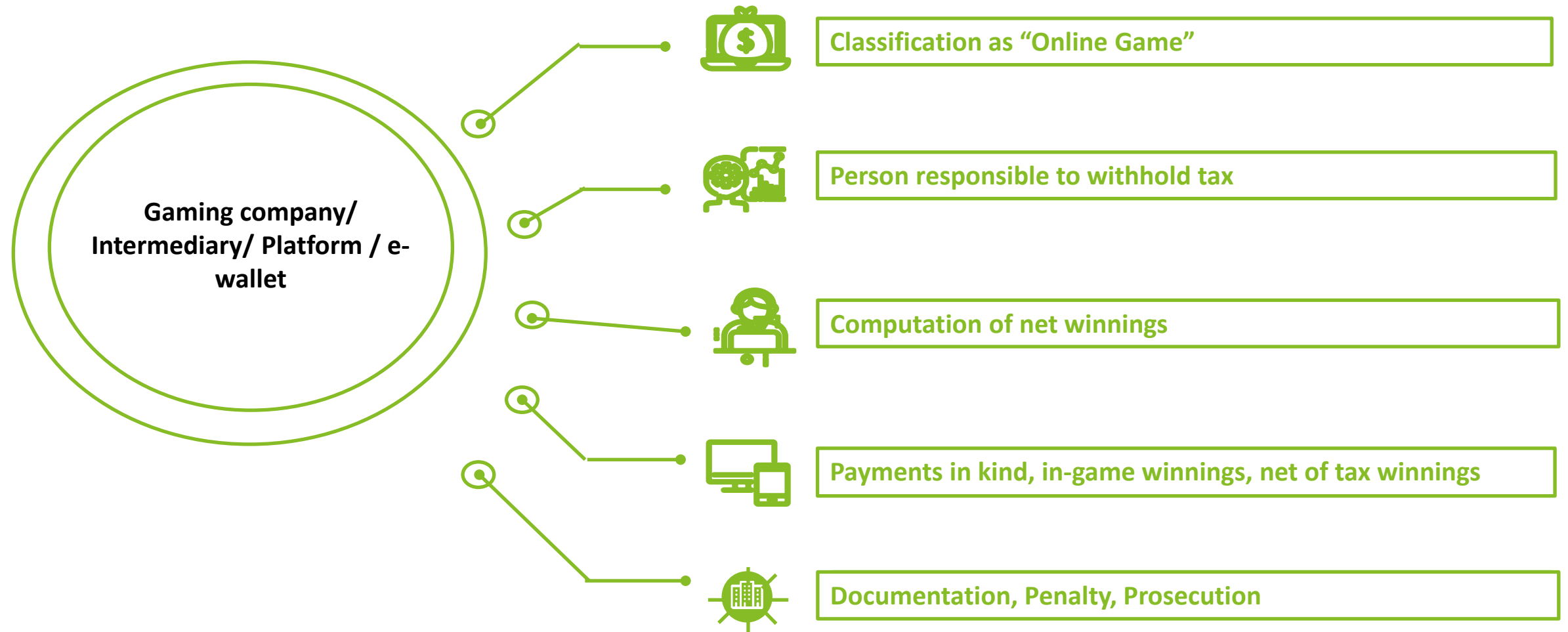
Penal implications for non-compliance

Maintaining documentary evidence

## Key Aspects

- Mechanism to compute “net winnings” specified for
  - First withdrawal during the FY
  - Each subsequent withdrawal during the FY
  - Balance in User account at the end of the FY
- Requires determination of Deposits (Taxable and Non-taxable); Withdrawals and balance in each User account with OGI
- Incentives, bonus only for playing; cannot be withdrawn or used for other purpose to be ignored; Taxable deposit when recharacterized and withdrawal allowed
- Winnings in kind
  - Valuation— based on FMV, except
    - If purchased— purchase price
    - If manufactured— price charged to customers

## Some Issues from withholding tax (WHT) perspective



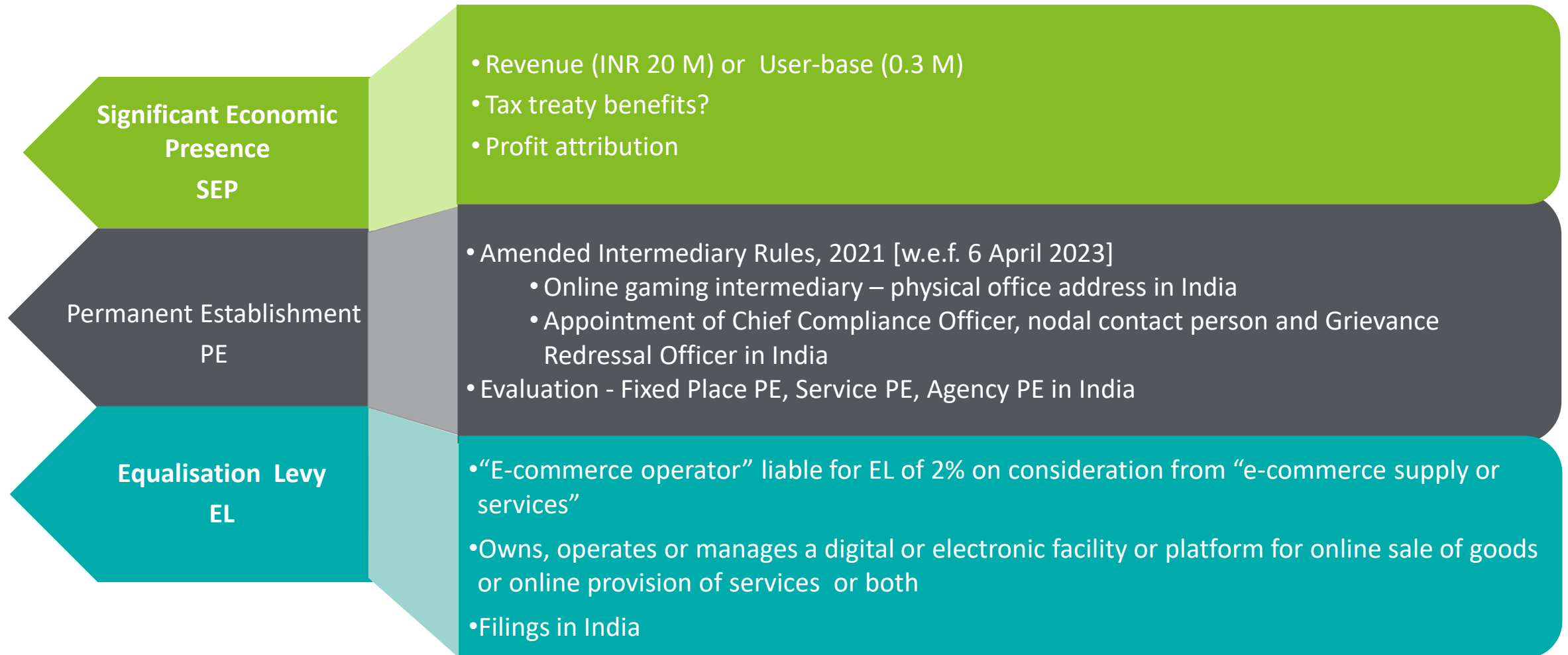


## Polling question 6

Do you believe that your TDS system is equipped to deal with the new computation mechanism prescribed to compute net winnings?

- Yes
- No
- Somewhat

## Non-resident (“NR”) Gaming Company/ Intermediary/ Platform – Key implications



# Key Takeaways

- Determine whether game is an “Online Game”?
- Evaluate tax and WHT implications and compliances to be undertaken

## **WHT areas to be considered**

- Gear up internal systems for WHT compliances
- Work out net winnings for WHT
- Maintain appropriate compliance documentation

## **Taxability areas to be considered for an NR**

- NR gaming intermediary/ platform/ company
- Evaluate SEP, PE and EL implications based on transaction structure
- Maintain documentation
- Undertake required compliances

# Question and answers

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## Annexure - Key Definitions (Income-tax Act, 1961)

**"Online game"** means **a game** that is :

- Offered on the **internet** and
- **Accessible** by a user **through a computer resource** including any telecommunication device.

- Explanation (iii) to Section 115BBJ

**"Card game and other game of any sort"** includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game.

- Section 2(24)(ix), Explanation (ii)

**"Internet"** means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that transmits information based on a protocol for controlling such transmission.

**"Computer resource"** means computer, computer system, computer network, data, computer database or software.

- Explanation (i) and (ii) to Section 115BBJ

**"Online gaming intermediary"** means an intermediary that offers one or more online games

**"User"** means any person who accesses or avails any computer resource of an online gaming intermediary

**"User account"** means account of a user registered with an online gaming intermediary.

- Explanation (b) , (c) and (d) to section 194BA