



Tax alert: Amendment in GST Act to incorporate proposed changes for online gaming industry

6 October 2023

This alert comprehensively covers the recent amendments outlined in the GST law pertaining to online money gaming with effect from 01 October 2023. It provides a clear overview of the regulatory changes affecting indirect taxation within this sector.

In a nutshell



Change in GST Rate

A higher GST rate of 28% has been notified for specified actionable claim involved in online money gaming.



Changes in GST Law

Legislative amendments in the CGST and IGST Amendment Acts relating to online money gaming related changes have been notified to be effective 1 October 2023 .

Specific rules have been introduced for determination of value of supply of specified actionable claim involved in online money gaming.

Exemption on taxability of advances received in respect of goods not available for supplies of online money gaming.

Import of specified actionable claim involving online money gaming to be taxed under IGST as import of goods without applicability of Customs duty.



Procedural Amendments

Overseas online money gaming service providers to apply for registration under a simplified registration scheme and undertake monthly compliances in Form GSTR-5A.

Overseas online money gaming service providers are exempted to submit PAN / State before applying for a registration.

Principal Commissioner of Central Tax in Bengaluru West and their subordinate officers are authorised to grant registration for overseas service providers and act as jurisdictional officers.

For supplies to unregistered customers, it is mandatory to include the recipient's state name on the invoice.



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Background:

- Pursuant to the amendments prescribed vide Central Goods and Services Tax (Amendment) Act, 2023 and Integrated Goods and Services Tax (Amendment) Act, 2023, the CBIC issued various notifications on 29 September 2023, to implement various changes surrounding taxation of online gaming with effect from 01 October 2023. These notifications were aligned with the recommendations prescribed in the 50th Council meeting dated 11 July 2023 and 51st Council Meeting dated 02 August 2023.
- The amendments included clarity in the GST laws, valuation and taxation of online money gaming and inclusion of overseas online gaming operators.
- Key amendments are as follows:

Changes in GST rate

- Serial no. 227 A has been introduced in the Notification 1/2017 – Central Tax Rate dated 28 June 2017 and Notification 1/2017 – Integrated Tax Rate dated 28 June 2017, to tax specified actionable claims including online money gaming at the rate of 28% with effect from 01 October 2023. Entries 228 and 229 in the respective notifications for lottery and game of chance have been omitted

Implementation of CGST Amendment Act 2023 and IGST Amendment Act 2023

- 01 October 2023 has been appointed as an effective date for implementation of following provisions amended vide the Central Goods and Services Tax (Amendment) Act, 2023 and Integrated Goods and Services Tax (Amendment) Act, 2023

Definition of Online Gaming, Online money Gaming, Specified actionable claims, Virtual digital assets

- '(80A) "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming;
- (80B) "online money gaming" means 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, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force;'
- "specified actionable claim" defined to mean the actionable claim involved in or by way of—
 - (i) betting;
 - (ii) casinos;
 - (iii) gambling;
 - (iv) horse racing;
 - (v) lottery; or
 - (vi) online money gaming;'
- (117A) "virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961'.

Exclusion of specified actionable claims from schedule III of CGST Act, 2017

- Amendment to schedule III of the CGST Act, 2017 to exclude "Specified actionable claims" involved in online money gaming and accordingly, to be taxed as supply of goods

Exclusion of online money gaming from the definition of OIDAR services and definition of supplier amended

- This distinction ensures that online money gaming activities, where participants deposit funds with the anticipation of winning money or equivalent assets, are treated separately from digital service offerings covered under OIDAR as online gaming.
- Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims

Requirement of mandatory registration for overseas online money gaming service provider

- Amendment in Section 24 of the CGST Act, 2017 is proposed to mandate the obligation to get registered in terms of the Indian GST laws for persons providing online money gaming services from a place outside India

Simplified registration for overseas online money gaming operators

- Other changes in IGST Act, 2017 include introduction of section 14A to define the taxability and simplified registration requirement for overseas gaming operator. Blocking of supplier's online money gaming related information in any computer resource for access by public in India in case of non-compliance.

Value of supply

- Vide the powers under Section 15(5) of the CGST Act, the government on the recommendation of the Council has notified the value of supply for the following –
 - Online money gaming,
 - Online gaming (excluding online money gaming), and
 - Actionable claims in casinos
 - As per Rule 31B of the CGST Rules, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:

Provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

As per Explanation for the purpose of rule 31B, it is stated that any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

Advance receipts to be taxable

- It is notified that registered person undertaking supplies of specified actionable claims would be required to pay GST as per the time of supply which is earlier of the following –

- Supply of goods and issuance of invoice
- Receipt of payment, whichever is earlier
 - The exemption relating to taxability of advances is not available to suppliers of specified actionable claims including online money gaming.
 - Relevant extract pursuant to amendment is notified as follows –

“... Council, hereby notifies the registered person who did not opt for the composition levy under section 10 of the said Act other than the registered person making supply of specified actionable claims as defined in clause (102A) of section 2 of the said Act, as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.”

Imports to be outside the purview of Customs

- Import of online money gaming has been removed from the ambit of Customs Tariff Act, 1975 and only IGST would be levied in accordance with the section 5(1) of the IGST Act, 2017

“Council, notifies the supply of online money gaming as the goods on import of which the proviso to sub-section (1) of section 5 of the said Act shall not apply, but on which integrated tax shall be levied and collected under sub-section (1) of section 5 of the said Act.”

Procedural amendments to be effective from 01 October

- Rule 8 has been amended to exclude persons supplying specified actionable claim involving online money gaming from a place outside India to submit their PAN / state of Union territory before applying for a registration. This amendment is to align with the simplified registration scheme proposed by the CBIC for such overseas service providers in order to bring parity between the domestic and overseas suppliers
- Rule 14 has been amended to allow simplified registration scheme (application through Form REG-10) to persons supplying online money gaming from a place outside India to a person in India (The rule has prescribed a revised Form REG-10 to align with the said amendment)
- Rule 46 has been amended to make it mandatory for online money gaming service providers providing services to unregistered customers to mention the name of the state of the recipient on the face of the invoice
- Rule 64 has been amended to prescribe GSTR -5A as the GST return applicable to overseas online money gaming service providers (The rule has prescribed a revised Form GSTR-5A to align with the said amendment)
- Rule 87 has been amended to allow overseas online money gaming service providers to make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board

Appointment of jurisdictional authority

- Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him are notified as the officers empowered to grant registration in case of supply of online money gaming provided or agreed to be provided by a person located in non-taxable territory and received by a

person in India with effect from 01 October 2023

Comments:

The amendment provides significant clarity in terms of taxability for both, domestic as well as overseas supplier of online money gaming in terms of rate of tax, time of supply as well as value of supply. However, details, analysis and clarity are still required for the following:

- Applicability of transitional provisions on account of change in taxability and the treatment under GST for money already with player wallets as on 1 October 2023.
- Applicability of GST on bonus or incentives given by the online money gaming suppliers to the players to play online money games.
- Valuation and taxability of player deposits in a common wallet used for online money gaming, online gaming, and merchandise.
- Impact assessment and alignment of technology systems with the amendments.

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