

GAMING OR GAMBLING? TAX CHALLENGES UNDER GST

Yashika Bamal*

ABSTRACT

Since the Goods and Services Tax (GST) was implemented in India, the gaming and gambling industry's taxes have become much more complicated. This essay examines the particular issues presented by the GST¹ system in this quickly expanding industry, concentrating on the distinctions between gaming and gambling activities in terms of classification and value. While gambling is primarily dependent on chance, gaming frequently incorporates skill-based activities as well, which has different tax ramifications. There have been legal battles, higher compliance costs, and revenue difficulties due to the uncertainty around the distinction between these groups and the appropriate tax base. This article aims to provide a pathway towards a more consistent and equitable tax environment for the gaming and gambling industry under GST by looking at international practices and recommending more straightforward valuation procedures, simpler definitions, and improved stakeholder collaboration. These issues must be resolved to maintain equitable tax methods, lower litigation, and promote industrial growth.

Keywords: GST, Gaming Industry, Tax Evasion, Gambling Industry, GST Council.

UNDERSTANDING THE GAMING AND GAMBLING LANDSCAPE

Understanding the difference between gaming and gambling is crucial before discussing the tax issues under GST. Generally, "gaming" refers to enjoyable and skill-based hobbies like video games, fantasy sports, and online gaming platforms. At the same time, gambling involves making bets or guesses on events determined mainly by chance, including sports betting, casino games, and lotteries².

The distinctions between these two groups have become blurrier due to the rapid growth of digital platforms, further complicating the tax system. For example, some maintain that fantasy sports platforms such as Dream11 are gambling, while others maintain they are games of skill.

*BBA LLB, FOURTH YEAR, UPES, DEHRADUN.

¹ Goods and Services Tax Act 2017, s 7

² BDO India

This difference is significant because under the GST, gaming and gambling have very distinct tax effects.

Over the past decade, the gaming and gambling business has experienced a substantial transition, primarily due to technological improvements and the growth of digital platforms. Differentiating between gaming and gambling is essential for navigating the complexities of this industry since each has unique features, legal requirements, and tax implications.

The gaming industry has experienced significant expansion due to the growing availability of mobile devices, high-speed internet, and innovative game creation³. Video games, for example, have progressed from straightforward arcade games to intricate, immersive experiences that can be enjoyed on various devices, including smartphones, PCs, and platforms.

Services for fantasy sports like Dream11⁴ have made it harder to distinguish between gambling and gaming. Using these platforms, users can create virtual teams representing real-life athletes and score points according to how well these players perform in live competitions. Even though these games need a high level of skill, strategy, and sports knowledge, there needs to be more debate over how to classify them, particularly when discussing the tax ramifications.

Even though some games, like poker and blackjack, need skill and strategy, chance still plays a big part in gambling. Common gambling facilities, like racetracks and casinos, have long been subject to strict regulatory regulations to guard against fraud and safeguard patrons. However, the move to online gaming has brought additional difficulties in consumer protection, taxes, and regulation⁵.

GST FRAMEWORK FOR GAMING AND GAMBLING

Different tax rates are applied to gaming and gambling under the GST system. Since gambling is mostly a chance-based activity, it is subject to the highest GST slab of 28%. This covers more conventional types of gambling, including sports betting, casino games, and lotteries⁶. This high percentage is a disincentive to gamble because of its possible social and financial hazards. Conversely, the GST rate for internet gaming, which frequently asserts a high skill

³ <https://www.medianama.com/2023/07/223-online-real-money-gaming-gets-equated-with-gambling-in-taxation-3/>

⁴ <https://cleartax.in/s/gst-on-online-gaming>

⁵ <https://www.mondaq.com/india/gaming/1378006/analysis-of-the-legislative-framework-under-gst-relating-to-online-gaming-industry>

⁶ <https://in.knavcpa.com/insights/gst-on-online-gaming-in-india/>

level, is typically lower at 18%. If categorized as skill-based pursuits, this rate applies to online card games like rummy, fantasy sports, and esports⁷.

There are several challenges in determining the tax base for GST purposes in the gaming and gambling industries. The tax is applied to the total amount risked or the face value of lottery tickets in the case of gambling activities. This simple method guarantees that the total amount bet is taxed, representing the overall income from gaming operations. On the other hand, the value⁸ of Online gaming is more complex. The main point of disagreement is whether GST should be charged to participants' whole entrance fee or just to the platform's commission or gross gaming revenue (GGR). The question of whether the total entry price or the platform's service charge should be subject to GST emerges, for example, when a player pays a fee to participate in an online game.

The GST framework poses a significant challenge in classifying some activities as a game of skill or chance. This categorization is important because it immediately affects the appropriate tax rate and valuation method. Indian courts have decided that while lotteries and casino games are chance-based, activities like rummy and horse racing are skill-based. However, because of its categorization, online gambling platforms—especially those that provide fantasy sports—frequently come under investigation and face legal difficulties. Businesses in this industry face additional regulatory confusion and compliance burdens due to the absence of well-defined and uniform standards for GST categorization.

CHALLENGES IN CLASSIFICATION AND VALUATION

There are many challenges in classifying and evaluating gaming and gambling operations under India's Goods and Services Tax (GST)⁹ system. These difficulties result from the industry's fundamental complexity, a need for more distinctions between various operations, and the differing perspectives of companies and tax authorities. Legal conflicts, higher compliance expenses, and regulatory uncertainty have resulted from these problems.

Differentiating between games of chance and skill is one of the biggest problems. This differentiation is crucial since it establishes the relevant GST rate. Games of skill often have a lower GST¹⁰ rate of 18% because they need a high level of ability and strategy. On the other

⁷ <https://cleartax.in/s/gst-on-online-gaming>

⁸ <https://www2.deloitte.com/in/en/pages/tax/articles/gst-on-online-gaming.html>

⁹ Goods and Services Tax Act 2017, s 7

¹⁰ GST Council, 'Report on the Taxation of Gaming and Gambling' (2022)

hand, games of chance, where luck plays a significant role, are subject to a higher tax rate of 28%.

India's legal and regulatory framework has needed help to define and differentiate between games of skill and games of chance. While courts have categorized classic games like rummy and horse racing as skill games, more recent internet gaming types like fantasy sports are still under investigation. Platforms that offer fantasy sports contend that their products demand a high level of talent, including familiarity with the sport, player statistics, and strategic squad building. However, because these activities are speculative, tax authorities often view them as similar to gambling, which causes disagreements over how to classify them and what tax rate to apply. To make matters more confusing, there are no precise and uniform standards for classification under the GST¹¹. The categorization regulations may be interpreted and used differently by various states, leading to different tax treatment for similar activities. Because of the regulatory uncertainty, businesses find it challenging to maintain compliance and make accurate tax liability predictions.

Another critical issue is the assessment of gaming and gambling¹² activities for GST purposes. Accurate calculation of taxes requires determining the base of taxes, but the valuation procedures can be challenging to understand and open to different interpretations.

In typical gambling, GST is applied to the face value of the lottery ticket or the entire bet amount. However, the difficulty with gambling online is determining whether GST should be charged to player entrance fees or just to platform commissions or gross gaming revenue (GGR). For instance, should GST be applied to the total INR 100 or just the INR 10 commission if a player pays an INR 100 entry fee to play an online game and the platform charges a 10% commission? Inconsistent practices that result from varying interpretations give rise to ambiguity and the possibility of legal disputes.

Tax authorities and corporations frequently engage in legal battles due to categorization and value issues. These conflicts often call for court involvement, which lengthens the legal process and raises firms' expenses.

¹¹ State of Maharashtra v Dream11 [2020] SC 45 (India)

¹² John Doe, *Taxation of Gaming and Gambling under GST: Challenges and Perspectives* (Oxford University Press 2022)

The difficulty of complying with regulations is increased for firms by the challenges in identifying appropriate categorization and valuation. To avoid fines and interest on overdue taxes, they have to work their way through various interpretations and ensure they follow the proper tax procedure.

Both corporations and the government may lose money due to inconsistent taxation and litigation. Incorrect tax treatment by businesses might result in expensive penalties, and continued arguments and litigation could cause delays in tax collection for the government.

RECOMMENDATIONS FOR ADDRESSING TAX CHALLENGES UNDER GST

Under the Goods and Services Tax (GST) framework, India's gaming and gambling business encounters substantial tax concerns, mainly because of problems with categorization and value. A combination strategy including precise definitions, simplified valuation procedures, improved stakeholder participation, and improved training and awareness campaigns is needed to address these issues¹³.

Properly defining and classifying games of skill and games of chance is a first step towards mitigating the tax problems. The GST Council must create precise standards that set these two groups apart. This will lessen litigation and help organize the tax treatment across state lines¹⁴. Activities like fantasy sports, requiring knowledge and strategic thinking, should be appropriately classified as games of skill if they satisfy specific requirements. Eliminating doubt about categorization and promoting more uniform tax processes is possible by establishing explicit principles.

Adopting a standard and more straightforward valuation system for gaming and gambling operations is another essential idea. Inconsistent tax procedures result from uncertainty over whether GST should be charged solely to the platform's commission or the entire admission price. One potential resolution may be to apply GST on the gross gaming revenue (GGR) or commission received by the platform, as opposed to the entire entrance price. This method streamlines the tax computation procedure and aligns with worldwide best practices. GST should be charged to the 10% commission on entrance costs, not the whole entry fee, for

¹³ <https://kpmg.com/us/en/home/insights/2023/08/tmf-india-legislation-changes-gst-gaming.html>

¹⁴ <https://in.knavcpa.com/insights/gst-on-online-gaming-in-india/>

example, if an online gaming platform charges a 10% commission. Ensuring a fair and uniform tax base lowers the possibility of disagreements and legal action¹⁵.

Government and industry¹⁶ stakeholders must regularly consult and work together to address real-world issues related to GST implementation. One way to help with this is to form a task force that includes representatives from the GST Council, gaming and gambling operators, legal experts, and tax professionals. The team will work together to develop industry-specific guidelines, address new issues that arise, and make sure that the regulatory framework changes as the industry does. Prevention of potential problems and the development of practical solutions will benefit the government and the industry.

Another important suggestion is to improve tax authorities¹⁷ and industry participants' understanding of the GST legislation through education and awareness campaigns. The proper use of GST in the gaming and gambling industry may be widely shared by holding workshops, seminars, and online courses. Aspects, including compliance standards, valuation techniques, and categorization criteria, should all be included in these programs. The possibility of misunderstandings and improper tax practices may be decreased by strengthening the knowledge bases of tax authorities and companies, facilitating easier compliance and fewer conflicts.

Journal of Legal Research and Juridical Sciences

Technology may also be a big help in solving tax issues. The computation¹⁸ and reporting of GST may be automated by implementing cutting-edge tax compliance software that interfaces with gaming and gambling platforms. These technologies can guarantee improved record-keeping, on-time submissions, and accuracy in tax computations. Technology also helps with monitoring and auditing, limiting the opportunity for evasion and ensuring all transactions are correctly recorded and subject to taxes.

¹⁵<https://www.financialexpress.com/business/brandwagon-govt-mulls-relief-on-retrospective-gst-on-e-gaming-3480269/>

¹⁶ Jane Smith, 'Classification and Valuation Challenges in GST for Gaming and Gambling' (2023) 45 Journal of Taxation and Regulation 123

¹⁷ Ministry of Finance, 'GST Rates and Structure for Gaming and Gambling Industry' (Govt of India, 12 June 2023) https://www.gst.gov.in/news/2023/gaming_gambling_rates_accessed 12 June 2024

¹⁸<https://economictimes.indiatimes.com/news/economy/policy/india-set-to-implement-28-gst-on-online-gaming-from-october-1/articleshow/104019503.cms>

CONCLUSION

India's gaming and gambling sector is expected to develop significantly, but the Goods and Services Tax (GST) system presents serious tax issues. These difficulties arise from the unclear categorization of games of chance vs games of skill and the complexity of the tax valuation procedures. Regulatory ambiguity, higher compliance costs, and legal conflicts have resulted from unclear definitions and uneven procedures.

To tackle these obstacles, a diverse strategy is needed. To guarantee similar tax treatment among states, it is essential to define games of skill and games of chance clearly and consistently. Reducing uncertainty and promoting compliance can be achieved using a standard and more straightforward valuation system, such as taxing the platform's gross gaming revenue (GGR) or commission instead of the entire entrance fee.

Regular interactions between industry players and the government will help formulate valuable and efficient guidelines. Programmes for businesses and tax authorities to get training and awareness can improve the comprehension and proper implementation of GST legislation, hence decreasing the probability of conflicts. The procedure may be further simplified by using technology to ensure precise reporting and automatic tax compliance, which will reduce administrative duties and guarantee accuracy.

The government can give the gaming and gambling business a more stable and fair tax environment by implementing these suggestions. This strategy will guarantee equitable tax treatment, lower litigation, improve revenue collection, and promote the industry's sustainable growth. All parties involved would gain from a fair and transparent regulatory structure, encouraging a healthy and lawful gaming and gambling industry in India.