

GST on Online Gaming

Analysing the effect of the tax rate and value of supply on tax revenues

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Glossary

ARPPU	Average Revenue Per Paying User
AVGC	Animation, Visual Effects, Gaming and Comics
CAGR	Compound Annual Growth Rate
CEA	Contest Entry Amount
CGST	Central Goods and Services Tax
E-Sports	Electronic Sports
FDI	Foreign Direct Investment
FIFS	Federation of Indian Fantasy Sports
FS	Fantasy Sports
FY	Fiscal Year
GGR	Gross Gaming Revenue
GOM	Group of Ministers
GST	Goods and Services Tax
HSN	Harmonised System of Nomenclature
Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021	Intermediary Rules, 2021 / IT Rules
INR	Indian National Rupee
MEITY	The Ministry for Electronics and Information Technology
MIB	Ministry of Information and Broadcasting
OG	Online Gaming
OGI	Online Gaming Intermediaries
PF	Platform Fees a.k.a GGR
PP	Price Pool
SRB	Self - Regulatory Body
TDS	Tax Deducted at Source
UK	United Kingdom
US\$ / USD	United States Dollar
YoY	Year on Year

Preface

The online gaming industry in India has experienced significant growth in recent years. With the rise of mobile gaming and increased internet penetration, India has become one of the largest markets for online gaming globally. However, the online gaming industry has been grappling with an unresolved issue of GST, which can greatly impact the industry's viability and sustainability.

To review the GST position on the online gaming industry, GST Council constituted a Group of Ministers (GoM) to examine taxation policy. GoM in the report submitted in the 47th GST Council have recommended a higher rate of 28% on the total contest entry amount contributed by the users.¹ The GST Council recommended the GoM to re-examine the recommendations, therefore the matter is yet to be decided by the GST Council.

This report aims to set the overall context of GST on online gaming industry, both historic and futuristic. In this report, we have tracked the evolution of tax jurisprudence related to online gaming in India and based on the statistical data shared by the industry, further forecasted the trend in

the online gaming industry given the change in tax policy which is being deliberated. Based on the data provided by the industry, the report estimates the potential impact of the higher tax burden on the growth of the industry and corresponding tax collections. The report also highlights global case studies where similar tax changes were implemented in the past and its impact on the industry and corresponding tax collections.

Based on the findings and the representation of the industry to the GST Council, any change or proposal to increase the overall tax burden on the online gaming industry would require careful consideration, taking into account various factors such as industry dynamics, revenue generation, regulatory objectives and global policies.

This is a report on 'GST on Online Gaming- Analyzing the effect of tax rate and value of supply on tax revenues'. Federation of Indian Fantasy Sports (FIFS) has engaged Deloitte Touche Tohmatsu India LLP and provided valuable inputs on the industry statistics and forecasts and guidance in preparing this report.

¹ <https://timesofindia.indiatimes.com/blogs/voices/gst-on-the-entire-prize-pool-in-online-gaming-a-step-too-far/>

Executive summary

The Online Gaming (OG) industry in India has witnessed significant growth and is emerging as a thriving sector with immense economic potential. This report provides an in-depth analysis of the tax landscape of the online gaming industry in India, with a focus on the proposed GST amendments and the challenges associated with them.

Domestically, the OG industry in India was worth US\$0.54 billion in FY16² and has grown to the worth US\$ 2.6 billion in FY22 and is estimated to reach US\$ 8.6 billion by FY27³, growing at a CAGR of 27%. Further, The Indian Gaming companies have raised \$2.8 billion from investors across the globe in the last 5 years. Indian gaming companies are on track to raise \$513 million by the end of FY22. Funding is up 380% from FY19 and up 23% from FY20.⁴ The industry's growth has had a positive effect on employment, with a workforce of 50,000 employees and an estimated creation of more than one lakh direct and indirect jobs by 2022-23.⁵

Legally, there exists a clear distinction within OG industry between games of skill and games of chance. Hon'ble Supreme Court and several High Courts on several occasions have recognized skill-based games as a legitimate business activity protected under Article 19 (1)(g) of the Constitution of India, whereas the latter is *res extra commercium* activity in nature.

The delineation between skill-based and chance-based games is crucial in determining the legal status and regulatory framework applicable to different forms of online gaming. The recognition of online games as a separate industry under the recent amendments to the Income Tax Act and Information

Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("Intermediary Rules, 2021") has significant ramifications for taxation requirements imposed on entities operating within the OG sector.

Currently, the government is revisiting the taxation system enforced with respect to the GST on the OG industry in India. The GoM has proposed to increase the rate of tax from 18 percent to 28 percent, and also the value at which GST should be levied. It is proposed to levy a 28 percent GST on the entire Contest Entry Amount (CEA)⁶ instead of the current levy of 18 percent on the Gross Gaming Revenue (GGR). The objective of the proposed amendments was to bring the taxation of the OG industry at par with the taxation mechanism adopted for lottery, betting, and gambling (games of chance).

Using scenario analysis and modelling techniques, the report assesses the impact of the proposed GST changes on the OG industry based on the revenue, cost and consumer behavior related data and assumptions shared by the industry. Based on such analysis, it has been estimated that shift from the current 18 percent on GGR to 28 percent on CEA, may result in a degrowth of the industry and parallel reduction of GST revenue collection. Degrowth of the industry may also result in significant job losses and reduced investments, making small industry players (e.g. Gaming startups) unviable. The report also considers the regulatory framework in India and global best practices as far as indirect taxes are concerned. The government should consider these potential outcomes and the global best practices and take steps to mitigate any effect on revenue, job creation, and the overall industry.

² https://www.meity.gov.in/writereaddata/files/india_trillion-dollar_digital_opportunity.pdf (Page 165)

<https://www.businessinsider.in/advertising/ad-tech/article/indias-online-gaming-industry-has-the-potential-to-generate-2-billion-by-2023-ey-all-india-gaming-federation-report/articleshow/85265749.cms>

³ <https://www.ndtv.com/business/india-is-emerging-as-a-gaming-hub-heres-why-3520771><https://www.lumikai.com/post/india-s-gaming-market-hit-2-6-billion-in-fy22-and-is-projected-to-reach-8-6-billion-in-fy27>

⁴ Report by Lumikai

<https://www.lumikai.com/post/india-s-gaming-market-hit-2-6-billion-in-fy22-and-is-projected-to-reach-8-6-billion-in-fy27>

⁵ https://s3.amazonaws.com/static.myteamlease.com/teamleasedigital-content/2022/11/17/PremiumReport_1668684156-1668684159-24812.pdf

⁶ <https://timesofindia.indiatimes.com/blogs/voices/gst-on-the-entire-prize-pool-in-online-gaming-a-step-too-far/>

Based on the finding and the representation of the industry to the GST Council, the GoM and GST Council should rely on established legal precedents that differentiate between online games that are constitutionally protected activities under Article 19(1)(g) and gambling and betting that are res extra commercium. It is further recommended that in order to uphold the constitutionality of the recommendations of the GoM, the government should also consider the principle of preponderance of skill in order to assess the applicability of GST. The IT Rules provide for every game to be certified by a Self-Regulatory Body to be recognised by the Central

Government. Thus, the GoM report may also consider these developments and continue to differentiate between games of skill and games of chance and consider the certifications/ approvals to be provided by SRB before arriving at a recommendation on value of supply.

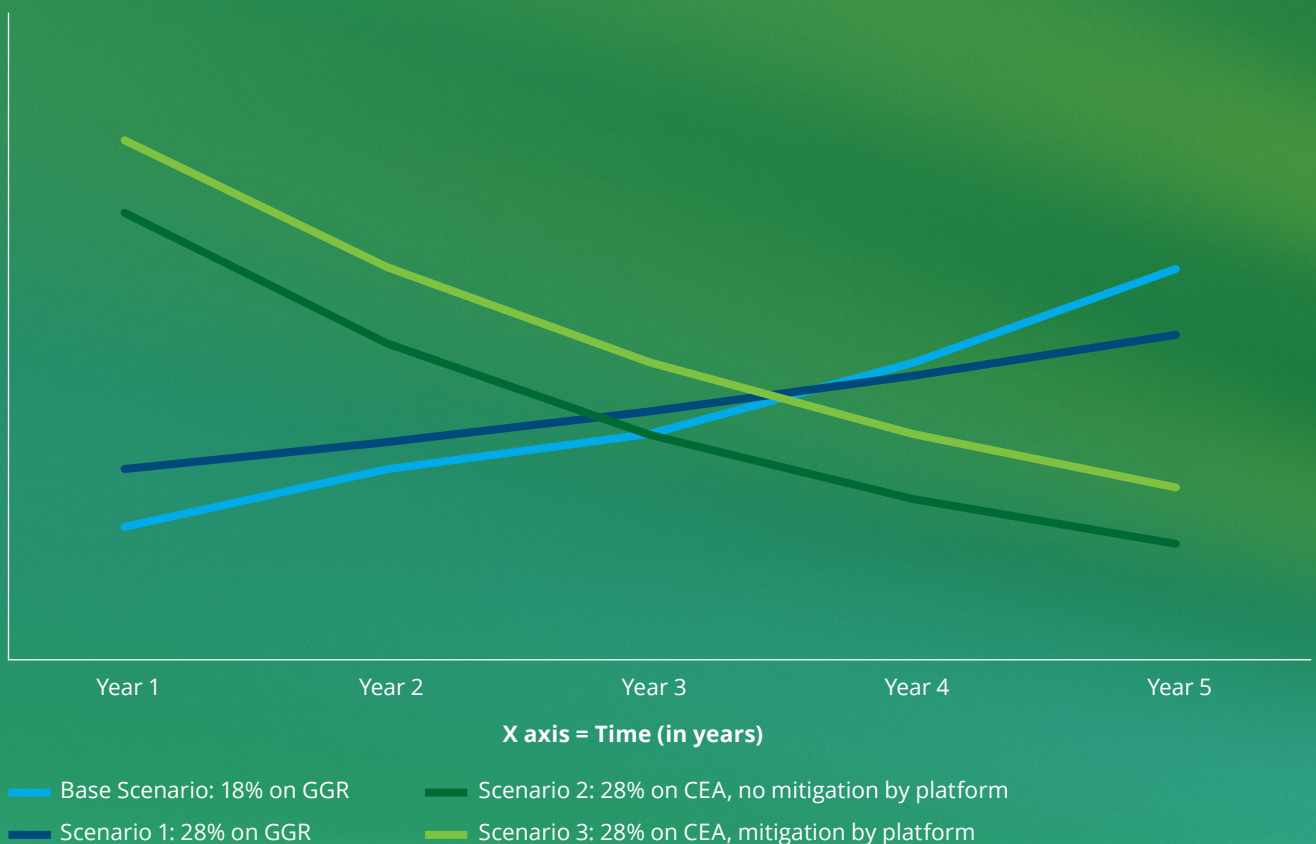
A thoughtful approach to taxation, taking into account industry dynamics, consumer affordability, substitutability, and competitiveness, can help maintain a sustainable and thriving gaming ecosystem.



Analysing the effect of GST rates and value of supply on the GST Collections as well as on the Industry as a whole

Scenario analysis (refer the report for detailed analysis) basis data and the assumptions shared by the industry indicate that levying tax on the CEA instead of GGR even with mitigation measures (i.e. where the industry bears partial burden of the additional GST) would have negative implications on the GST revenue and industry's viability. The industry believes that the initial higher GST revenue derived from taxing CEA leads to value destruction for the industry and results in minimal future GST revenues which is evident from the graph plotted below:

Change in GST revenue across different scenarios with respect to time



As captured in the graph above, it can be seen that an increase in tax liability from 18 percent on GGR to 28 percent on the CEA would result into a significant decline in the tax revenue within the projected period of first-five years (As depicted by the yellow & green lines). Further, substantial differences are observed in the tax revenue as compared to current taxation structures. Thus, this would gradually result to a decline in the proportion of GST revenue generated by the government and would impact the overall revenue collection.

Further, the table below depicts the change in GST revenue collection by the government in comparison with the current tax regime, showcasing that GST on CEA would have an overall negative effect on GST revenue.

GST Revenues Comparison with 18% on GGR

	Year 1	Year 2	Year 3	Year 4	Year 5
28% GGR	47.78%	27.78%	10.48%	-4.47%	-17.40%
28% CEA - fully passed on to consumers	258.97%	88.93%	-0.56%	-47.66%	-72.45%
28% CEA - partially passed on to consumers	318.80%	136.17%	33.18%	-24.90%	-57.65%

Apart from the impact on revenue collections, the below insights emphasise the potential negative effect on the industry’s overall revenue if the tax structure is altered to tax CEA instead of GGR.

Per the scenario analysis, based on revenue, cost, and consumer behaviour related data and assumptions shared by the industry, applying 28 percent GST on CEA may result in a reduction of industry revenue by about 43 times in year 5 when the incidence of increased cost on account of increased tax is completely passed on to customers. Further, GST revenue is estimated to be lower by 48 percent in year 4 and 72 percent in year 5 when taxed at 28 percent on CEA compared with 18 percent on GGR.

In case where the incidence of increased cost on account of increased tax is partially borne by the company and partially passed on to customers, GST revenue would be lower by 25 percent in year 4 and 58 percent in year 5 when taxed at 28 percent on CEA compared with 18 percent on GGR. It is also believed that the industry revenue would lower by about 33 times in year 5 when GST is levied on CEA instead of GGR, considering the applied mitigation measures.

Overall effect of change on OG Industry



Consumer shift to offshore platforms



Gaming startups likely to become unviable, leading to job losses.



Overall degrowth of the industry

The consequences highlight the potential negative effects of imposing an undue tax burden on the OG industry through GST on CEA. Job losses, loss of FDI, reduced R&D and innovation, and overall industry contraction can have far-reaching implications for the industry’s development and its contribution to the economy

Overview of the Online Gaming industry

Gaming is an active and interactive form of entertainment, especially multiplayer games. It acts as a platform for immersive engagement and has also become a way for people to socialise. The growth of gaming in India has been catalysed by smartphone adoption, wider internet access, a better selection of mobile-first games, as well as the rise of gaming streamers and influencers, who are attracting large fan bases by playing made-in-India games.⁷ The rise of smartphones and the increasing availability of high-speed internet at reasonable prices has made it easier for people to access online games. India is now one of the largest gaming markets in the world. The growth of the OG industry in India has also led to the emergence of several gaming companies and startups. These companies are developing new games, building gaming communities, and providing services, such as streaming and E-sports (Electronic sports) tournaments.

The government has recognised that the Animation, Visual Effects, Gaming and Comics (AVGC) industry has the potential to boost domestic capacities and develop the opportunity landscape, collaborations in academia, co-production, technology, policy, and research. Prime Minister Narendra Modi provided the vision that the AVCG-XR sector can provide immense employment opportunities to the youth who can serve the global market and the Indian talent can lead the way in this sector.⁸ In addition, the Prime Minister also praised the efforts of innovators and developers in the industry who are helping him realise his vision of a 'Digital India'. To maintain the momentum of the industry, Finance Minister, Nirmala Sitharaman announced the formation of the AVGC Promotion Task Force during the Budget Speech 2022-23, which was constituted under the Ministry of Information and Broadcasting (MIB) in April 2022.

The report issued by the AVGC Promotion task force in 2022 was mainly to take necessary measures to unleash the potential of the industry. The report has provided recommendations to ensure accessibility to markets and suggestions for developing the required skill sets and readying professionals for the AVGC sector. The report also suggested ways for increasing access to technology, promoting high-quality content amongst the youth for promoting Indian gaming content. The suggestions were also aligned with the Make in India Initiative of the government. The report also highlights the implementation of various schemes, such as Technology Incubation and Development of Entrepreneurs, R&D grant scheme to fuel the growth of the sector in India.

Further, the economic potential of the OG industry can be better understood based on the following statistics reproduced:

Revenue



Revenue is steadily increasing due to a better supply of games and a greater propensity to pay. The average revenue per paying user (ARPPU) increased by 11% to reach US\$ 20 per year in FY22, with 2 million new paying users being added each month. A survey showed that 65% of paying gamers claim to have engaged in in-app purchases at least once.⁹

⁷ <https://www.sequoiacap.com/india/article/indias-got-game-sequoia-india-bcg-report-forecasts-a-5-billion-mobile-gaming-market-by-2025/>

⁸ <https://mib.gov.in/sites/default/files/AVGC-XR%20Promotion%20Taskforce%20Report%20-%202022.pdf>

⁹ <https://www.ibef.org/blogs/india-s-booming-gaming-industry#:~:text=The%20average%20revenue%20per%20paying,users%20being%20added%20each%20month.>

Industry size



Domestically, the OG industry in India was worth US\$0.54 billion in FY16¹⁰ and has grown to the worth US\$ 2.6 billion in FY22 and is estimated to reach US\$ 8.6 billion by FY27, growing at a CAGR of 27%.¹¹

Further, The Indian Gaming companies have raised \$2.8 billion from investors across the globe in the last 5 years. Indian gaming companies are on track to raise \$513 million by the end of FY22. ¹² Funding is up 380% from FY19 and up 23% from FY20.¹³

Number of gamers



The number of gamers in India stood at 50.7 crore in FY22, growing at a CAGR of 12 percent from 45 crore in FY21.¹⁶ Out of the 50.7 crore, the amount of paying gamers stands at 12 crore, growing at a CAGR of 24 percent.¹⁷ Currently, there are more than 15,000 game developers.¹ Further, India's gamer population recorded a conversion rate of 24 percent resulting in paying users base of 120 million in FY22.¹⁹

Employment



The Indian gaming industry has a workforce of 50,000 employees. Out of these 30 percent or 15,000 employees are programmers and developers.¹⁴ The industry is estimated to create more than one lakh direct and indirect jobs by FY22–23 and approximately two lakh jobs by FY24.¹⁵ The industry is witnessing a demand of approximately more than 50,000 to 80,000 job roles involving developers, programmers, testers/artists, and customer support.

Startups



Today, there are about 1,162 gaming startups in India²⁰ and 275 game development companies.²¹ About 5,468 Indian game publishers are present on the Google Play Store offering 19,518 games across categories.²²

Some of the top gaming intermediaries in India (unicorns or publicly listed) include Nazara Technologies, Game 24x7, Dream11, and Mobile Premier League.

¹⁰ https://www.meity.gov.in/writereaddata/files/india_trillion-dollar_digital_opportunity.pdf (Page 165)

<https://www.businessinsider.in/advertising/ad-tech/article/indias-online-gaming-industry-has-the-potential-to-generate-2-billion-by-2023-ey-all-india-gaming-federation-report/articleshow/85265749.cms>

¹¹ <https://www.ndtv.com/business/india-is-emerging-as-a-gaming-hub-heres-why-3520771><https://www.lumikai.com/post/india-s-gaming-market-hit-2-6-billion-in-fy22-and-is-projected-to-reach-8-6-billion-in-fy27>

¹² Report by Lumikai <https://www.lumikai.com/post/india-s-gaming-market-hit-2-6-billion-in-fy22-and-is-projected-to-reach-8-6-billion-in-fy27>

¹³ Report by Lumikai <https://www.lumikai.com/post/india-s-gaming-market-hit-2-6-billion-in-fy22-and-is-projected-to-reach-8-6-billion-in-fy27>

¹⁴ https://s3.amazonaws.com/static.myteamlease.com/teamleasedigital-content/2022/11/17/PremiumReport_1668684156-1668684159-24812.pdf

¹⁵ https://s3.amazonaws.com/static.myteamlease.com/teamleasedigital-content/2022/11/17/PremiumReport_1668684156-1668684159-24812.pdf

¹⁶ <https://www.ibef.org/blogs/india-s-booming-gaming-industry>

¹⁷ Lumikai%20Gaming%20Report%20FY21-22_Executive%20Summary.pdf

¹⁸ <https://web-assets.bcg.com/38/14/41fdfa494a9b84aaa32c47cc92b0/mobile-gaming-market-opportunity.pdf>

¹⁹ Lumikai%20Gaming%20Report%20FY21-22_Executive%20Summary.pdf

²⁰ <https://tracxn.com/explore/Gaming-Startups-in-India>

²¹ <https://web-assets.bcg.com/38/14/41fdfa494a9b84aaa32c47cc92b0/mobile-gaming-market-opportunity.pdf>

²² <https://www.ikigailaw.com/unpacking-a-billion-dollar-industry-digital-games-and-sports-in-india/#acceptLicense>



Business models of the Online Gaming industry



Free games

Freemium Business model: This model is free to download initially but requires payment for various upgrades at a later stage.

Shareware: This model allows users to try a free trial or demo version of the game but requires them to make a payment to unlock the full game. The purpose is to provide limited gameplay so that users can be enticed to purchase the full version.

Advertising: In this model, users are not charged, but the game contains advertisements for revenue generation.



Paid games

Up-front payment model: This model applies to games purchased with a one-time payment and then downloaded directly onto a mobile device.

Subscription model: This model charges a recurring fee, usually monthly, if users want to continue playing. The subscription model is not very common in mobile gaming. It is more frequently used for Massively Multiplayer Online (MMO) games and other video games that require continuous server hosting and administrative overview for smooth operations.

Real Money Gaming: In these games, the players pay an entry amount for each game/ contest consisting of platform fee for providing platform services and contribution to prize pool which is distributed to winners as per predetermined rules of the game.

Regulatory framework

The Ministry for Electronics and Information Technology (MEITY) notified amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("Intermediary Rules, 2021") on 6 April 2023, to create additional obligations for OGI who enable access to real money games. This includes regulatory oversight and obligations regarding compliance, disclosures, and grievance redressal for OGI.

The amended rules define online games, which are further classified as online real money games, permissible online real

money games, permissible online games. The clear definition of online games imbibe the settled jurisprudence of the distinction between Games of Skill and Games of Chance.

The Intermediary Rules, 2021 further mandate registration, verification, and certification of all the eligible Online Gaming Intermediaries ("OGI") and online permissible real money games with the with MEITY's notified licensed self-regulatory body (SRBs). The Rules further prescribe due diligence required to be carried out by the OGIs and SRBs while discharging their functions and duties.

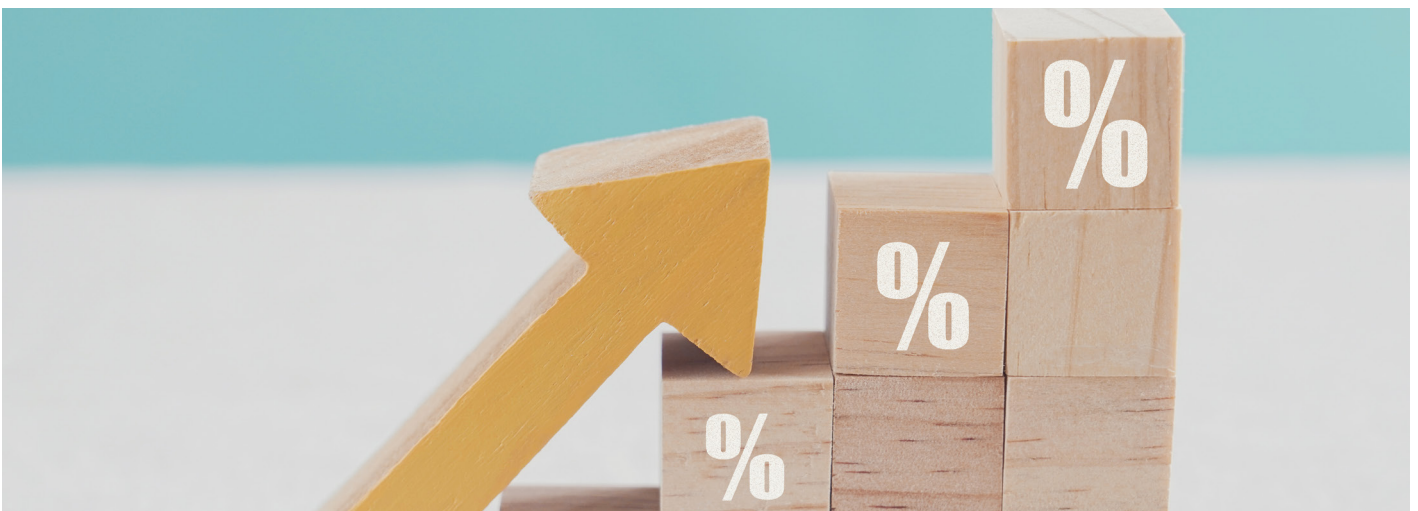


Tax landscape of Online Gaming in India

The tax landscape for OG in India is complex and constantly evolving with the availability and constant innovation of different formats within OG. The regulatory framework as well as the historic indirect tax jurisprudence in India, both in the pre-GST as well as post-GST regime, always made a distinction between games of chance involving betting and gambling activities vis-à-vis games of skill while determining the regulatory status and the indirect tax treatment involving rate of tax and value of supply respectively. The Courts have interpreted the term 'betting and gambling' to mean games of chance²³ which are covered under the Public Gambling Act, 1867 or state gambling/betting laws. Games of skill which are covered under the IT Act, 2000 and Intermediary Rules, 2021, have been consistently distinguished by the Courts from gambling and betting, and exempted from the applicability of the Public Gambling Act. Further, several courts have held that games of skill do not amount to gambling/betting and are protected as a legitimate business activity under Article 19(1)(g) of the Constitution of India.²⁴

Goods and Service Tax (GST)

Per Schedule III of the CGST Act, 2017, as amended from time to time, "actionable claims other than lottery, betting and gambling and horse racing" are neither treated as a supply of goods nor a supply of services. Accordingly, actionable claims arising from online games of skill are neither treated as a supply of goods nor a supply of services. Under the GST law, as it stands today, GST cannot be levied on actionable claims arising from online games of skill and accordingly, GST of 28 percent is not levied on the CEA, rather, 18 percent GST is levied on the GGR. On the contrary, lotteries are classified under HSN Code 999694, and gambling and betting activities are classified under HSN Code 999692, and the GST is levied at 28 percent on the face value of the lottery ticket and total bet value, respectively.²⁵ Further, the online skill gaming services are classified as an Online Information Database Access and Retrieval service (OIDAR) under HSN Code 998439 and the GST is levied at 18 percent on the Platform Fee (PF)/Gross Gaming Revenue (GGR), a charge applied by the platform to facilitate play between users.



²³ Madras High Court in Public Prosecutor v. Veraj Lal Sheth (1945) 1 MLJ 163; R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628; RMD Chamarbaugwala v. Union of India, AIR 1957 SC 699; K. R. Lakshmanan v State of Tamil Nadu, AIR 1996 SC 1153; Jungle Games India Private Limited & Anr. v. State of Tamil Nadu & Ors., W.P. 18022 of 2020; All India Gaming Federation v. State of Karnataka (WP 18703/2021).

²⁴ Avinash Mehrotra v. Union of India, Special Leave Petition (Civil) Diary No(s). 18478/2020; Saahil Nalwaya v. State of Rajasthan, D.B. Civil Writ Petition No. 2026/2021; Ravindra Singh Chaudhary v. Union of India, D.B. Civil Writ Petition No. 20779/2019; Chandresh Sankhla v. The State of Rajasthan, D.B. Civil Writ Petition No. 6653/2019; Gurdeep Singh Sachar v. Union of India, SLP(Criminal) Diary No. 43346/2019; Varun Gumber v. Union Territory, Chandigarh, Diary No(s). 27511/2017; Gurdeep Singh Sachar v. Union of India, Criminal Public Interest Litigation (St.) NO. 22 of 2019; Varun Gumber v. Union Territory, Chandigarh, CWP No.7559 of 2017.

²⁵ Reference may be made to Rule 31A of the CGST Rules, 2017 and to Section 7 read with Schedule III of the CGST Act, 2017

Gameskraft Technologies Pvt. Ltd. vs. Directorate General of Goods & Services Tax Intelligence & Ors

The High Court of Karnataka in the case of Gameskraft Technologies Pvt. Ltd. vs. Directorate General of Goods & Services Tax Intelligence & Ors., vide its judgment dated 11.05.2023 decided on the issue - whether offline/online games, such as rummy, which are mainly/preponderantly/substantially based on skill and not on chance, whether played with/without stakes tantamount to 'gambling or betting' as contemplated in Entry 6 of Schedule III of the GST Act, 2017.

The court reiterated the settled jurisprudence and observed that there is a clear difference between games of skill and games of chance, which is of constitutional significance as the former are protected under Article 19(1)(g) as legitimate businesses whereas the latter is treated to be *res extra commercium*. The court further held that "Though Section 2(17) of the CGST Act recognises even wagering contracts as included in the term business, but that in itself would not mean that lottery, betting, and gambling are the same as games of skill. The meaning of the terms "lottery, betting and gambling" as contemplated in Entry 6 of Schedule III of the CGST Act should be construed *nomen juris* in the light of the decisions of the Supreme Court, this Court, and other High Courts supra, which do not include games of skill.

Entry 6 in Schedule III to the CGST Act taking actionable claims out of the purview of supply of goods or services would clearly apply to games of skill and only games of chance, such as lottery, betting, and gambling would be taxable. Taxation of games of skill is outside the scope of the term 'supply' in view of Section 7(2) of the CGST Act, 2017 read with Schedule III of the Act."

The Court further held that a game of chance whether played with stakes is gambling, however, a game of skill whether played with stakes or without stakes is not gambling.

"The expressions, 'betting' and 'gambling' having become *nomen juris*, the same are applicable for the purpose of GST also and consequently, the said words, 'betting' and 'gambling' contained in Entry 6 of Schedule III to the CGST Act are not applicable to online/electronic/digital rummy, whether played with stakes or without stakes as well as to any other online/electronic/digital games, which are also substantially and preponderantly games of skill."

Conclusively, the terms 'betting' and 'gambling' under Entry 6 of Schedule III of the CGST Act must be given the same interpretation given to them by the courts, in the context of Entry 34 of List II of the Seventh Schedule to the Constitution and the Public Gambling Act, 1867. The terms 'betting' and 'gambling' appearing in Entry 6 of Schedule III of the CGST Act does not and cannot include games of skill within its ambit.

Tax Deducted at Source (TDS) and Income Tax

The Finance Act, 2023 amended the Income Tax Act, 1961, whereby new Section 194BA and Section 115BBJ were introduced to recognise online games as a separate and new-age industry. Per the new provisions, OGIs are mandated to deduct Tax Deducted at Source (TDS) at the rate of 30 percent from the net winnings of the user account, either during the financial year in case of withdrawal or at the end of the financial year.

Prior to these amendments, TDS at the rate of 30 percent was applicable only on winnings above INR 10,000. The new provisions have increased the tax burden on the users and the compliance burden for the OGIs. However, the industry

has welcomed the amendments as it provides clarity, and recognition of online gaming as a separate and distinct industry with further clarity that only net winnings can be taxed.

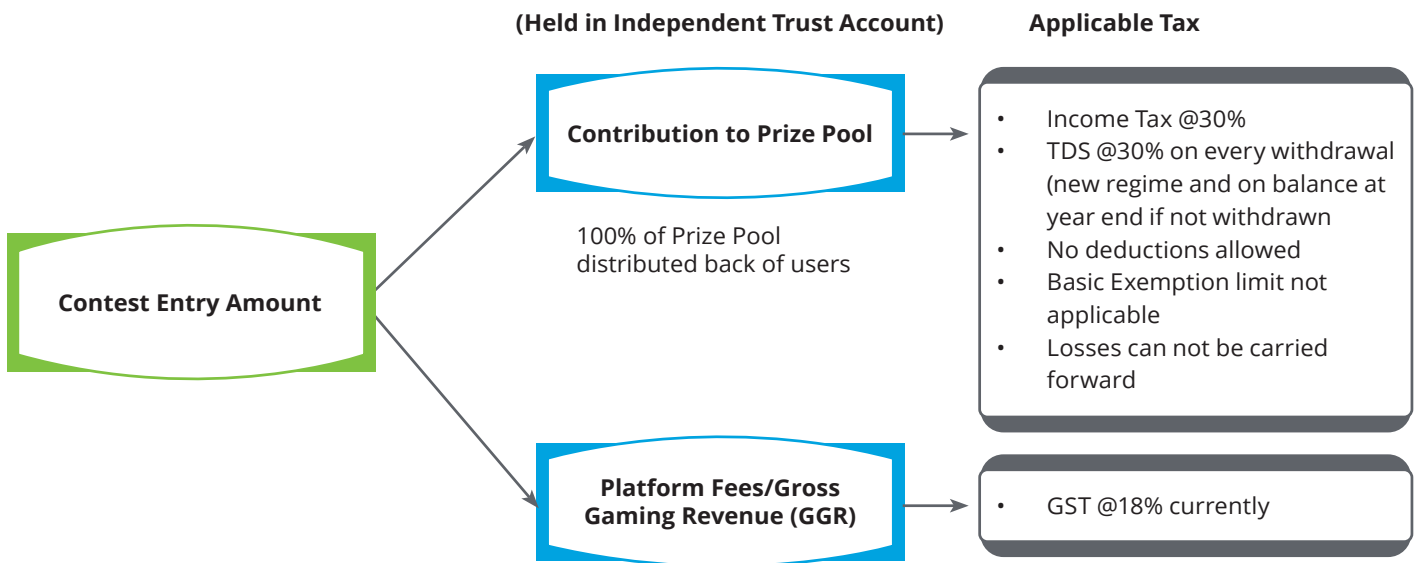
Recently, the government vide notification dated 22 May 2023 prescribed the mechanism for computation of net winnings at the time of withdrawal and at year-end. The government has further issued guidelines vide circular no. 5/2023 dated 22 May 2023 to address difficulties.

It is pertinent to note that with the new TDS regime and removal of the erstwhile threshold of INR 10,000, no winnings/prize money income will escape from the purview of income tax. Complete responsibility and liability is now on platforms

to deduct tax at the highest rate, i.e., 30 percent on net winnings. The amendments to TDS ensure that all components are subject to tax and there is no revenue leakage for the government on user earnings from the PP.

Based on the income tax and GST taxing policies highlighted above, it can be seen that the entire value chain of the online game of skill is being subject to tax currently. The same can be demonstrated in the following illustration-

Income tax and GST taxing policies on the Online gaming industry



All money components in Online Gaming are Taxed

Contest Entry Amount paid by a user in an online real money game is distributed into the prize pool which is held in an independent trust account and the platform fee, which is the service charge levied by the platform for providing the gaming service. Both the money components are subject to taxation and the tax burden is borne by the users, directly or indirectly. Therefore, any change in taxation, directly impacts the user

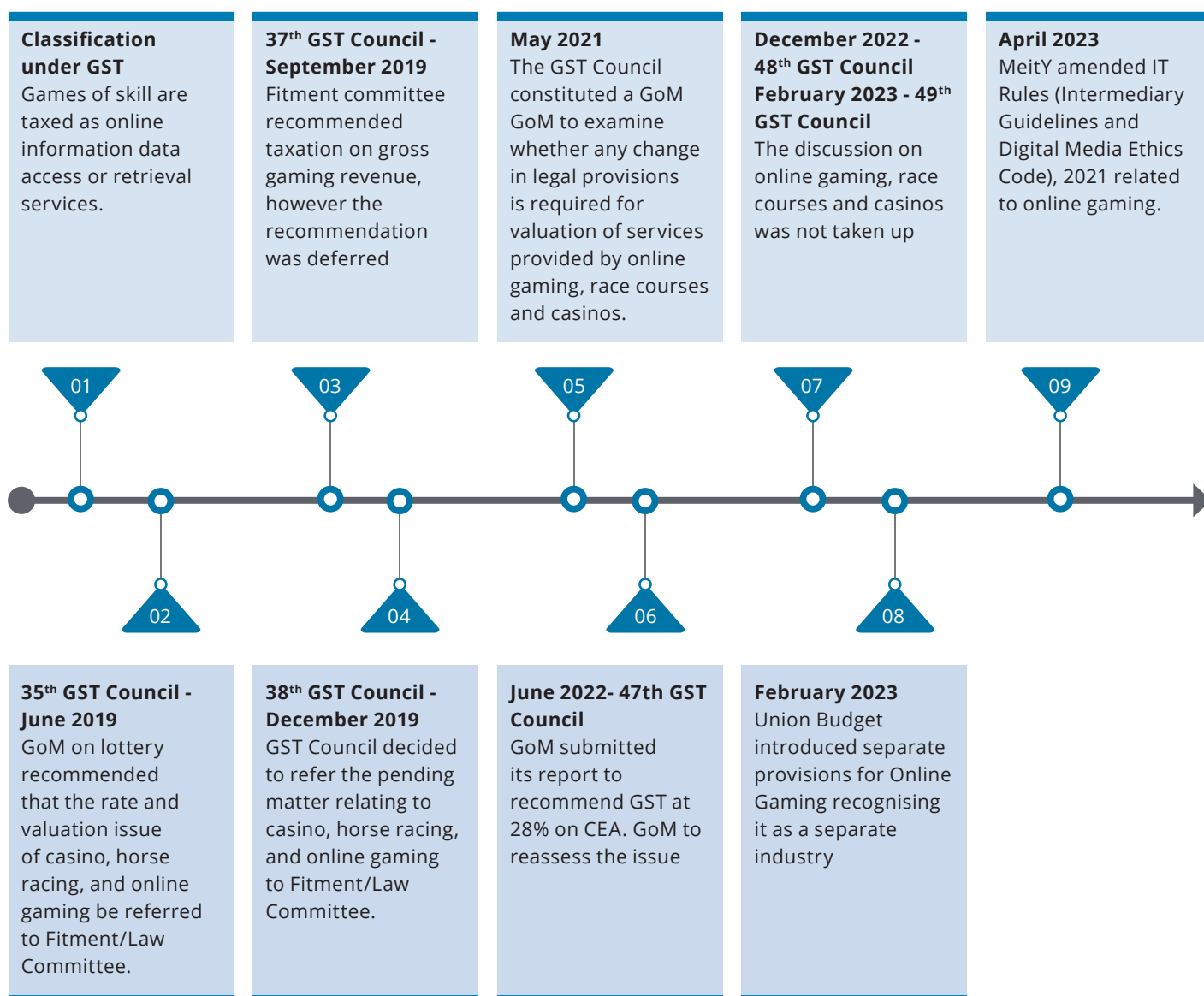
behaviours, which drives the platforms business models & viability.

The industry believes that any change in the indirect tax policy which is contrary to the existing framework as envisaged while enactment of the GST law, will have significant impact on the business models and viability of the online gaming industry.

Proposed GST amendments

In May 2021, GST Council constituted a Group of Ministers (GoM) to examine the valuation of services provided by OG, race courses, and casinos. In the report submitted by the GoM in the 47th GST Council meeting, it has been recommended that OG should be taxed at 28 percent on the total consideration, i.e., the CEA. The GST Council recommended the GoM to re-examine the recommendations and the final report has been submitted in December 2022. (details of not in public domain).

Timeline of amendments proposed under the GST Law



Challenges with the proposed amendments

The proposed GST rate increase and valuation changes for the OG industry would run contrary to both the historic indirect tax position in India and international best practices that have capped the rates between 15 percent and 20 percent.²⁶ Treating games of skill akin to gambling, betting, or lottery under the tax statute would result in an error of classification.

The recommendations are contrary to the jurisprudence as well as the IT Rules, which have a clear distinction between games of skill and games of chance. The industry believes that this would lead to significant disruption of the sector and its offerings, ultimately hurting both short-term as well long-term growth of the sector.



²⁶ Source - FIFS

Modelling the potential impact of GST recommendation on OGI

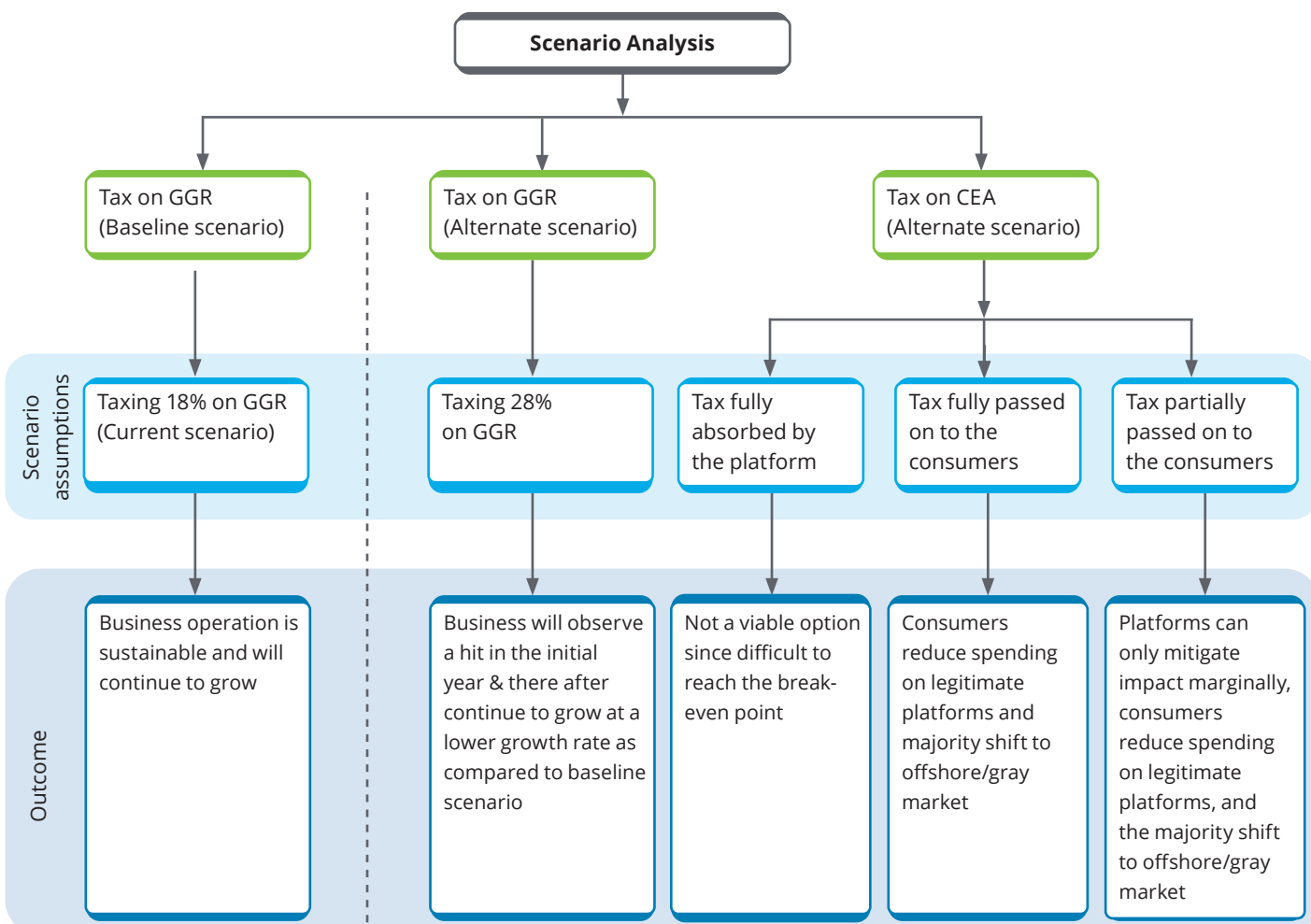
Modelling the effect of the proposed Goods and Services Tax changes

At present, the GST is charged at 18 percent on GGR. However, the proposal is to increase the rate as well as the value of supply to 28 percent on CEA. The rationale behind the proposal is that increase in tax may lead to an increase in the total revenue for the exchequer, as it is believed that the OG industry is profitable with a CAGR of ~33 percent, and since GST is a pass-through tax to consumers, the increase will not affect the industry and consumers.


While one of the objectives of the government may be to increase tax revenues, the effect of proposed change needs to be evaluated based on the following parameters which are equally critical for the growth of the industry and the resultant increase in tax collections:

1. Impact on Consumer behaviour – The proposed changes may result in a reduction of the consumer spending and substitution with other lucrative alternatives
2. Industry’s viability and business actions to mitigate the effect of an additional tax burden on the consumer


GST evaluation of current vs alternative scenario modelling analysis




Based on the industry inputs on consumer sensitivity, multiple scenarios have been modelled to evaluate the overall effect of the proposed tax change.²⁷ The common assumptions for this modelling are as follows:




GGR is 13 percent of CEA and exclusive of GST



11 percent of CEA per game per user is the cost incurred by the platform, which includes the cost of software, infrastructure, marketing, customer acquisition, etc.. Costs increase or decrease in the same proportion as user growth/degrowth



All users are paying users




All scenarios are modelled as a function of the baseline scenario


Baseline scenario - Tax at the rate of 18 percent on GGR

At present, OGIs are required to levy GST at 18 percent on GGR, in this scenario, the CEA is inclusive of the GGR, GST, and the Prize Pool (PP). Projected CAGR for the OG industry is 33 percent²⁸ for the next five years, which also signifies the user growth rate.


Assumption



CAGR for the OG industry is **33 percent** for baseline scenario²⁹



Number of users is 10 and CEA per user is **INR 10**



Growth rate signifies user growth rate

Calculation summary of baseline scenario: Tax at the rate of 18 percent on GGR

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
% growth rate		33	33	33	33	
CEA in INR	100.00	133.00	176.89	235.26	312.90	958.05
PF (13% of CEA) in INR	13.00	17.29	23.00	30.58	40.68	124.55
GST in INR	2.34	3.11	4.14	5.51	7.32	22.42
PP in INR	84.66	112.60	149.76	199.17	264.90	811.09
Cost in INR	11.00	14.63	19.46	25.88	34.42	105.39
Margin in INR	2.00	2.66	3.54	4.71	6.26	19.16

Since the GoM proposed the increase of tax rate and the value of supply, an analysis of different scenarios has been undertaken to assess the effect of the proposed change on different stakeholders, industry and users. Alternative

scenarios have been mapped to provide a holistic picture with respect to how the platform will tackle the higher cost to users and the effect of those choices on the platform’s operations and users.

²⁷ Common acronyms: Contest Entry Amount (CEA), Gross Gaming revenue (GGR), Platform fee (PF), Pool price(PP)

²⁸ Source: FIFS

²⁹ <https://www2.deloitte.com/in/en/pages/technology-media-and-telecommunications/articles/fantasy-sports-a-catalyst-for-the-sports-economy.html>

A. Alternate scenario (1) – 28% tax on GGR

In this scenario, the CEA is inclusive of the GGR, GST, and the PP. In order to meet the increased tax liability, the industry has two options i.e. absorb the entire liability or pass on the additional burden partially or completely to users.

Regardless of the option chosen, the industry's growth is expected to decline by 0.05 percent in the first year, but pick up at a lower rate of 15 percent in the next four years. The reduction in growth is attributed to a lower user retention rate, which is on account of reduced profit margin and marketing expense. This will lead to a smaller prize pool for user.

Calculation summary of alternate scenario (1): 28% tax on GGR^{30, 31}

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
% growth rate³¹	-5% (compared to base scenario)	15	15	15	15	
CEA in INR	95.00	109.25	125.64	144.48	166.16	640.53
GGR (13% of CEA) in INR	12.35	14.20	16.33	18.78	21.60	83.27
GST in INR	3.46	3.98	4.57	5.26	6.05	23.32
PP in INR	79.19	91.07	104.73	120.44	138.51	533.94
Cost in INR	10.45	12.02	13.82	15.89	18.28	70.46
Margin in INR	1.90	2.19	2.51	2.89	3.32	12.81
% change in GST compared with baseline	47.78%	27.78%	10.48%	-4.47%	-17.40%	

Observations

In this scenario, OGLs choose to either absorb the increased cost and tax liability or pass it to users. As a result, OGLs' profitability is expected to decline significantly as they are likely to face financial challenges, reduced profit margin, and lower user retention. Additionally, tax revenues that increase initially over a three-year period are lower than the baseline case. This is due to the lower growth rate that the industry will see because of a higher tax rate.

At present, some OGLs absorb GST while others pass it on to users either fully or partially. The change in GST affects the prize pool, which further influences consumer behaviour

towards OGLs. Higher GST will have a significant negative impact on the fledgling start-up ecosystem in the online gaming sector, many of whom may be forced to cut down on investment and expansion plans due to a higher tax burden and reduced margins.

The Indian online gaming industry is at a nascent stage of growth and development. A higher tax rate may prevent the industry from reaching its full potential and thereby curtailing investments and job creation.

³⁰ The table captures the impact of an increase in tax rate where the additional tax liability is completely absorbed by the industry. There would only be a small immaterial deviation in the percentage change in the GST revenue captured in the table in case where the burden of tax is partially or completely passed on to customers.

³¹ Source - FIFS



B. Alternate scenario - Tax at the rate of 28 percent on CEA

Entire tax increase is absorbed fully by the OIGs

At present, the range of GGR charged by the different OIGs is between 5 percent and 25 percent of the CEA. This range of GGR is lower than the proposed tax liability of 28 percent of the CEA.

This indicates that if the proposed tax rate of 28 percent on CEA is implemented, OIGs would face challenges in absorbing the entire tax burden without making significant adjustments to their GGR or operating costs. It may require OIGs to re-assess their business models and make adjustments to remain financially viable while complying with the new tax regulations.

The OIGs will not be able to absorb the tax increase of 1,115 percent, making it impossible for all OIGs to even reach the break-even point. Therefore, the industry overall will become unviable, resulting in both the small as well as the large players exiting the market. Further, this will also gradually shift consumers to offshore/gray market OG industries. Even the revenue exchequer for the government will also reduce.

Therefore, let us analyse the other alternate scenarios, i.e., the increased tax liability is either shifted fully to the consumer or partially shifted to the consumer, and the resultant effect on tax collections and the viability of the platform.

Case study - Tax Rate Sensitivity (Denmark)³²

The Danish government introduced the increase in the tax rate from 20 percent of GGR to 28 percent of GGR, claiming that this will ultimately raise DKK150m (£17.1 million/€20.1 million/US\$22.3 million) in new tax revenue.

However, it was observed that given the low-profit margin of operators, any significant increase in tax rate will lead to a reduction in marketing costs to retain profitability. With the change in tax regime from 20 percent on GGR to 28 percent on GGR, it was noted that the domestic market will observe ~22 percent decline. In other words, the 40 percent increase in tax liability resulted in ~22 percent reduction in the gaming industry.

The report further highlights that the increased tax comes at the detriment of consumer welfare, with more players moving to offshore sites where there are lower levels of consumer protection.

³² <https://www.egba.eu/uploads/2020/06/Tax-analysis-Denmark.pdf>

C. Alternate scenario (3) - Entire tax increase is passed on to users

In this scenario, the OGIs would not employ any strategy to offset the additional tax burden resulting from increased taxes, i.e., the increase in cost would be passed on to consumers completely. As a result, the GGR charged by OGIs would remain the same as in the base scenario, and the entire increased tax liability will be passed on to users of the platform. This means that users will bear

the full cost of the higher taxes imposed on the OGIs, potentially leading to increased prices or reduced PP available for individuals participating through these platforms.

Based on the sensitivity analysis performed by the industry, the overall industry would witness a 70 percent de-growth CEA in year 1 and 30 percent Y-o-Y reduction of CEA for the next four years.

Calculation summary of alternate scenario (3): Entire tax increase is passed on to users

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
% growth rate	-70% (compared with base scenario)	-30%	-30%	-30%	-30%	
CEA in INR	30.00	21.00	14.70	10.29	7.20	83.19
PF (13% of CEA) in INR	3.90	2.73	1.91	1.34	0.94	10.82
GST in INR	8.40	5.88	4.12	2.88	2.02	23.29
PP in INR	17.70	12.39	8.67	6.07	4.25	49.08
Cost in INR	3.30	2.31	1.62	1.13	0.79	9.15
Margin in INR	0.60	0.42	0.29	0.21	0.14	1.66
% change in GST compared with baseline	258.97%	88.93%	-0.56%	-47.66%	-72.45%	

Observations

In this scenario, the degrowth of the market, decline in CEA, and reduced profit margin would have significant implications for domestic legitimate OGIs, leading to the shutdown of these platforms.

The increase in taxes and higher customer acquisition costs would further worsen the financial situation of these platforms. The industry believes that the additional tax burden would reduce their profitability, making it even more challenging to stay afloat. Moreover, higher customer acquisition costs imply that attracting new users becomes more expensive which is likely to affect the revenue generation and adding to the financial strain. It is concerning that most of the 500 online skill gaming

companies in India, specifically less than five of them, are profitable. This indicates that a significant number of companies are incurring higher costs than the revenue generated from GGR. The industry believes that this financial imbalance would make it difficult for these platforms to sustain their operations, potentially resulting in rapid shutdowns. This situation coupled with the increased tax liability would lead to shut down of most of the startups.

Further, the reduced profitability of these platforms leads to a substantial decrease in the GST collected by the government compared with what would have been collected at the 18 percent rate on GGR.

D. Alternate scenario (4) - Partially passed on to consumer

In the scenarios above, it was observed that neither the OGIs nor the users will be able to solely absorb the increased tax burden without deleterious effect on the industry. Therefore, to ensure viability and sustainability, OGIs may try to mitigate by sharing the increased tax liability.

Therefore, the mitigation strategy available to the OGIs is to partially pass on the increased tax to the consumers and partially absorb the same. In other words, OGIs will reduce the GGR and thereby, try to reduce the tax burden on users. By reducing the GGR, OGIs can attempt to mitigate the shift of users or the degrowth of the market. However, based on industry data provided, it is estimated that this reduction in the GGR will only mitigate the user shift by 5 percent, i.e., the industry is likely to witness a

65 percent reduction of CEA in year 1 and 25 percent Y-o-Y reduction of CEA for the next four years.

While this mitigation strategy may help ease the burden on users to some extent, it is important to note that the industry would still experience a substantial decline in revenue over the specified period. The effectiveness of this strategy may depend on various factors, such as the willingness of users to continue participating in the platform despite the reduced CEA and the overall competitive landscape within the industry.

The proposed mitigation strategy of partially passing on the increased tax liability to consumers by reducing the GGR aims to strike a balance between maintaining user engagement and sustaining the profitability of OGIs. However, the projected reduction in CEA indicates that challenges may persist for the industry, and careful consideration of additional strategies may be required to ensure its long-term viability.

Calculation summary of alternate scenario (4): Partially passed on to consumer

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
% growth rate	-65% (compared with base scenario)	-25%	-25%	-25%	-25%	
CEA in INR	35.00	26.25	19.69	14.77	11.07	106.78
PF (11% of CEA) in INR	3.85	2.89	2.17	1.62	1.22	11.75
GST in INR	9.80	7.35	5.51	4.13	3.10	29.90
PP in INR	21.35	16.01	12.01	9.01	6.76	65.13
Cost in INR	3.85	2.89	2.17	1.62	1.22	11.75
Margin in INR	0.00	0.00	0.00	0.00	0.00	0.00
% change in GST compared with baseline	318.80%	136.17%	33.18%	-24.90%	-57.65%	

Observations

In the described scenario, the reduction of the GGR and the overall degrowth of the market will have a cumulative effect on the CEA and profit margin of OGIs. The OGIs will be operating at the break-even point, which will subsequently lead to a decrease in innovation and technological advancement within the industry.

For OGIs to maintain and operate at the break-even point, a GGR of 11 percent is considered the threshold. However, even with this reduced fee, the shrinking market

will result in a proportional reduction in costs, such as manpower and marketing expenses. Despite these efforts, the platform revenues will continue to shrink, highlighting the challenging financial situation for OGIs.

The subsequent decrease in the GGR will also affect the GST collected by the government. The amount of GST collected will substantially reduce compared with what would have been collected at the 18 percent rate on GGR or 28 percent on GGR.

Key findings

1. Five-year GST revenue

GST revenue	Year 1	Year 2	Year 3	Year 4	Year 5
Base scenario: 18% on GGR	2.34	3.46	4.14	5.51	7.32
Scenario 1: 28% on GGR	3.46	3.98	4.57	5.26	6.05
Scenario 3: 28% on CEA, no mitigation by platform	8.40	5.88	4.12	2.88	2.02
Scenario 4: 28% on CEA, mitigation by platform	9.80	7.35	5.51	4.13	3.10

2. Taxed at 28 percent on CEA instead of 28 percent on GGR - (no mitigation)



While the initial GST figures are high due to an unprecedented increase in tax, the current tax regime provides higher tax collection year 3 onwards.



GST revenue is lower by 48 percent in year 4 and 72 percent in year 5 when taxed at 28 percent on CEA compared with 18 percent on GGR.



Industry revenue is lower by approximately 43 times in year 5 when GST is levied on CEA instead of GGR.

3. Taxed at 28 percent on CEA instead of 28 percent on GGR - (with mitigation)



While the initial GST figures are high due to an unprecedented increase in tax, the current tax regime provides higher tax collection year 3 onwards.

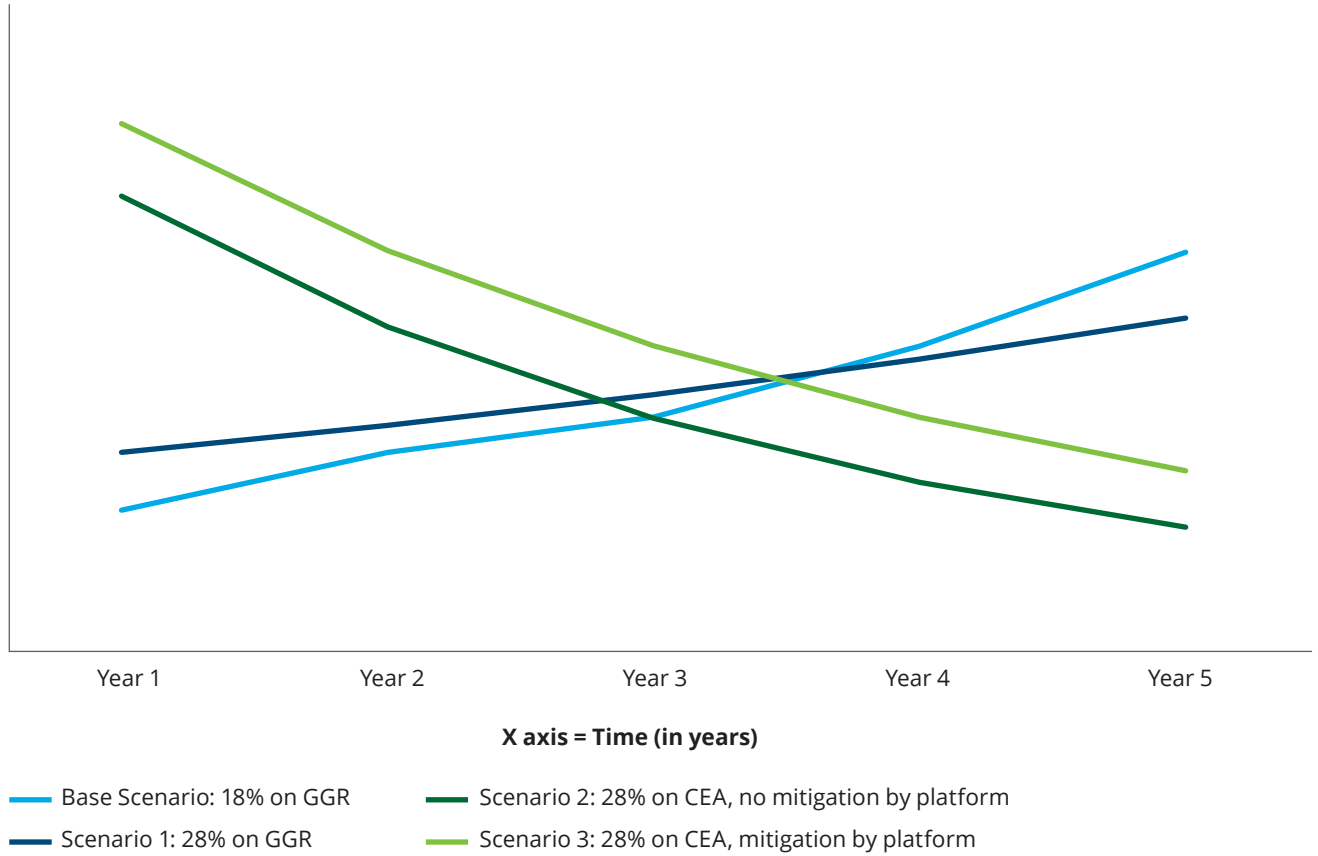


GST revenue is lower by 25 percent in year 4 and 58 percent in year 5 when taxed at 28 percent on CEA compared with 18 percent on GGR.



Industry revenue is lower by approximately 33 times in year 5 when GST is levied on CEA instead of GGR, considering the applied mitigation measures.

Change in GST revenue across different scenarios with respect to time



These findings indicate that levying GST on CEA even with mitigation measures, would have negative implications for GST revenues and the industry’s viability and revenue growth. The industry believes that the initial higher GST revenue derived from taxing CEA leads to value destruction for the industry and results in minimal future GST revenues. The industry revenue would experience a significant decline within the first-five

years, with substantial differences observed when comparing the tax structures.

These insights emphasise the potential negative effect on GST revenues and the industry’s overall revenue if the tax structure is altered to tax CEA instead of GGR.

Overall effect of change in value of supply on the OG Industry



Consumer shift to offshore platforms: The increase in the tax rate and value of supply may lead to a consumer shift from domestic legitimate platforms to offshore online illegitimate platforms. These offshore platforms may offer more favourable conditions, attracting users who seek to avoid higher tax rates. This shift exposes consumers to potentially harmful markets without access to a grievance redressal mechanism.

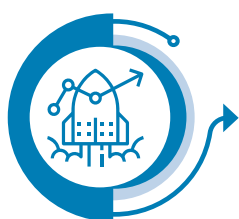


Reduction in GST revenue collection: The tax revenue collected from the increased rate of 28 percent on CEA is projected to reduce substantially over the years. This significant reduction in tax revenue can be attributed to factors, such as the consumer shift to offshore platforms and potentially reduced participation in the regulated domestic market.

The table below depicts the change in GST revenue collection by the government in comparison with the current tax regime, showcasing that GST on CEA would have an overall negative effect on GST revenue.

GST revenue comparison with 18% on GGR

	Year 1	Year 2	Year 3	Year 4	Year 5
28% GGR	47.78%	27.78%	10.48%	-4.47%	-17.40%
28% CEA - fully passed on to consumers	258.97%	88.93%	-0.56%	-47.66%	-72.45%
28% CEA - partially passed on to consumers	318.80%	136.17%	33.18%	-24.90%	-57.65%



Gaming startups likely become unviable, leading to job losses: The increase in tax liability on the online gaming industry is expected to have severe consequences, particularly for the numerous gaming startups in the sector. Most of these startups may become unviable, leading to significant job losses. It is estimated that approximately 60,000 jobs could be at risk, and the industry would lose the potential to create around 20,000 skilled jobs.



Overall degrowth of the industry: To cope with the increased tax liability, the industry may have to reduce costs, which will have cascading effects. Legitimate industry revenue would shrink by around 33x to 43x times the current levels within the first five years. This is expected to result in lower investments in R&D, decreased innovation, and reduced spending on marketing and IT services. Ancillary industries associated with the gaming sector may also be adversely affected.

The consequences outlined to highlight the potential negative effects of imposing an undue tax burden on the OG industry through GST on CEA. Job losses, loss of FDI, reduced R&D and innovation, and overall industry contraction can have far-reaching implications for the industry’s development and its contribution to the economy.

While, measuring the effect of an increase in indirect tax on the industry, it is important to understand its potential economic effects, industry competitiveness, supply chain, and inflation. This information can help policymakers make informed decisions about tax policies and their potential effect on the industry and the economy.



Global indirect tax position in the Online Gaming (OG) industry

The OGIs have a high turnover, and low margin business. Further, taxation is one of the keystones for a successful regulatory market in any region.

The level of taxes levied is an important driver of market growth and consumer attraction.

It is imperative to analyse the best practices being followed across the globe for taxation of the OG industry. For this purpose, an analysis of the taxation model adopted by the below countries/country groups should be considered:

Country	Tax rate	Taxable value
UK ³³	21%	GGR
Austria ³⁴	20%	GGR
Malaysia ³⁵	6%	GGR
Singapore ^{36,37}	8%	GGR
Czech Republic ³⁸	21%	GGR
Australia ³⁹	20%	GGR
Denmark ⁴⁰	28%	GGR
Italy ⁴¹	22%	GGR
France ^{42*}	11%	CEA
Germany ⁴³	5.3%	CEA
Portugal ⁴⁴	8%	CEA
Poland ⁴⁵	12%	CEA

*France is shifting from CEA to GGR



³³ <https://lawstrust.com/en/autor/klymenko/uk-onlinegamblingtaxation#:~:text=Given%20the%20new%20tax%20regime,payments%20received%20from%20the%20British>

³⁴ Source - FIFS

³⁵ http://gst.customs.gov.my/en/rg/SiteAssets/gst_actw/GOODS_AND_SERVICES_TAX_ACT_2014v1.pdf

³⁶ <https://sso.agc.gov.sg/SL/GSTA1993-RG1?Provids=P1XIII-#P1XIII->

³⁷ <https://sso.agc.gov.sg/Act/GSTA1993#pr15->

³⁸ <https://www.iprh.cz/en/documentation/act-no-187-2016-on-gambling-tax-unofficial-translation/>

³⁹ <https://www.ato.gov.au/business/gst/in-detail/your-industry/gst-when-conducting-gambling-activities/>

⁴⁰ <https://iclg.com/practice-areas/gambling-laws-and-regulations/denmark>

⁴¹ Source - FIFS

⁴² <https://igamingbusiness.com/casino-games/french-senate-approves-shift-to-ggr-tax-for-gambling/>

⁴³ <https://iclg.com/practice-areas/gambling-laws-and-regulations/germany>

⁴⁴ <https://ibia.bet/wp-content/uploads/2021/08/IBIA-An-Optimum-Betting-Market.pdf>

⁴⁵ <https://ibia.bet/wp-content/uploads/2021/08/IBIA-An-Optimum-Betting-Market.pdf>

Historic examples showing the effect of the shift to GGR-based taxation in the UK and France

Based on the analysis, it has been observed that most of the countries follow the GGR-based taxing model. The CEA-based taxing model would invariably make online skill gaming intermediaries less competitive and unappealing to consumers compared with operators offering the same products taxed on the GGR.

Many countries following the turnover tax model have shifted to the GGR tax model, such as the UK and France (proposing to switch to the GGR)

The United Kingdom^{46,47}

In 2001, the UK scrapped the turnover-based taxing policies, wherein a 6.75 percent tax was charged on the CEA.

Pursuant to the changes, in 2003, the UK introduced the GGR-based taxation system.

One of the key objectives behind this reform was to allow remote gaming operators to locate in Great Britain and be regulated under national jurisdiction.

The major bookmakers re-located their offshore online and telephone betting operations to the UK rapidly.

The proposed change resulted in the creation of many new jobs within the UK gaming market.

As a result, the industry turnover has risen by ~35–40 percent resulting in increased financial support and investments.

The industry witnessed a rapid decline in the level of illegal activities due to the shift to the GGR-based taxing model.

There was a growth in revenue collections made by the authorities.

France⁴⁸

France has been imposing high taxing burdens on the industry rendering it less competitive.

The authorities levied a tax on the entire contribution received from the users (CEA).

In October 2016, a report issued by the Court of Auditors stated that French taxation was heavy because of this choice of the taxable base, especially as the rates were high.

In 2020, the French Senate proposed a Budget Bill to amend the tax model from the CEA to the GGR with respect to the calculation of tax on gaming. They realised that the industry was being unfairly taxed on money that was not their revenue.

The Senate noted that the operators were taxed on sums that they do not actually receive as a bulk of money staked was returned to the users.

The Senate said that the change would ensure that the tax bills would adjust for fluctuations in the success of the industry.

⁴⁶ <https://researchbriefings.files.parliament.uk/documents/SN02151/SN02151.pdf>

⁴⁷ <https://igamingbusiness.com/casino-games/french-senate-approves-shift-to-ggr-tax-for-gamblin/>

⁴⁸ http://news.bbc.co.uk/sport2/hi/front_page/1207748.stm

The impact of taxation models adopted by the countries

The threat of business shift from the organised to unorganised sector (in case of the CEA-based taxation)

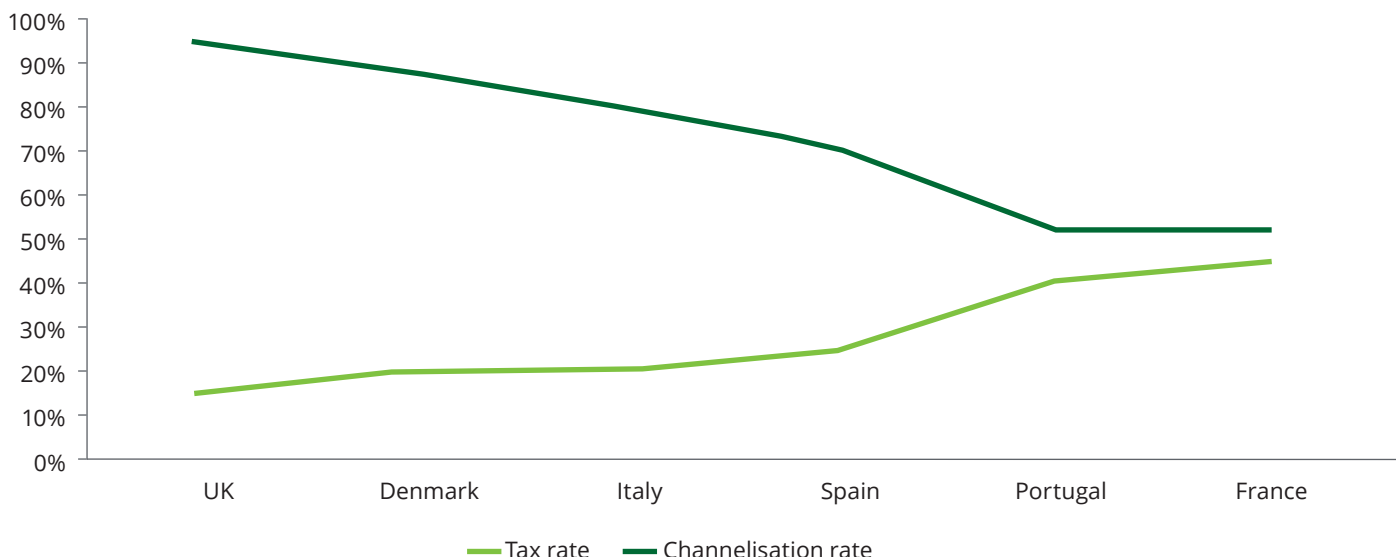
It has been observed that domestic legitimate OGI will be exposed to fierce competition from offshore online platforms offering illegitimate gaming. In other words, since a higher tax rate will result in less channeling⁴⁹ of operators, the ideal structure is to create an equilibrium between the rate and the revenue.

A report by Copenhagen Economics⁵⁰ observed that the country with the lowest tax rate, the UK, is also the country with the highest channeling rate with taxing high charges.

Further, in a report issued by the International Betting Integrity Association (IBIA) in association with H2 Gambling capital,⁵¹ it was mentioned both France and Portugal suffer from low regulated operators despite having unlimited online licensing regimes. Burdensome taxation policies have been a key reason for such a decline. The report further anticipated a decline in the onshore channelising rate in countries, such as Denmark, Sweden, Italy, etc.

The chart below demonstrates an inverse relationship between tax rates and channelisation rates.

Channelisation rate vs Tax Rate in 2015



Source - Based on the statistics mentioned in the report issued by Copenhagen Economics

⁴⁹ Channelisation rate refers to the ratio of players using the platform of licensed operators, i.e., organised sector to the players operating through the unlicensed/unorganised sector.

⁵⁰ <https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/8/368/1478078895/copenhagen-economics-2016-licensing-system-for-online-gambling.pdf>

⁵¹ <https://ibia.bet/wp-content/uploads/2021/08/IBIA-An-Optimum-Betting-Market.pdf>

Conclusion

The online gaming industry in India has experienced significant growth and popularity in recent years and has emerged as a thriving sector. The recent legal and regulatory changes have provided a clear and comprehensive roadmap for the growth of the industry as a key contributor to the digital economy.

Based on the revenue, cost and consumer behavior related data and assumptions shared by the industry, the report estimates that the proposed change in the GST regime for online gaming services from the current 18 percent on GGR to 28 percent on CEA may render the OG industry unviable as the increase in GST burden could be more than 1,000 percent⁵² in one of the scenario analysis. The proposed change in valuation effectively taxes the OGIs above and beyond their revenue stream.

Based on the finding and the representation of the industry to the GST Council, the GoM and GST Council may rely on established legal precedents and the regulatory framework that differentiate between online games of skill that are constitutionally protected activities under Article 19(1)(g) vis-a-vis games of chance involving gambling and betting that are res extra commercium activities. The IT Rules provide for every game to be certified by a Self-Regulatory Body to be recognised by the Central Government. GoM report while recommending changes under GST may also considers these developments and continues to differentiate between games of skill and games of chance, and consider the certifications/ approvals to be provided by SRB before arriving at a recommendation on value of supply.

Using the scenario analysis and modelling techniques based on the data and assumptions shared by the industry, the report estimates the potential impact on the industry's growth and foresees a reduction in government revenues in the next five years if GoM recommendations are implemented. If 28 percent GST is levied on CEA, the GST revenue in five years is expected to decrease by 58 percent to 72 percent compared with the current regime. Based on such analysis, the legitimate industry size may shrink by 33x to 43x in the next five years, significantly affecting the domestic industry, including small players and start-ups in this space. The analysis in this report based on data and assumptions shared by the industry indicates that the proposed tax regime may have a cascading effect since the decline in the industry will result in reduced revenue for both the OGIs and the government. It could also deter the investors from investing in the industry, which would affect the development, infrastructure, innovation and employment.

Further, as observed in countries, such as the UK, France, Denmark, the taxation scheme adopted by any country should strike a balance between having a robust taxation regime for the sector given its popularity and addressing the need for social regulation. Based on the global best practices, it appears that GGR tax model enables the industry to remain viable and flourish, whereas the CEA-based taxing model gradually drives consumers to offshore gaming platforms and may impact the industry negatively.

Thus, a thoughtful approach to taxation under GST, considering industry dynamics, consumer affordability, substitutability, and competitiveness, can help maintain a sustainable and thriving online gaming ecosystem in India.



⁵² Source - scenario analysis based on the data and assumptions provided by industry



Formed in 2017, the Federation of Indian Fantasy Sports (FIFS) earlier known as the Indian Federation of Sports Gaming IFSG, India's first and only Fantasy Sports body, was established to protect consumer interest and create standardised best practices in the Fantasy Sports industry. FIFS aims to create a thriving ecosystem for fantasy sports users and operators. It focuses on creating guidelines for best practices and setting standards of operation to protect the interest of fantasy sports users and operators. FIFS works with key industry stakeholders and liaisons with the policymakers to create a robust governance structure to support the sustained growth of the industry.

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