



Online gaming  
in India -  
The GST conundrum

**AIGF**  
ALL INDIA GAMING FEDERATION

**EY**  
Building a better  
working world

# Fore word

Sports and gaming have been a predominant source of enjoyment since time immemorial. In today's digital lifestyle, the avenues for seeking recreation and entertainment have increased manifold. Resultantly, online gaming has emerged as an important avenue due to a multitude of favourable factors such as young and tech-savvy population, affordable availability of feature-packed smartphones, better internet connectivity, increased awareness and development of local gaming content suited to one's preferences.

However, every industry needs a robust regulatory and legal environment, devoid of uncertainties to achieve its true potential and ensure that the business is able to scale quickly.

The core revenue source for real-money gaming players is the rake fee charged by them to facilitate gameplay

between users. The lack of clear valuation principles and ambiguities in levying GST on the entire stake value vis-à-vis the rake fee element has caused regulatory uncertainty amongst industry players and has dampened the industry to an extent.

This report attempts to delve deeper into the aspects of legality of the business, present day GST provisions and the taxation of the industry across the globe. To be a meaningful contributor to the vision of a Trillion-dollar digital economy of the government, it is crucial that we adapt globally consistent standards in our tax treatment of the industry.

We hope this report provides actionable insights to the policymakers on firming up valuation principles and remove any ambiguity thereto.



**Bipin Sapra**  
Partner  
Ernst & Young LLP



The online gaming industry is witnessing significant growth around the world. In India as well, it has come a long way from its nascent beginning in late 2000s to become a multibillion-dollar industry in 2020. The industry is expected to grow by another billion dollars by 2023, reaching a total market size of US\$2 billion+ in India. The growth is a testament to India's potential to develop, engage and operate a competitive industry that is comparable to global standards.

We firmly believe in the potential of the online gaming industry in the country's economic development and its capability in fostering innovation and providing job opportunities. As a result, we are pleased to have collaborated with EY for a report that outlines the dynamics of the online gaming industry, legality of the business in India and the issues under Goods and Services

Tax law that have contributed to regulatory uncertainty. The valuation disputes under GST law have been a dampener to the industry off late.

With a view to spur investments in the industry and realize its true potential, the report recommends crystallization of the valuation principles through an in-depth research on the global best practices across major economies and the levy of standard GST/VAT rate by treating it on par with any other segments of the economy.

We hope that this report would provide meaningful insights to the policy makers and help accord a priority to the industry.

I thank the member stakeholders of AIGF and our colleagues at EY for their involvement and valuable inputs for contribution in the construct of this report.



**Roland Landers**  
CEO  
All India Gaming Federation



# Executive summary



Sports and gaming have been a traditional source of rejoice, recreation and engagement for players and spectators alike. Within it, online gaming provides avenues for an on-demand, real-time gameplay without the limitations of a physical venue and time zones. COVID-19 and the resultant social distancing norms have further forced the masses to explore alternative means of recreation and social engagement and in turn, aided the growth of online gaming.

The market size and estimated growth numbers hint a steady growth trend wherein global online gaming revenue is estimated to grow from US\$38 billion (approx.) in 2019 to US\$122 billion (approx.) by 2025. On similar lines, the domestic market for online gaming is estimated to grow from US\$906 million in 2019 to over US\$2 billion in 2023 representing a CAGR of 22% approx. Therefore, the domestic industry has the potential to scale quickly and become a meaningful contributor. Digitizing the gaming industry has led to tapping into an otherwise unorganised sector and brought more accountability.

The online gaming industry offers various playing formats which can be majorly classified into card-based games such as Rummy and Poker, fantasy sports, competitive skill-based games commonly known as e-sports and casual games such as Chess, Ludo, Candy Crush, Temple Run, etc. The key market players in India enabling the online gaming experience comprise of MPL, RummyCulture, PayTM First Games, Dream11, Ludo King, Nodwin, Nazara, Epic Games, etc. (illustrative list).

Considering the growth prospects of the industry, it is imperative to analyse the GST implications and impediments therein that may impact the business operations for the industry as a whole. It is also worthwhile to evaluate the global best practices for the taxation of the industry and provide much-needed clarity on aspects related to valuation and applicable GST rate. Online games operate either on the rake fee model wherein the gaming platform charges a rake fee for

facilitating the play of games or freemium models wherein the gameplay is free but additional features may require the user to purchase certain items for a monetary price.

A rationale imposition of Goods and Services Tax (GST) is important for sustaining this industry. Two important aspects covered in this report are - (i) Value on which GST should be charged; and (ii) Rate at which GST should be levied. With respect to all online games (involved in a game of skill), the industry has taken a position that GST is payable only on the rake fee at standard rate of 18% and the amount contributed to the pool for distribution as prize money is not taxable, it being an actionable claim. This view has been upheld by various High Courts in the country.

Analysis of international laws, in different ways and manner, considers the tax only rake fee earned by the companies. Primarily, there are two taxation models that prominently emerge as prevalent practices across the globe.

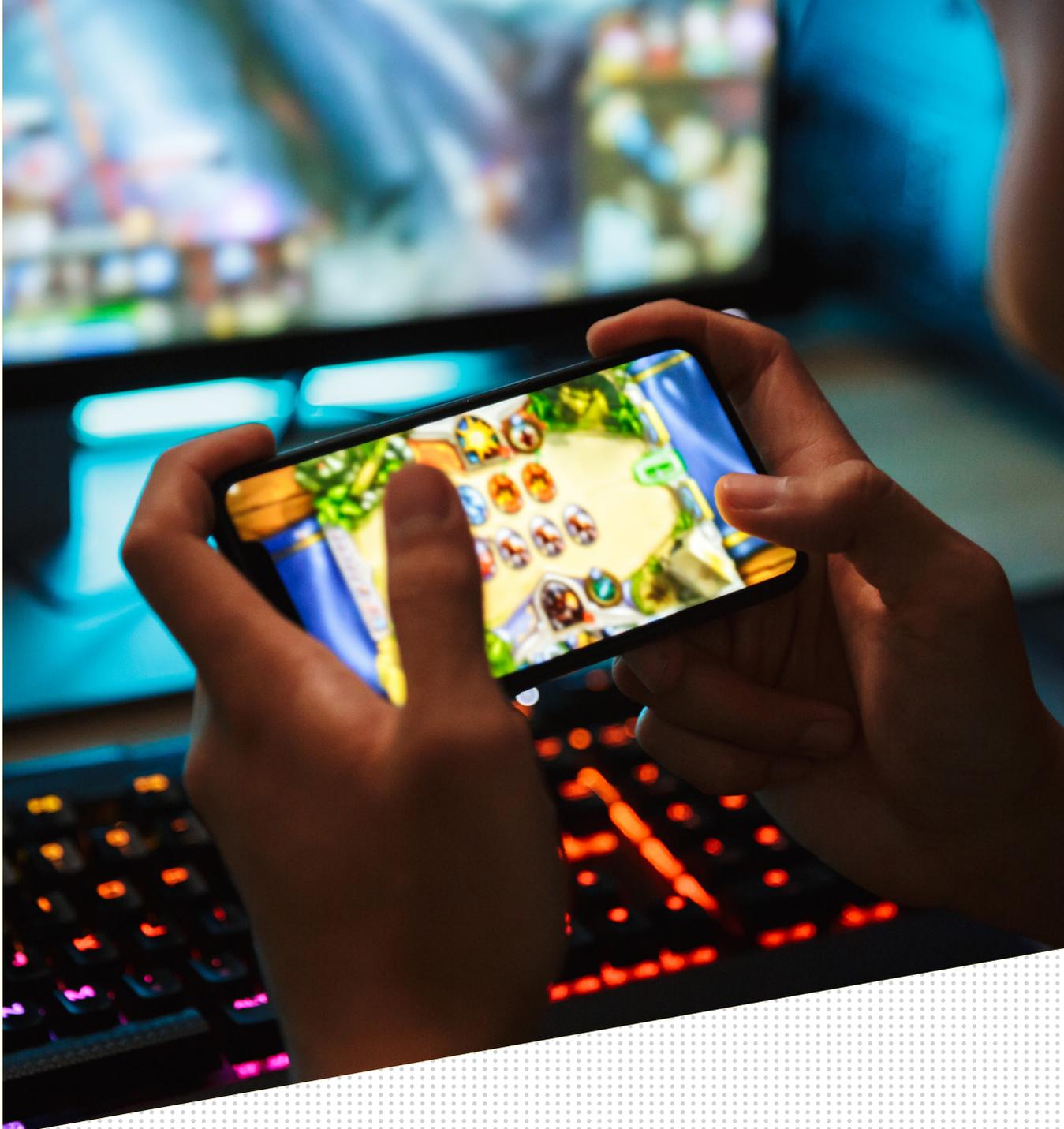
Firstly, tax is levied only on the rake fees earned by the provider of gaming services. This practice has been followed majorly in all the EU countries (except France), the UK and the US. Secondly, the deemed credit model that is followed by the likes of Australia, Singapore and South Africa which provides for levy of tax at standard rate on the entire stake value and simultaneously allow deemed credit of the tax paid on amount that is distributed to the players (e.g., winnings).

We recommend that either of the above internationally accepted models may be considered for India. It is important to highlight that regressive taxation of these emerging sectors may only make the business unsustainable in India. Our recommendation is that the Government shall align its policies with internationally accepted principles of taxing the online gaming sector and provide certainty to the industry.



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# 01

## Industry overview

Sports and gaming have been a traditional source of rejoice, recreation and engagement for players and spectators alike. The constantly evolving digital lifestyle has further opened the avenues for providing alternative recreation activities vis-à-vis physical gameplays to the masses. Resultantly, online gaming has emerged as a highly engaging and viable medium for entertainment as well as professional gameplays alike.

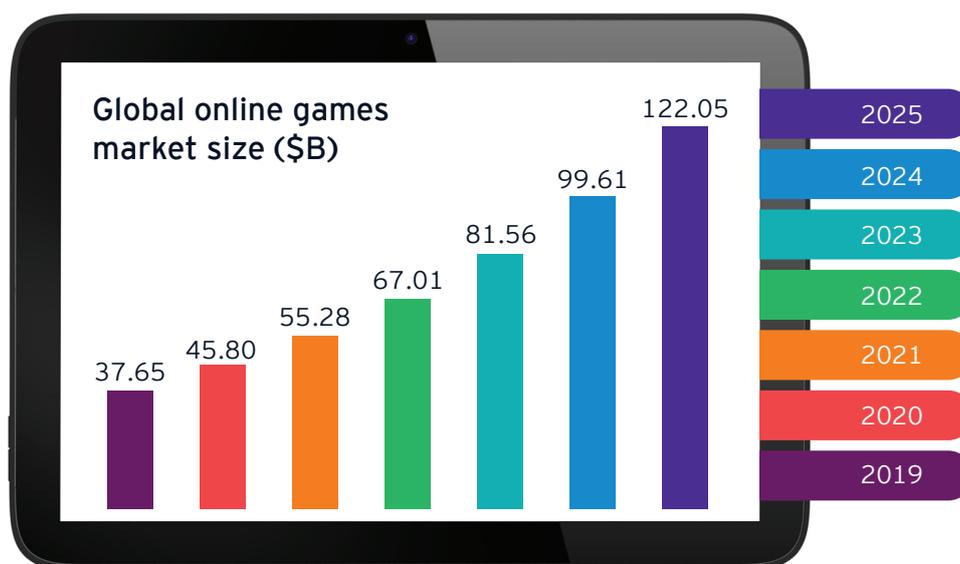
Broad internet coverage coupled with the increasing use of smartphones, computers and specialized gaming consoles have fuelled an era of online gaming which simulate near real-life playing for the user and provides a deeply engaging experience. The growth in online gaming was further propelled by COVID-19 and the resultant social distancing norms forcing the masses to explore alternative means of recreation and social engagement.

Additionally, the advent of technology has provided the much-needed catalyst to enable playing complex and resource-heavy games. Improved internet connectivity has facilitated multi-player real-time games to provide a more engaging experience and the thrill of being competitive at the same time. Government initiatives such as demonetisation and the advent of Unified Payment Interface (UPI) has aided the scaling and monetisation of the online gaming ecosystem in India.

Today, India has its largest ever adolescent and youth population with around 66% of the total population (more than 808 million) below the age of 35<sup>1</sup>. According to United Nations Population Fund (UNFPA) projections, India will continue to have one of the youngest populations in the world till 2030<sup>2</sup>. The likelihood of the youth being tech savvy (as compared to older sections of population) and thus, embracement of online gaming augurs well for the growth of the industry in India in the time to come. The market size and projected growth indeed point to this trend.

## A. Market size and growth trends

The global market size for online games is expected to grow from US\$37.65 billion in 2019 to US\$122.05 billion in 2025<sup>3</sup>. This translates to a CAGR of 18% (approx.).



<sup>1</sup> [https://www.ilo.org/newdelhi/info/WCMS\\_175936/lang--en/index.htm](https://www.ilo.org/newdelhi/info/WCMS_175936/lang--en/index.htm)

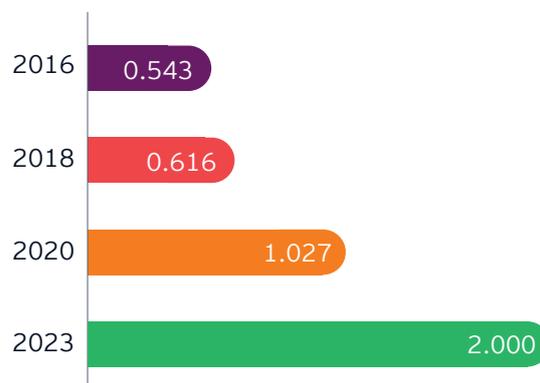
<sup>2</sup> <https://india.unfpa.org/en/topics/young-people-12>

<sup>3</sup> <https://www.alliedmarketresearch.com/online-smartphone-and-tablet-games-market#:~:text=Online%20Smartphone%20and%20Tablet%20Games%20Market%20Statistics%202027,21.8%25%20from%202020%20to%202027>

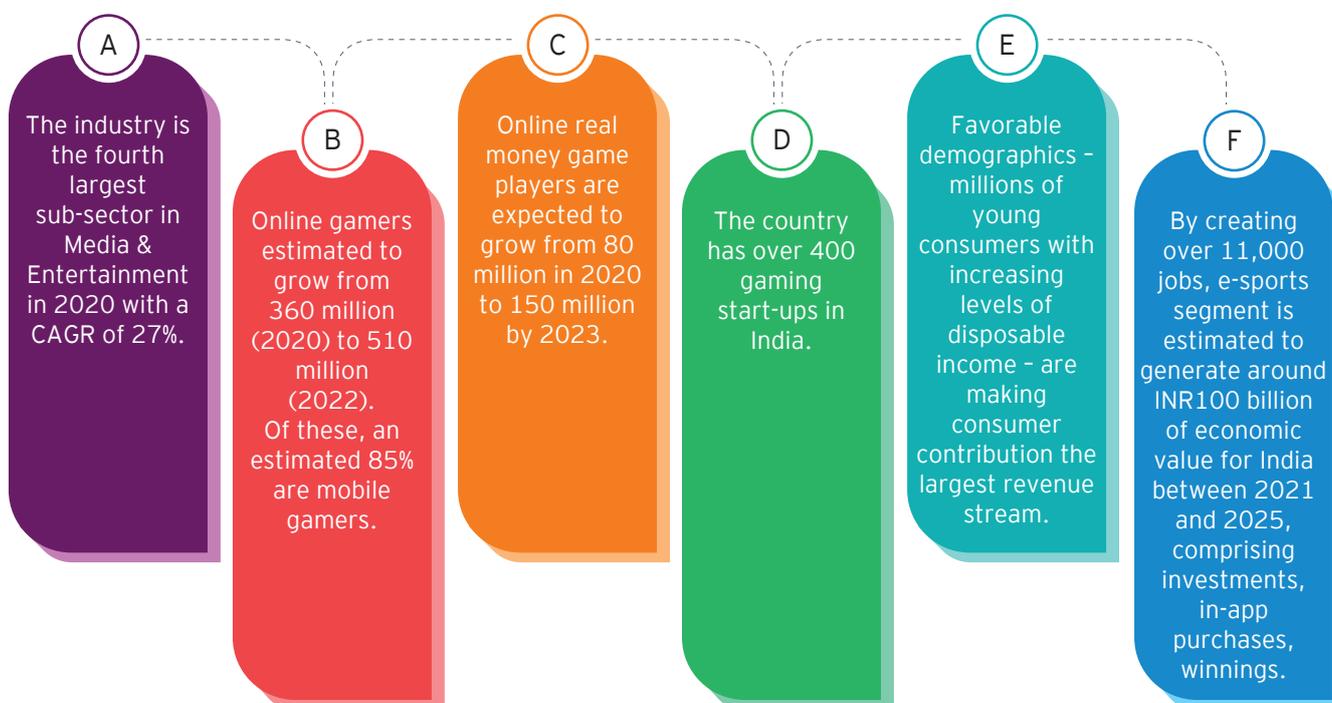
In the global market context, India is the fifth largest online gaming market in the world and is growing rapidly to move up the rankings<sup>4</sup>. The industry is expected to witness growth on account of a multitude of factors such as increased investments, internet penetration and tech savvy younger population.

**Domestically**, the online gaming industry in India was worth US\$543 million in 2016<sup>5</sup> and has grown to US\$1.027 billion in 2020<sup>6</sup> at a CAGR of 18.6%. Moreover, the industry is estimated to reach US\$2 billion by 2023<sup>7</sup> (in terms of rake fee earned).

India online gaming market size (\$B)



W



Therefore, the industry has the potential to scale quickly and become a significant contributor to government’s vision of a Trillion-dollar digital economy.

<sup>4</sup> <https://timesofindia.indiatimes.com/business/india-business/gennext-believes-online-gaming-enhances-life-skills/articleshow/83658116.cms>

<sup>5</sup> [https://www.meity.gov.in/writereaddata/files/india\\_trillion-dollar\\_digital\\_opportunity.pdf](https://www.meity.gov.in/writereaddata/files/india_trillion-dollar_digital_opportunity.pdf)

<sup>6,7</sup> [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_in/topics/media-and-entertainment/2021/ey-india-media-and-entertainment-sector-reboots.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2021/ey-india-media-and-entertainment-sector-reboots.pdf) Page 124

<sup>8</sup> [https://www.aigf.in/wp-content/uploads/2019/09/AIGF-Report-6\\_Sec\\_L.pdf](https://www.aigf.in/wp-content/uploads/2019/09/AIGF-Report-6_Sec_L.pdf)

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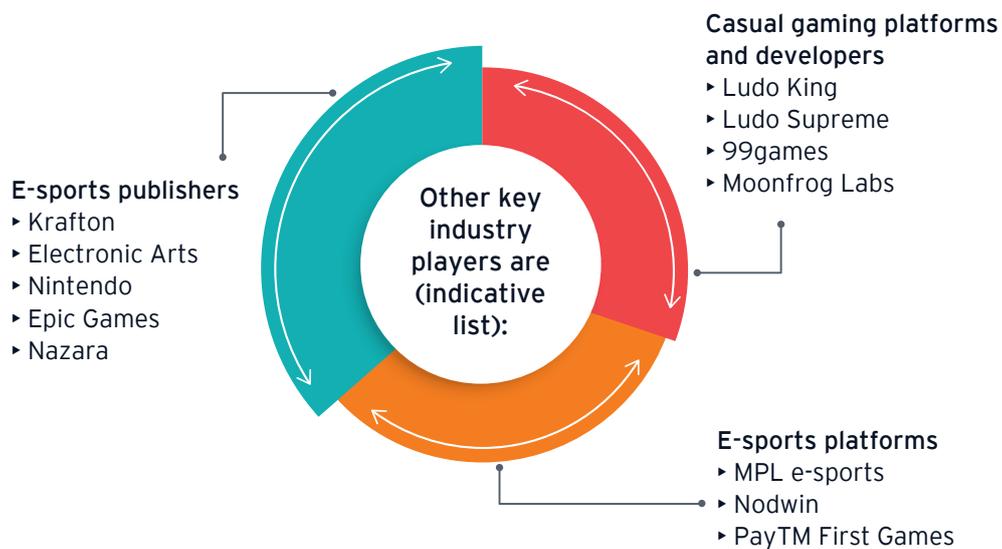
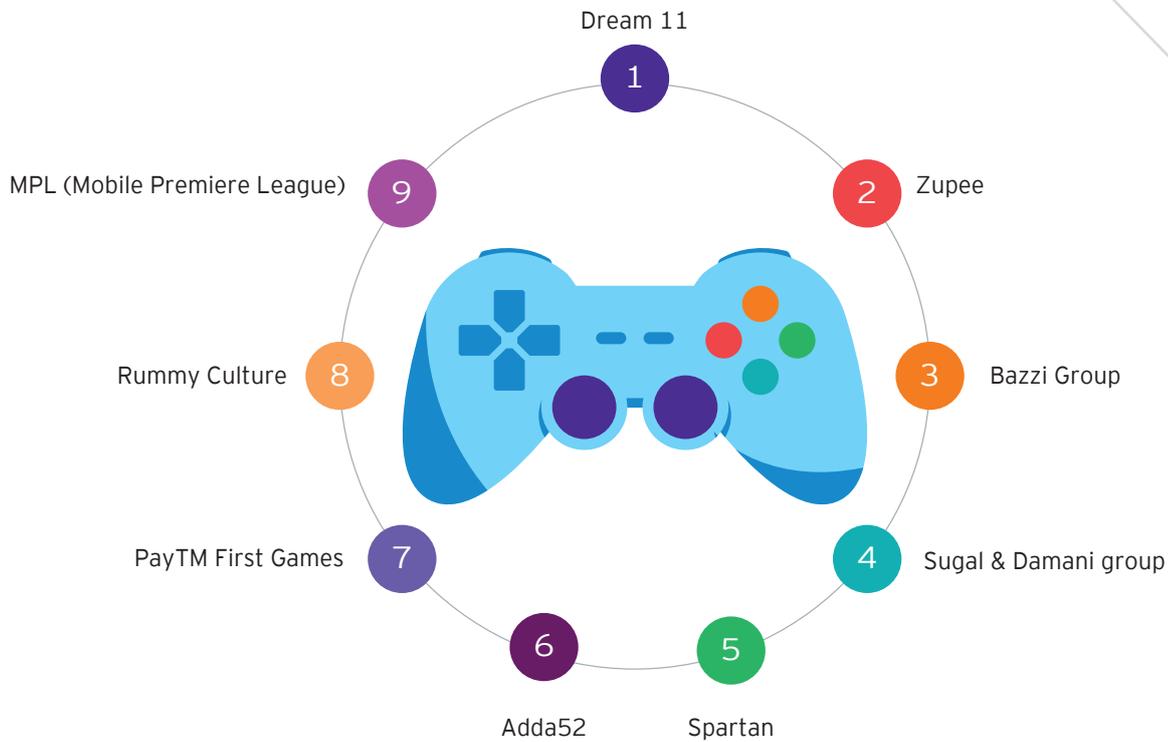
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[http://www.maple-advisors.com/Online%20Gaming%20-%20India%20Story%20and%20Investment%20Trends%20\(1\).pdf](http://www.maple-advisors.com/Online%20Gaming%20-%20India%20Story%20and%20Investment%20Trends%20(1).pdf)

[https://www.ey.com/en\\_in/media-entertainment/the-dawn-of-esports-in-india](https://www.ey.com/en_in/media-entertainment/the-dawn-of-esports-in-india)

## B. Key industry players in India

The growth prospects of the industry have been fueled by sophisticated and immersive gaming platforms across various categories. The user interface and ability to compete with others provides an enriched experience to a gamer and thus, helps in better engagement.





# 02

## Overview of Business model

The business models of online gaming industry may be categorized based on:

- (i) Monetary and non-monetary
- (ii) Playing format

## Monetary and non-monetary games:

1

### Platform fee-based games

In this case, the gaming platform or the application facilitating the play of games charges a platform fee from the users. It may be further sub-categorized into:

#### 1. Prize winnings in real money:

In these cases, the gaming platform allows the users to place monetary amounts to be eligible for winning the pooled amounts dependent on the game's outcome.

#### 2. Recreational gameplays (without any prize money):

In this model, the platform does not provide any winning based games and only charges money for facilitating the games. The users play on a non-monetary basis.

2

### Freemium model

This business model is usually prevalent in case of e-sports or other games. In such cases, the app or the gaming platform itself is free whereas any additional activity such as retaining player's life, extending the game progress, boosting performance of the player, etc. is chargeable.

Thus, it is a combination of free gameplay alongside on-demand premium features available for a price.

## Playing format-based categorization:



### 1. Fantasy sports

Users create virtual teams comprising of real players' proxies of any given sport, e.g., cricket, soccer, etc. Based on the statistical performance of the players in actual games, win outcome is decided.



### 2. Casual games

Other skill-based games being played online. This includes games such as Chess, Ludo, Candy Crush, Temple Run, etc.



### 3. E-sports (competitive skill-based)

E-sports denote the video games that are usually played in a multi-player format. The games are popular among professional gamers and provide a more engaging experience through tournaments, teaming, etc. Examples include PUBG, League of Legends, etc.

2020 saw a 90% growth in the number of people playing esports in India compared to 2019<sup>9</sup>.



### 4. Educational based gaming

It comprises of games that are designed with an educational purpose. Examples include quizzes, puzzles, etc.

## 5. Card-based games



### A. Rummy

A 13-card game based on the matching of cards of the same rank or sequence and same unit on a virtual table



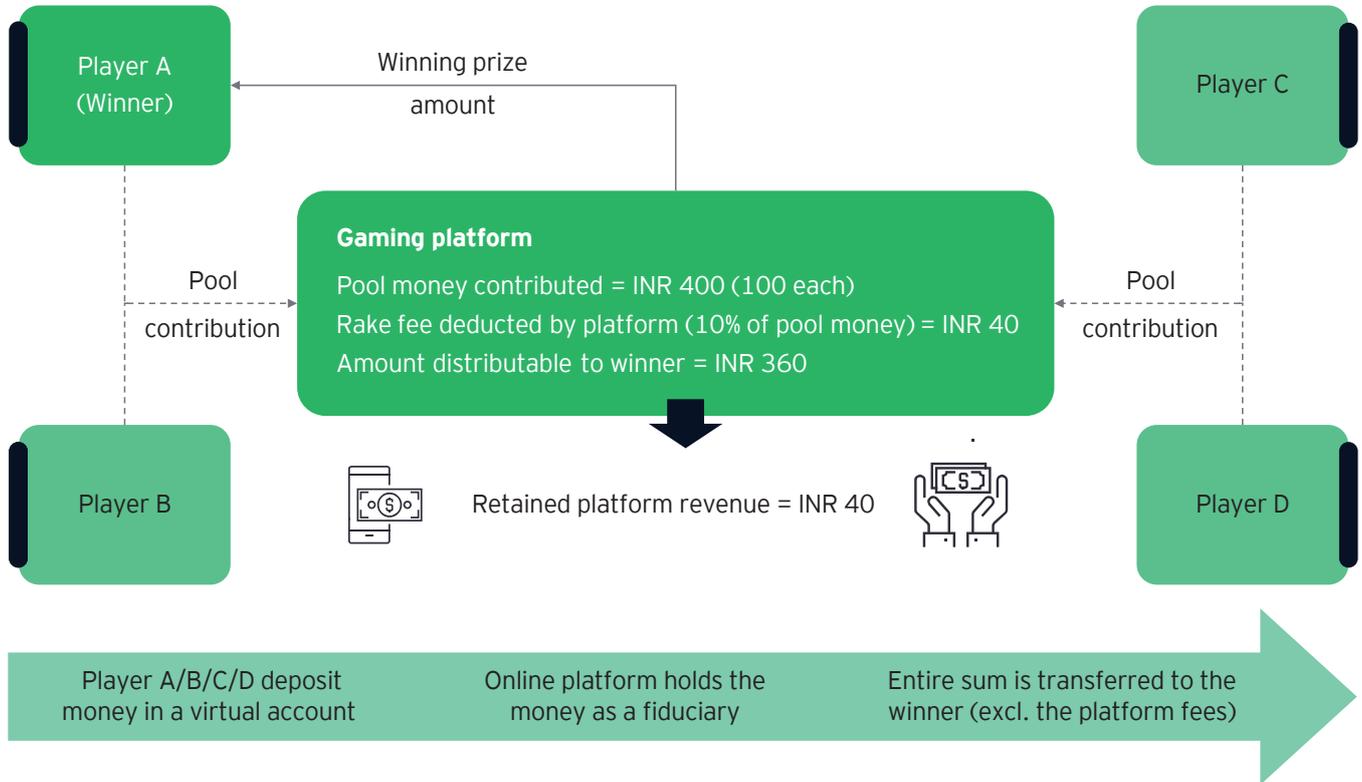
### B. Poker

Poker is a card game wherein players wager over which player has the best set of cards according to the specific game's rules.

<sup>9</sup> [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_in/topics/media-and-entertainment/2021/ey-india-media-and-entertainment-sector-reboots.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2021/ey-india-media-and-entertainment-sector-reboots.pdf)

# Operating model - workflow

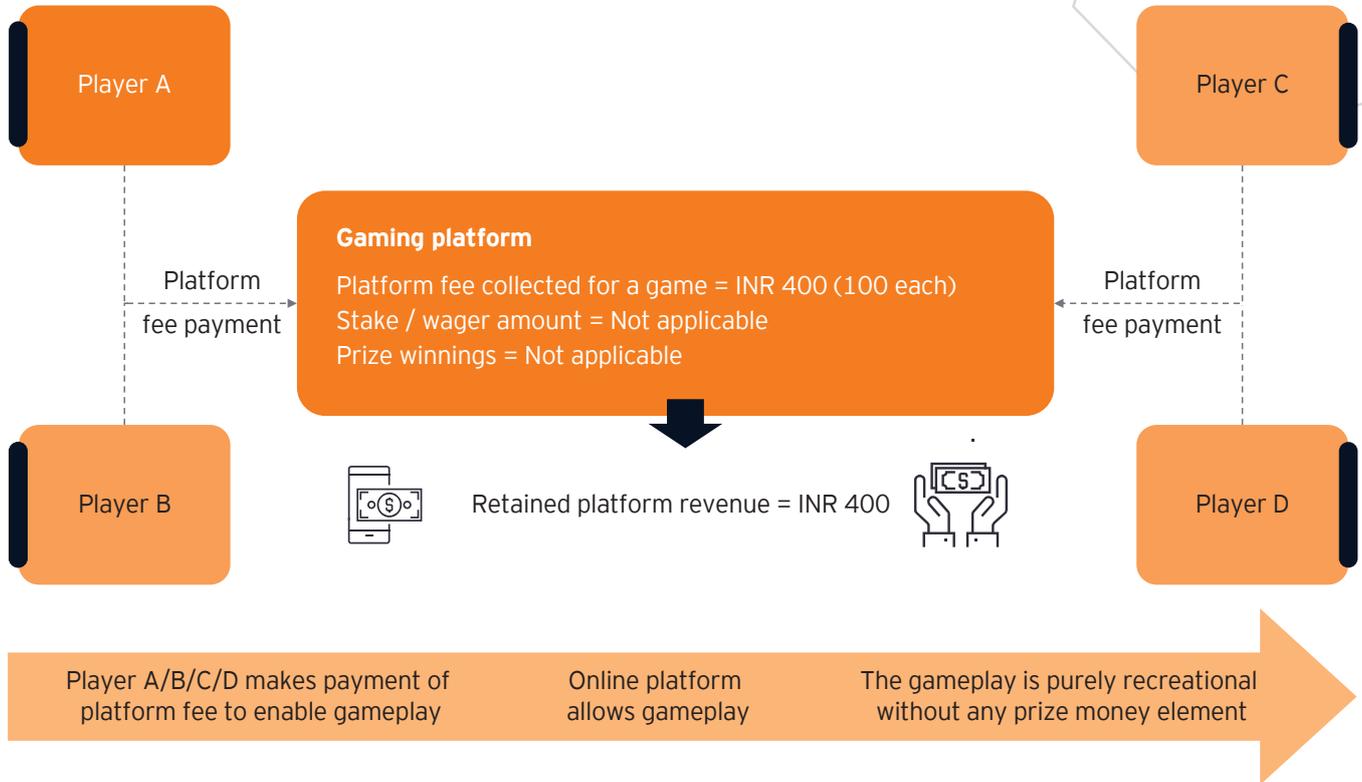
Platform fee-based games (along with prize winnings):



The operating model broadly comprises of below stages:

| Step # | Particulars                             | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Deposit of money using banking channels | <ul style="list-style-type: none"> <li>Deposits are received through authorized payment gateways and kept in a bank account</li> <li>The gaming platform has no right over such deposits and are treated as actionable claims since the amount is refundable to the users</li> </ul>                                                                                                                                                                                                                                                                                 |
| 2      | Participation in the game               | <ul style="list-style-type: none"> <li>Of the amount deposited on the platform, the user pools the money into a gameplay (known as wager amount or stake)</li> <li>A portion of the stake is deducted as rake fee</li> <li>The rake fee is considered as the consideration for facilitating the gameplays by the gaming platform</li> <li>Remaining stake (net of rake fee) is treated as winning prize pool or 'pot'</li> <li>Players play against each other. The online platform is merely a facilitator of games and does not participate in the game</li> </ul> |
| 3      | Declaration of results                  | <ul style="list-style-type: none"> <li>Winnings are credited to user account</li> <li>The entire prize pool amount is distributed to the contest winner(s)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                |
| 4      | Transfer of winnings to user's account  | <ul style="list-style-type: none"> <li>User is free to withdraw the winnings to his/her bank account or to further use it for gameplays</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                   |

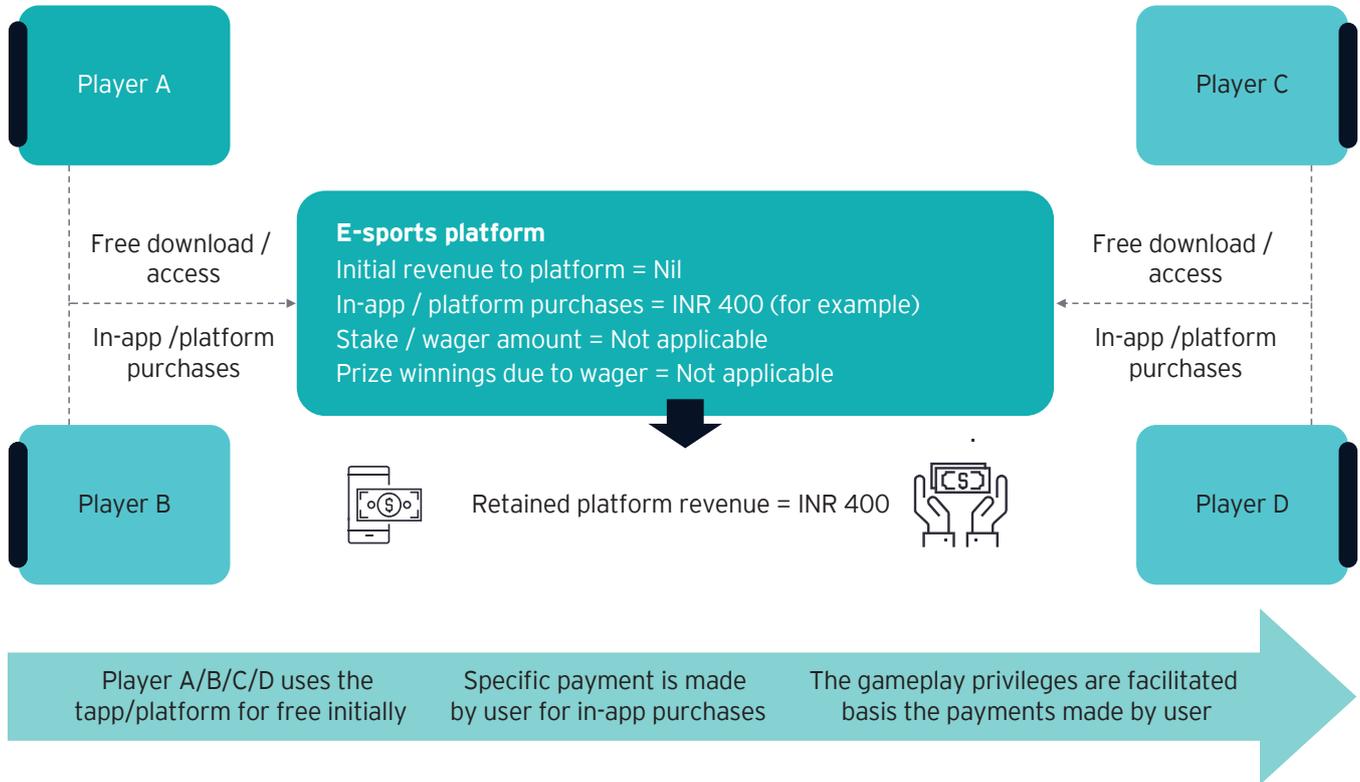
**Pay to play model (without prize winnings):**



The operating model broadly comprises of below stages:

| Step # | Particulars                             | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Deposit of money using banking channels | <ul style="list-style-type: none"> <li>▶ 100% amount received online only (no cash)</li> <li>▶ The gaming platform has no right over such deposits and are treated as actionable claims since the amount is refundable to the users if not used for a gameplay</li> </ul>                                                                                                                                                                                                                                            |
| 2      | Participation in the game               | <ul style="list-style-type: none"> <li>▶ The user uses the money to pay platform fee for entering a gameplay</li> <li>▶ The entire amount is entry fee/platform fee and no amount whatsoever is attributed to any wager or prize winnings pool</li> <li>▶ The platform fee is considered as the consideration for facilitating the gameplays by the gaming platform</li> <li>▶ Players play against each other. The online platform is merely a facilitator of games and does not participate in the game</li> </ul> |
| 3      | Declaration of results                  | <ul style="list-style-type: none"> <li>▶ Winners are declared on conclusion of gameplay</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                   |

## Freemium model



| Step # | Particulars                           | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|--------|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | App download / initial platform usage | <ul style="list-style-type: none"> <li>▶ No amount is received from the user</li> <li>▶ Gameplays are facilitated with open access to participation</li> </ul>                                                                                                                                                                                                                                                                                                                             |
| 2      | Participation in the game             | <ul style="list-style-type: none"> <li>▶ 100% amount received online only (no cash)</li> <li>▶ The user uses the money to buy specific privileges or functionalities</li> <li>▶ The entire amount is in relation to services rendered by the e-sports platform and no amount whatsoever is attributed to any wager or prize winnings pool</li> <li>▶ Players play against each other. The online platform is merely a facilitator of games and does not participate in the game</li> </ul> |





# 03

## Legality of online gaming business in India

To determine whether a game comprises a game of skill or a game of chance has wide consequences for any industry player. It is often the determining factor for legal implications on the business operations. Whether a game classifies under chance or skill depends on the facts and circumstances of each case.

- ▶ Player invests time in learning, practicing and honing a skill.
- ▶ Game success depends principally upon:
  - ▶ superior knowledge
  - ▶ training
  - ▶ attention
  - ▶ experience
  - ▶ capability of the player
- ▶ Most games can be a combination of skill and chance, but skill must be the predominant factor in these games.

Game of skill

Game of chance

- ▶ Game outcome depends more on factors like luck and unpredictability
- ▶ Results are usually uncertain and doubtful
- ▶ Game of chance are considered gambling

A game of chance translates to betting or gambling activities and attracts a higher GST rate of tax vis-à-vis game of skill.

Table 1: Legal status of online games<sup>10</sup>

## Rummy



Whether game of skill? **Yes**

- ▶ Rummy has been declared to be a game of skill or mere skill by the Hon'ble Supreme Court of India vide various Judgments.
- ▶ The landmark judgment of **State of Andhra Pradesh vs. K. Satyanarayana and Ors., AIR 1968 SC 825** held:

*"Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge."*

- ▶ Further, the Apex court in the case of **K.R. Lakshmanan v State of Tamil Nadu and Ors. (1996) 2 SCC 226** also held:

*"A game of skill, on the other hand - although the element of chance necessarily cannot be entirely eliminated --is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player. Golf, chess and Rummy are considered to be games of skill. The Courts have reasoned that there are few games, if any, which consist purely of chance or skill, and as such a game of chance is one in which the element of chance predominates over the element of skill, and a game of skill is one in which the element of skill predominates over the element of chance. It is the dominant element --"skill" or "chance" -- which determines the character of the game".*

## Poker



Whether game of skill? **Yes**

- ▶ Online Poker, like Rummy can also be held to be a game of skill.
- ▶ Various research studies have been conducted across the world (including those from University of Chicago, Brown University and many others) all of them arriving at a common conclusion of the predominance of skill involved in Poker.
- ▶ Studies such as the Miles & Levitt have been able to demonstrate this with vast data and sample size, adding substantial merit to the quality of such research.
- ▶ When it comes to Indian laws, there is documented precedence in either High Courts or by the local police permitting Poker to be operated and acknowledging it as a game of skill.
- ▶ These favourable rulings have come from:
  - ▶ Indian Poker Association & Anr vs State of West Bengal & Ors (W.P.A. No. 394 of 2019)
  - ▶ Indian Poker Association (IPA) vs The State of Karnataka (WP 39167/2013)
- ▶ Only state where the matter is sub judice, with initial remarks of the game being construed as not a game of skill is Gujarat. However, it is known that this is an initial understanding and the remark thereof is a result of lack of understanding of the game's functioning and is to be discussed in the subsequent hearings.
- ▶ The Law Commission of India vide its Report No. 276<sup>11</sup> also observed that poker is a game of skill:

*"3.34 In the case of State v. Gupton,<sup>52</sup> the Supreme Court of North Carolina held that any athletic game or sport is not a game of chance. In the United States, the 'dominant factor test' is applied by many States to determine whether or not a particular game is a 'game of skill' or 'game of chance'. For instance, poker is considered to be a game of skill because more skillful players will always win over the less skilled or novice players.*

*3.35 In a study carried out by the Computer Scientist Roman Yampolskiy, it is concluded that Poker is a game that requires a specific set of skills and some of those skills include:<sup>53</sup>*

- 1. The ability to precisely calculate probability of a needed card coming on a turn;*
- 2. The skill to read opponents' behaviour and body language; and*
- 3. The competence to apply strategic concepts such as "semi-bluffing and playing for implied odds."*

<sup>10</sup>EY analysis based on judicial rulings

<sup>11</sup> <https://lawcommissionofindia.nic.in/reports/Report276.pdf>



### Fantasy sports games (FSG)



Whether game of skill? **Yes**

- ▶ The Punjab & Haryana High Court in an order dated 18th April 2017 has ruled that playing the Dream11 FSG format involves a substantial degree of skill thereby classifying it as a “game of skill”. (Varun Gumber vs Union Territory, Chandigarh & ORS CWP No. 7559/2017 (High Court Of Punjab & Haryana))
- ▶ It does not come under the ambit of the Indian Public Gambling Act 1867 and is declared a legal business in India.
- ▶ It is specifically afforded the protection of right to free trade and commerce guaranteed under Article 19(1)(g) of the constitution of India.
- ▶ An appeal against this High Court judgement was also dismissed by the Supreme Court of India.
- ▶ The Hon'ble Rajasthan High Court has also held on similar grounds that FSG does not amount to betting. (Ravindra Singh Chaudhary vs Union of India 2020(42) G.S.T.L. 195 (Raj))
- ▶ The Hon'ble Bombay High Court also pronounced similar judgment in the case of Gurdeep Singh Sachar vs Union of India 2019 (30) G.S.T.L. 441 (Bom).

### E-sports



Whether game of skill? **Yes**

- ▶ Applying the principles laid out by the Hon'ble Supreme Court and various High Courts in India, e-sports shall qualify as game of skill since it requires a person to learn, adapt and improvise on the nuances of the game.
- ▶ The outcome of the game is dependent on the player's performance and adaptability to the situations/assessments of the game and is not merely a result of any probability or chance.

Therefore, the online games being offered by industry players shall qualify as game of skill and thus, legal in India. The differentiation vis-à-vis betting and gambling impacts the Indirect Tax implications which have been provided in Chapter 4 below.



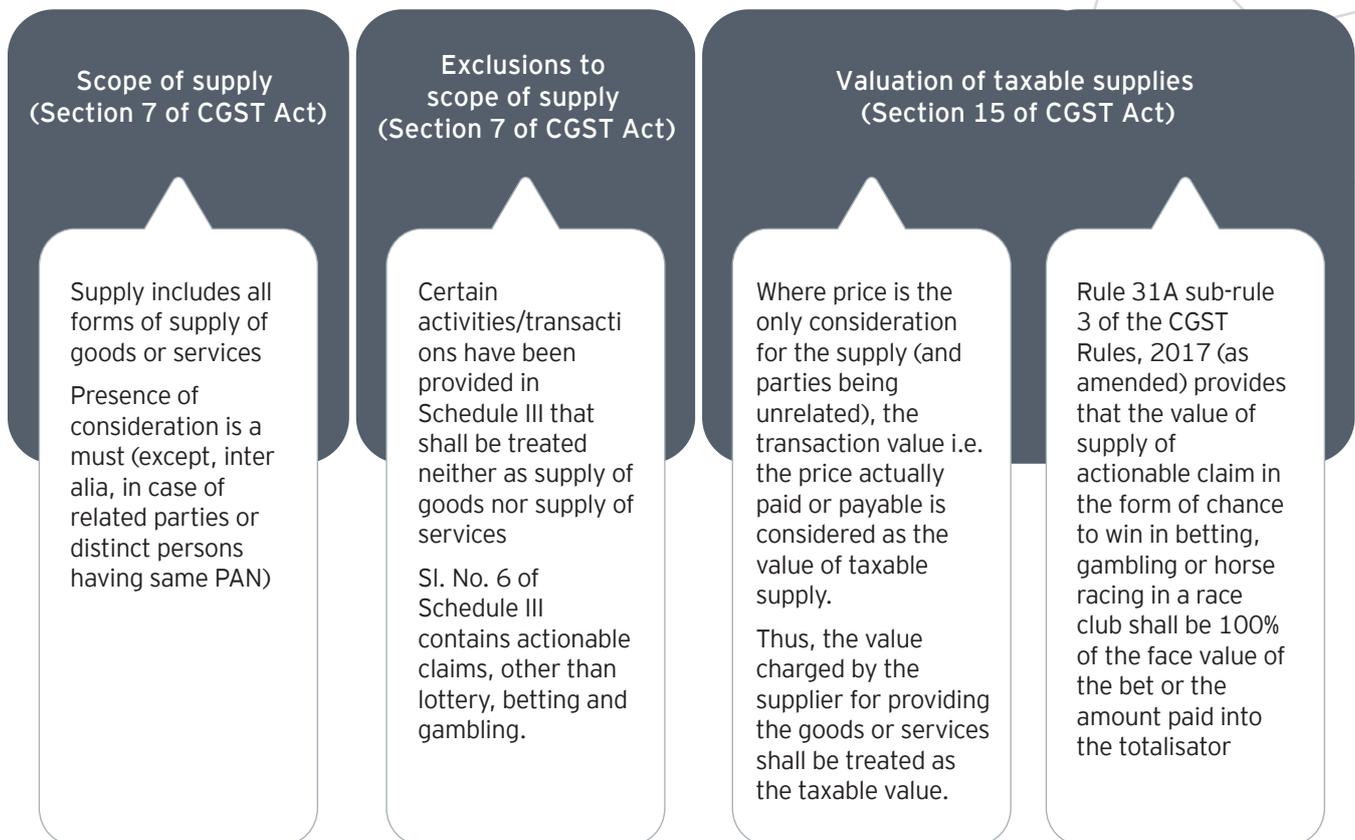
# 04

## Current GST implications

The activity of the online gaming platform to enable gameplays against a rake fee gets covered under the ambit of 'supply' under Goods and Services Tax (GST)

law. Therefore, GST would be applicable on the revenue accruing to industry players.

### Existing provisions under GST law



### Issue in existing provisions under GST law

As explained in Chapter 3, the settled position in law has been the classification of online games as game of skill and thus, outside the purview of betting and gambling. However, the industry being in nascent stage and lack of specific categorisation of online games as game of

skill by the government has resulted in ambiguity. The inconsistencies among state laws related to scope of betting and gambling and prohibition of even rummy games in some states has further aided to uncertainty.

**Table 2: Dispute on valuation and tax position by stakeholders**

#### Industry players

As illustrated in the business model, the gaming platform only earns the rake fee for facilitating gameplays by the users.

Therefore, the rake fee is treated as the consideration for supply of online gaming services and GST liability is calculated by the platform accordingly.

The tax position is based on a conjoint reading of Section 15 read with Section 7 of the CGST Act alongwith the interpretation of the term "consideration".

Since the gaming platform only earns the rake fee and treats it as revenue (balance amount i.e. stake amount minus rake fee being payable to the winner), the entire stake value can-not be considered as turnover liable to GST as it would be arbitrary and devoid of logic.

Moreover, Rule 31A(3) is differentiated on the ground that the rule provides for valuation in case of a game of chance only. Since online games duly qualify as game of skill, the rule would not be applicable to online games.

## Revenue authorities

Due to the valuation prescribed under Rule 31A(3) in CGST Rules and the ambiguity under various state laws related to scope of betting and gambling activities, the revenue authorities have taken divergent views on the taxation of online games.

The authorities may take a view to levy GST on the entire stake amount instead of the actual rake fee earned by the platform as consideration for supply of services.

The above ambiguity has the potential to raise unnecessary tax demands beyond the rake fee earned by online gaming platforms. Such aggressive litigation would significantly impact the sustainability of the online gaming business.

**Amidst the evolving dispute on valuation, certain key pointers for consideration are enlisted herein:**

Further, since prize pool contribution is churned several times by each participant for participating in various contests, any attempt to tax such contribution for each contest will make the levy totally unreasonable and ex-proprietary.

Levy of GST can only be on the consideration that the supplier of a taxable service receives in lieu of the services supplied by him. In the context of all online businesses, that consideration is the rake fee and not prize pool contribution.

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Applying the statutory principles of valuation under Section 15 of CGST Act, prize pool contributions which are merely 'transaction in money' over which the supplier of the service has no right, title or interest either in present or the future, cannot be considered as part of the consideration of the taxable supply for GST.



## GST implications on online gaming industry

### Contribution/Deposits by user/player

### Whether taxable under GST?



Would the contribution to the prize pool by various players fall under the ambit of 'supply' under GST or not is decided by the judgments pronounced by various High Courts specific to online gaming business. The GST Law redirects the definition of actionable claim to be imported from the Transfer of Property Act, 1882. Under Transfer Property Act, 1882, actionable claim is defined as follows :

*"Actionable claim means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."*

In the case of **Gurdeep Singh Sachar v Dream11 Fantasy Pvt. Ltd. (Criminal Public Interest Litigation Stamp**

**No. 22 Of 2019 Date: 30.04.2019**), the Hon'ble High Court of Bombay has held that the amount pooled in by participants as prize money contribution in a fantasy game qualifies as actionable claim and the said activity is neither a supply of goods nor supply of services. Relevant extract of the judgment has been reproduced below for reference:

*"There is no dispute that the amounts pooled in the escrow account is an 'actionable claim', as the same is to be distributed amongst the winning participating members as per the outcome of a game. But, since the activities of the respondent do not amount to lottery, betting and gambling, the said actionable claim would fall under Entry 6 of the Schedule III under Section 7(2) of CGST Act. Therefore, this activity or transaction pertaining to such actionable claim can neither be considered as supply of goods nor supply of services and is thus clearly exempted from levy of any GST."*

### Rake Fee

### Whether taxable under GST?



The scope of definition of 'consideration' extends only in relation to "the supply of goods or services or both". Since, the activity or transaction relating to the actionable claim for the amounts pooled in escrow arrangement is neither supply of goods nor supply of services, the same is clearly out of the purview of the expression 'consideration' under GST law.

The said view has also been affirmed in the recent judgment pronounced by the Hon'ble High Court of Karnataka in the case of **Bangalore Turf Club Limited (Writ Petition No. 11168/2018)** which held as under:

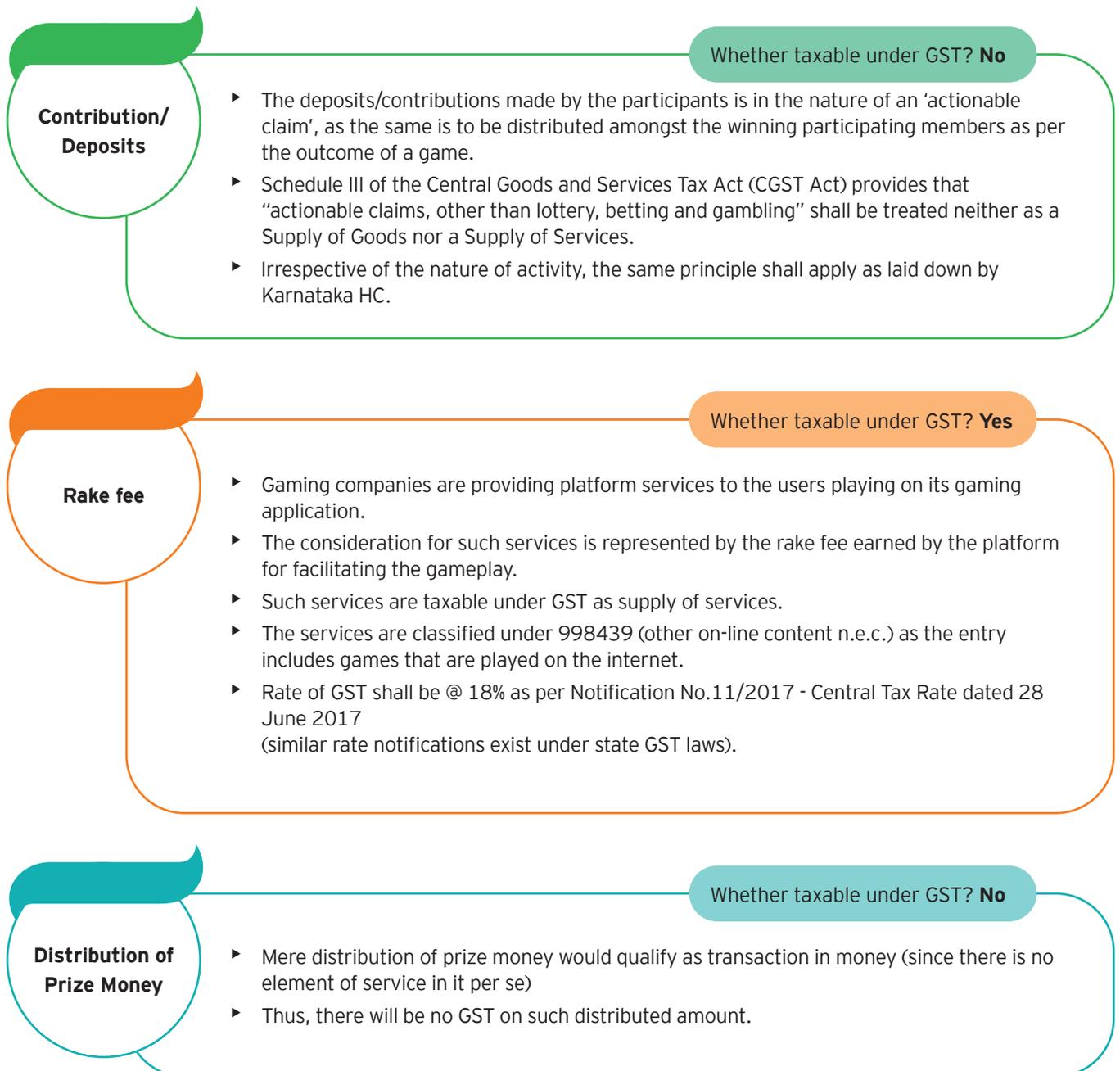
- ▶ The petitioner by themselves did not bet and only facilitated betting by the punters. The punters placed their bet either with a totalizator run by the petitioner or a book maker licensed by the petitioner.
- ▶ 'Totalizator' means a fixed commission that is earned irrespective of the outcome of the race and cannot be seen to be indulging in a betting activity.
- ▶ A totalizator does not indulge in betting. Betting is neither in the course of business nor in furtherance of business of a race club for the purposes of the CGST Act.

- ▶ The game of racing is a game of skill and the club earns nothing but a commission which at that point in time was 5%.
- ▶ The Court observed that the petitioner held the amount received in the totalizator for a brief period in its fiduciary capacity. Once the race was over, the money was distributed to the winners of the stake.
- ▶ The consideration that the Petitioner receives is the commission, irrespective of the result of the race.

Thus, Rule 31A(3) of the CGST Rules would completely wipe out the distinction between the bookmaker and a totalizator by making the Petitioner liable to pay tax on 100% of the bet value.

- ▶ Therefore, the Hon'ble High Court held that Rule 31A(3) of the CGST Rules does not conform to the provisions of the CGST Act and is thus, ultra vires the enabling CGST Act.

**Broadly, below are the tax positions adopted by industry players on the valuation and taxability of revenue:**







# 05

Case studies on  
best practices  
followed globally

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

**The summary of prevalent valuation practice and applicable Indirect Tax rates globally for online games are summarized below:**

| Country          | Tax levy                  | Tax Rate                                                    | Standard rate |
|------------------|---------------------------|-------------------------------------------------------------|---------------|
| UK               | Rake fee based            | 21%                                                         | 20%           |
| France           | Stake value               | 1.8% of wagers                                              | 20%           |
| Alderney         | License based on rake fee | GBP 3k to 400k per annum based on net gaming yield criteria | -             |
| Isle of Man      | Rake fee based            | GBP 35 k/year + up to 15% on rake fee                       | 20%           |
| US: Pennsylvania | Rake fee based            | 14% (online poker) & 15% (fantasy games)                    | Up to 10.25%  |
| US: Nevada       | Rake fee based            | 6.75%                                                       | Up to 10.25%  |
| Belgium          | Rake fee based            | 11%                                                         | 21%           |
| Denmark          | Rake fee based            | 20%                                                         | 25%           |
| Sweden           | Rake fee based            | 18%                                                         | 25%           |
| Germany          | Rake fee based            | 19%                                                         | 19%           |
| South Africa     | Deemed credit             | 15%                                                         | 15%           |
| Singapore        | Deemed credit             | 7%                                                          | 7%            |
| Australia        | Deemed credit             | 10%                                                         | 20%           |

It is also worthwhile to note that as per a Copenhagen Economics<sup>12</sup> analysis report, the tax rate of 15% to 20% of rake fee produces the most favourable returns<sup>13</sup>.

The report states “We further conclude that the tax rate should not exceed 20%. The reason being that at higher tax rates gaming operators as well as consumers will choose not to join the licensing system”

By this, the report implies that operators will operate in the black market and consumers will prefer to play with operators from the black market

The report further states, “This is in line with our forecasts, where we forecast a reduction in onshore channeling from 84% in 2020e to 76% in 2021e due to the proposed increase in taxation to 28% of GGR. This leads to a decline in the onshore market of c. 22% year on year, or a decline of c.DKK 900m in onshore GGR.”

<sup>12</sup> The Global Competition Review (GCR) enlists Copenhagen Economics among the Top-20 economic consultancies in the world

<sup>13</sup> <https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/8/368/1478078895/copenhagen-economics-2016-licensing-system-for-online-gambling.pdf>

## A. European Union (EU)

The EU adopts the mechanism of levying Value Added Tax (VAT) only on the rake fee earned by the gaming platforms facilitating the gameplays/bets.

In this regard, the European Commission Directorate-General Taxation and Customs Union issued a working paper no. 882<sup>14</sup> to clarify on valuation aspects amongst other pointers.

### Relevant extract of the working paper no. 882

“3.3. Determination of the taxable amount

3.3.1. Games where players compete against each other for a prize fund

As Article 73 of the VAT Directive states, the taxable amount is the consideration obtained or to be obtained by the supplier. The terms and conditions written by the operator and accepted by the players determine the amount of the commission or fee that the operator will receive for organising the game.

**The consideration could not be taken to be the total amounts of the stakes that are received from the players, as these stakes remain “on the table” until the end of the game, where they are given to the winner of the game, leaving the operator with a commission or**

**fee calculated based on the sum played or the winnings obtained by the winner.**

**Therefore, we are of the view that in these cases the consideration received by the operator is formed by the total amount of commission or fees only, to which the terms and conditions of the game accepted by the players refers.**

It should be noted that the operator cannot dispose of the stakes placed by the players. Thus, the total amount of stakes placed should not be considered as consideration obtained by the supplier, as he cannot use these to cover the costs of his activity. Only the part of the stakes or the winnings that he receives as commission or fees from the players can be used by him to cover these costs, constituting the consideration obtained by him.”

## B. South Africa

South Africa has adopted a simpler mechanism for taxing horse-racing, casinos, wide area progressive jackpots, etc. Under its Value Added Tax Act, 1991; the country follows the below methodology<sup>15,16</sup>:

- ▶ VAT is applied on the entire stake value, i.e., the amount received by the person facilitating the gameplay

- ▶ Simultaneously, a deemed VAT deduction is allowed on the prizes or winnings paid out by the supplier who facilitated such gameplay

This effectively translates to the net amount (stake value minus winnings) being subject to VAT due to the allowance of deemed input tax credit.

### Relevant extract of Interpretation Note No. 14 dated 31 March 2014<sup>17</sup>

“Para 3.1.3 Deemed supplies

.....Relevant to this Note is section 8(13) and (13A) which contains deeming provisions particular to the gambling industry.

Under section 8(13), where a person bets an amount on the outcome of any other event or occurrence, the person with whom the bet is placed is deemed to supply a service to the person placing the bet. As a result, the person with whom the bet is placed is required to account for output tax on the amount received.

In addition, section 8(13A) provides that a vendor, who makes supplies under section 8(13) and who receives a prize or winnings as a result of placing a bet with another vendor, is deemed to supply a service to the other vendor.”

“Para 3.1.4 Input tax and deductions

A vendor may deduct “input tax” from the amount of tax payable in respect of a tax period under section 16(3) (a), subject to the requirements in sections 16, 17 and 20 being met. However, the proviso to section 16(3)(a)

<sup>14</sup> <https://circabc.europa.eu/sd/a/d2dad701-4568-47c8-ba03-c5996822b59e/882%20-%20New%20Legislation%20%20Online%20gambling%20-%20Follow-up.pdf>

<sup>15</sup> <https://www.sars.gov.za/types-of-tax/value-added-tax/>

<sup>16</sup> <https://www.sars.gov.za/wp-content/uploads/Legal/Notes/LAPD-IntR-IN-2012-41-Application-VAT-Gambling-Industry.pdf>

<sup>17</sup> <https://www.sars.gov.za/wp-content/uploads/Legal/Notes/LAPD-IntR-IN-2012-41-Application-VAT-Gambling-Industry.pdf>

specifically excludes the deduction of input tax under this subsection on goods or services acquired by a vendor for the purposes of awarding such goods or services as a prize or winnings. In this regard, the vendor would only qualify for a deduction under section 16(3)(d), as discussed below. Section 16(3) also makes provision for certain other deductions to which a vendor is entitled in calculating the VAT payable or refundable for a specific period. Deductions specific to the gambling industry are contained in section 16(3)(d) and (e).

Section 16(3)(d) allows a deduction equal to the tax fraction of amounts paid by a supplier of betting services contemplated in section 8(13) as prizes or winnings to the recipient of the betting services. Under section 16(3)(e), a vendor making the payment of betting tax may deduct an amount equal to the tax fraction of such payment.”

## C. Singapore

The taxability aspects of gaming industry are dealt with in Part XIII – Betting and Gaming of the Goods and Services Tax Act.

Like the valuation mechanism adopted by South Africa, Singapore follows below methodology:

- ▶ GST is applied on the entire stake value, i.e., the amount received by the person facilitating the gameplay

- ▶ Simultaneously, a deduction is allowed on the prizes or winnings paid out by the supplier who facilitated such gameplay

This effectively translates to the net amount (stake value minus winnings) being subject to GST.

### Relevant extracts of Singapore GST law<sup>18</sup>

Consideration of betting and gaming transactions

“91. Subject to regulation 91A, where any person pays an amount in money to participate in any transaction involving betting, sweepstakes, lotteries, fruit machines or games of chance, the amount of money so paid shall, for the purposes of the tax, be treated as the consideration for a supply of services to him.”

Value of betting and gaming transactions

“91A.–(1) Notwithstanding section 17 of the Act, the value to be taken as the value of supplies made in the circumstances mentioned in regulation 91 in any period shall be determined as if the consideration for the supplies were reduced by an amount equal to the amount of money (if any) received in that period by persons (other than the person making the supply and persons acting on his behalf) participating successfully in the betting, sweepstakes, lotteries, fruit machines or games of chance, as the case may be.

(2) The insertion of a token into a machine shall be treated for the purposes of regulation 91 as the payment of an amount equal to that for which the token can be obtained; and the receipt of a token by a person playing successfully shall be treated for the purposes of paragraph (1) –

(a) if the token is of a kind used to play the machine, as the receipt of an amount equal to that for which such a token can be obtained; or

(b) if the token is not of such a kind but can be exchanged for money, as the receipt of an amount equal to that for which it can be exchanged.

Tax chargeable on betting and gaming transactions

“91B. The tax chargeable and payable under the Act on the transactions referred to in regulation 91 shall be the tax fraction of the value of the supplies referred to in regulation 91A.”

<sup>18</sup><https://sso.agc.gov.sg/SL/GSTA1993-RG1?DocDate=20171103&ProvlDs=P1XIII->

## D. Australia

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Australia also has adopted a similar mechanism as that of South Africa and Singapore for valuation of activities that involves payout of prizes or monetary value to the players.

### Relevant extracts of Australian GST law<sup>19</sup>

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#### Definition of gambling activities<sup>20</sup>

'Gambling' includes:

- ▶ raffles
- ▶ lotteries
- ▶ gambling in casinos
- ▶ gaming machines in hotels and clubs
- ▶ betting on racing and other events.

'gambling supplies' includes:

- ▶ taxable sales that involve
  - ▶ the supply of a ticket in a lottery, raffle or similar activity
  - ▶ taking bets on gambling events such as racing, gaming or sporting events
- ▶ casino gambling operations

GST is charged on the margin calculated as below:

- ▶ Total amount received by the supplier
- ▶ Subtract the total monetary prizes paid for the period

- ▶ operating gaming machines in clubs and hotels conducting bingo activities.

Gambling events include:

- ▶ lotteries, raffles or similar activities
- ▶ races, games, or sporting events, or any other event where you can win or lose money, digital currency, goods or services depending on the outcome.

#### Calculation of margin<sup>21</sup>

Gambling sales are taxable by applying GST to the margin between money received and prizes paid out.

Margin for a tax period is to be computed as under:

- ▶ Total amount received in gambling event wagers for the period
- ▶ subtract the total monetary prizes paid for the period

## E. United Kingdom

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The United Kingdom does not levy VAT on online gaming. Instead, a remote gambling duty (RGD) is levied @ 21% on the rake fees.<sup>22</sup>

### Relevant extract from Finance Act, 2014

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"155 - Remote gaming duty of VAT Act, 2014

A duty of excise, to be known as remote gaming duty, is charged on a chargeable person's participation in remote gaming under arrangements (whether or not enforceable) between the chargeable person and another person (referred to in this Part as a "gaming provider").

(3) Remote gaming duty is chargeable at the rate of 21%<sup>23</sup> of the gaming provider's profits on remote gaming for an accounting period.

(4) The gaming provider's profits on remote gaming for an accounting period are the aggregate of—

(a) the amount of the provider's profits for the period in respect of pooled prize gaming (calculated in accordance with section 156),

(b) the amount of the provider's profits for the period in respect of ordinary gaming (calculated in accordance with section 157), and

(c) the amount of the provider's profits for the period in respect of retained prizes (calculated in accordance with section 158).

156 - Profits on pooled prize gaming

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<sup>19</sup> <https://www.legislation.gov.au/Details/C2014C00008>

<sup>20</sup> [https://www.ato.gov.au/Business/GST/In-detail/Your-industry/GST-when-conducting-gambling-activities/?page=2#Definitions\\_of\\_gambling\\_activities](https://www.ato.gov.au/Business/GST/In-detail/Your-industry/GST-when-conducting-gambling-activities/?page=2#Definitions_of_gambling_activities)

<sup>21</sup> <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/GST-when-conducting-gambling-activities/?anchor=HowGSTappliesstogamblingsalesyouma#HowGSTappliesstogamblingsalesyouma>

<sup>22</sup> Excise Notice 455a: Remote Gaming Duty - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>23</sup> Section 162 of Finance Act, 2019 amended the rate to 21%.

(1) Take the following steps to calculate the amount of a gaming provider's profits for an accounting period in respect of pooled prize gaming.

Step 1: Take the aggregate of the relevant gaming payments made to the provider in the accounting period and deduct the aggregate of any of those payments that are assigned by or on behalf of the provider to gaming prize funds during the period.

Step 2: If in the accounting period any amount contained in a gaming prize fund to which relevant gaming payments have been assigned by or on behalf of the provider is used otherwise than to provide prizes to participators in pooled prize gaming, multiply each amount so used in the accounting period by the relevant proportion that applies in relation to it.

Step 3: Add the aggregate of the amounts calculated under Step 2 to the amount calculated under Step 1.

Step 4: If in the accounting period any top-up payment is assigned to a gaming prize fund by the gaming provider,

multiply the amount of each top-up payment so assigned in the accounting period by the appropriate proportion that applies in relation to it.

Step 5: Subtract the aggregate of the amounts calculated under Step 4 from the amount calculated under Step 3.

157 - Profits on ordinary gaming

(1) To calculate the amount of a gaming provider's profits for an accounting period in respect of ordinary gaming—

(a) take the aggregate of the gaming payments made to the provider in the accounting period in respect of ordinary gaming, and

(b) subtract the amount of the provider's expenditure for the period on prizes in respect of such gaming.

158 - Profits on retained prizes

(1) The amount of a gaming provider's profits for an accounting period in respect of retained prizes is the aggregate of the amounts which cease to be qualifying amounts during the accounting period."

## F. Isle Of Man

A similar levy as applicable in United Kingdom is prevalent in Isle of Man wherein VAT is exempted on online gaming.<sup>24</sup> However, Gambling Duty is levied on net stakes receipt at varied rates depending upon total yield in a year.

"Net stakes receipt" is nothing but rake fees. Amount of net stakes receipt is the aggregate of all bets or stakes made, and the price of all chances sold less the value of all winnings and prizes due in the course of the gambling.<sup>25</sup>

Isle of Man further imposes a standardized license fee basis the following<sup>26</sup>:

- ▶ £5,000 administration fee with the initial application (Network Services, Full or Sub-licence)
- ▶ £50,000 per annum thereafter, for a Network Services licence
- ▶ £35,000 per annum thereafter, for a Full licence
- ▶ £5,000 per annum thereafter, for a Sub-licence

## G. United States: Nevada

In Nevada, tax is levied on Gross Gaming Revenue (GGR). The value of GGR is the sum of wagers in a game less amounts won by participants as prize. Thus, the nature of GGR is that of rake fees. A monthly percentage fee is

levied on the total amount of rake fee for a particular tax period at the following rates<sup>27</sup>:

- ▶ 3.5% of the first \$50,000 during the month, plus
- ▶ 4.5% of the next \$84,000 plus
- ▶ 6.75% of revenue exceeding \$134,000.

<sup>24</sup> [https://www.gov.im/media/90803/notice\\_451\\_man\\_-\\_gambling\\_duty\\_\\_january\\_2014\\_.pdf](https://www.gov.im/media/90803/notice_451_man_-_gambling_duty__january_2014_.pdf)

<sup>25</sup> [https://www.gov.im/media/90803/notice\\_451\\_man\\_-\\_gambling\\_duty\\_\\_january\\_2014\\_.pdf](https://www.gov.im/media/90803/notice_451_man_-_gambling_duty__january_2014_.pdf)

<sup>26</sup> Isle of Man Government - Application forms and guidance notes

<sup>27</sup> <https://gaming.nv.gov/index.aspx?page=94#non-monthly-percentage>

## H. France

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In case of online poker, tax is levied @ 1.8% of the value of wagers obtained by the provider of online gaming.<sup>28</sup>

However, the country is contemplating to shift to a rake fee-based taxation instead of taxing the entire stake value at a nominal rate<sup>29</sup>.

## I. Germany

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Unlike other countries of the EU, Germany does not have any specific levy on gaming.<sup>30</sup> VAT is levied @ 19%<sup>31</sup> on the value of rake fee.<sup>32</sup>

## J. Sweden

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The Swedish VAT law provides for exemption from payment of VAT vide Article 23 (5) of the Swedish VAT Act. However, gaming tax is levied @ 18% on the rake fee

viz. difference between the total amount of stakes less the amount of payout to be made by the licensee.<sup>33</sup>

## K. Alderney

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Alderney does not levy VAT, nor does it levy any tax on GGR. However, the Alderney eGaming Ordinance, 2009 vide Schedule 8 read with Schedule III provides for levy of license fee and in case of renewal of license, the fee varies basis the "gaming yield" of a licensee.<sup>34</sup> The relevant portion of the Regulation is as follows:

"8. (1) Subject to subsections (2) and (3), the fees specified in column 4 of Schedule 3 to this Ordinance and corresponding to the type and description of eGambling licence or certificate specified in columns 2 and 3 respectively of Schedule 3 shall be paid by an eGambling licensee or certificate holder to the Commission as agent for the States -

(a) ...

(b) ...

(1A)...

(2) If the Commission determines that - (a) an eGambling licensee or certificate holder has constructed a mechanism in order to reduce the fee payable by it under this Ordinance, and (b) any of the conditions specified in subsection (3) are satisfied, the Commission may specify the fee payable under this Ordinance without reference to Schedule 3, provided that such a fee (except the annual gambling business association fee) shall not exceed the maximum fee set out in Schedule 3."

"net gaming yield" in relation to an eGambling licensee or Category 1 certificate holder means the gross sum received by the eGambling licensee or Category 1 certificate holder as a result of the licensed activity, after deduction of - (a) winnings and prizes paid or payable to a customer, and (b) such sums paid out by the eGambling licensee or Category 1 certificate holder pursuant to contractual revenue sharing arrangements that the Commission considers to be bona fide and at arms length, and shall be calculated by reference to regulations made by the Commission under this Ordinance,"

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<sup>28</sup> [https://uk.practicallaw.thomsonreuters.com/9-634-4247?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co\\_anchor\\_a228703](https://uk.practicallaw.thomsonreuters.com/9-634-4247?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a228703)

<sup>29</sup> <https://igamingbusiness.com/french-senate-approves-shift-to-ggr-tax-for-gambling/#:~:text=When%20all%20the%20taxes%20are,GGR%20for%20retail%20sports%20betting>

<sup>30</sup> Commentary on German VAT Act.

<sup>31</sup> <https://www.bing.com/search?q=gaming+in+germany+%2b+thomson+reuters&FORM=SSRE>

<sup>32</sup> Gambling 2021 | Laws and Regulations | Germany | ICLG

<sup>33</sup> <https://www.skatteverket.se/servicelankar/otherlanguages/inenglish/businessesandemployers/startingandrunningaswedishbusiness/payingtaxesbusinesses/gamblingtax.4.35c34f651660af3747c32c.html>

<sup>34</sup> Alderney eGambling Ordinance, 2009 ([guernseylegalresources.gg](http://guernseylegalresources.gg))



## L. United States: Pennsylvania

The Pennsylvania statutes titled 4 Pa. C.S.A, Amusement vide chapter 13BF, mandates levy of tax on the daily rake fee earned by the service provider at the following rates<sup>35</sup>:

- (1) 14% of daily gross interactive gaming revenue from peer-to-peer interactive games
- (2) 14% of daily gross interactive gaming revenue from non-peer-to-peer interactive games which simulate table games
- (3) 52% of daily gross interactive gaming revenue from non-peer-to-peer interactive games which simulate slot machines

Gross interactive gaming revenue is defined as follows:

“(1) The total of all cash or cash equivalent wagers paid by registered players to an interactive gaming certificate holder in consideration for the play of authorized interactive games, including cash received as entry fees for contests or tournaments, minus:

- (i) The total of cash or cash equivalents paid out to registered players as winnings.
  - (ii) The actual cost paid by the interactive gaming certificate holder for any personal property distributed to a player as a result of playing an authorized interactive game. This subparagraph does not include travel expenses, food, refreshments, lodging or services.
- (2) Amounts deposited with an interactive gaming certificate holder for purposes of interactive gaming and amounts taken in fraudulent acts perpetrated against an interactive gaming certificate holder for which the interactive gaming certificate holder is not reimbursed shall not be considered to have been paid to the interactive gaming certificate holder for purposes of calculating gross interactive gaming revenue”

In case of online fantasy games, section 331 of 4 Pa. C.S.A provides for levy of tax @ 15% on the monthly adjusted revenues (rake fees) earned from the fantasy contests provided by the service provider.

### Relevant extract

“§ 331. Fantasy contest tax.

(a) Imposition.— Each licensed operator shall report to the department and pay from its monthly fantasy contest adjusted revenues, on a form and in the manner prescribed by the department, a tax of 15% of its monthly fantasy contest adjusted revenues.

‘Fantasy contest adjusted revenues.’ For each fantasy contest, the amount equal to the total amount of all entry fees collected from all participants entering the fantasy contest minus prizes or awards paid to participants in the fantasy contest, multiplied by the in-State percentage.”

<sup>35</sup>Gaming in the United States: Pennsylvania: overview | Practical Law (thomsonreuters.com)



# 06

## Policy recommendations

Considering the market size and future growth projections, the online gaming industry is expected to be a significant contributor to the economy. It may help achieve the vision of a Trillion-Dollar digital economy of the government of India and provide future economic avenues considering the ubiquitous digital trends impacting our lifestyle.

Given the potential and the economic contribution, it is important to iron out the ambiguities and provide a stable tax regime at a time when the industry is nascent and only about to grow from here. With this view, the policy recommendations have been provided herein.

## A. Crystallize the GST levy mechanism (for rake fee-based gaming platforms)

- ▶ The valuation mechanism shall be clearly outlined to avoid any ambiguities and potential litigations leading to frivolous tax demands.
- ▶ Any uncertainty and possibility of litigation adversely impacts the business plans, operations and entry of new players in the industry.
- ▶ Most of the industry players have a rake fee in the range of 4% ~ 20%. Any attempt to levy GST on the entire stake value essentially leads to economic unviability of the business model and would force the closure of businesses.

For instance, for every gameplay stake of, say INR 100, the gaming platform earns anywhere between INR 4 to INR 20. If GST is sought to be levied on entire stake value, i.e., INR 100, it effectively wipes out the revenue (let alone the net margins) and renders the business unviable to even cover the operational expenses.

In view of the backdrop above, various mechanisms have been contemplated below along with weighing of their pros and cons:

### Option 1: GST on rake fee value only

- ▶ Levy GST only on the rake fee i.e. consideration received by gaming platform
- ▶ Illustrative calculation:

| Particulars                 | Amount (INR)    |
|-----------------------------|-----------------|
| Stake value                 | 100             |
| Rake fee earned by platform | 10              |
| Payout (prize pool)         | 90              |
| GST @ 18% on rake fee       | 10 * 18% = 1.80 |
| <b>Net GST liability</b>    | <b>1.80</b>     |

### Impact on business

1. Being followed across the industry presently
2. No changes to ERP required

### Impact on government

1. Aligns with existing GST mechanism to levy tax on consideration only
2. No specific amendment required in GST law. Circular may be issued to crystallize the valuation

## Option 2: Deemed credit model

- ▶ Levy GST on entire stake value
- ▶ Simultaneously, allow for GST credit on pay-outs made by the gaming platform
- ▶ Illustrative calculation:

| Particulars                 | Amount (INR)         |
|-----------------------------|----------------------|
| Stake value                 | 100                  |
| Rake fee earned by platform | 10                   |
| Payout (prize pool)         | 90                   |
| GST @ 18% on stake value    | $100 * 18\% = 18.00$ |
| Deemed credit on payout     | $90 * 18\% = 16.20$  |
| <b>Net GST liability</b>    | <b>1.80</b>          |

### Impact on business

1. Simpler to implement
2. Only two data metrics to be considered: Stake and pay-outs
3. However, businesses would be required to undertake change in their ERP systems/tax engine to compute GST

### Impact on government

1. Global acceptance, e.g., Singapore, South Africa and Australia follow the same mechanism
2. Easier to verify and audit the entities
3. The model is in line with judicial decisions and takes care of anticipated risk around misdeclaration of rake fees

### Option 3: GST on entire stake value but at a nominal rate of, say 1.8%

- ▶ Levy GST on entire stake value but at a nominal rate.
- ▶ Illustrative calculation:

| Particulars                 | Amount (INR)         |
|-----------------------------|----------------------|
| Stake value                 | 100                  |
| Rake fee earned by platform | 10                   |
| Payout (prize pool)         | 90                   |
| GST @ 1.8% on stake value   | $100 * 1.8\% = 1.80$ |
| <b>Net GST liability</b>    | <b>1.80</b>          |

#### Impact on business

1. Ease of calculation
2. Only one data metric to be tracked by business, i.e., stake value
3. The mechanism would be discriminatory for industry players having low rake (since GST outflow would be higher whereas margins are lower).
4. It would vitiate the well-established principle of taxing only consideration and instead, taxes entire stake value.
5. The precedent to tax entire value is not desirable since it opens up future avenues by states to tax entire stake value for other levies, e.g., cess.
6. Taxing the entire stake value may not be aligned with business margins in case of decreasing rake fee

#### Impact on government

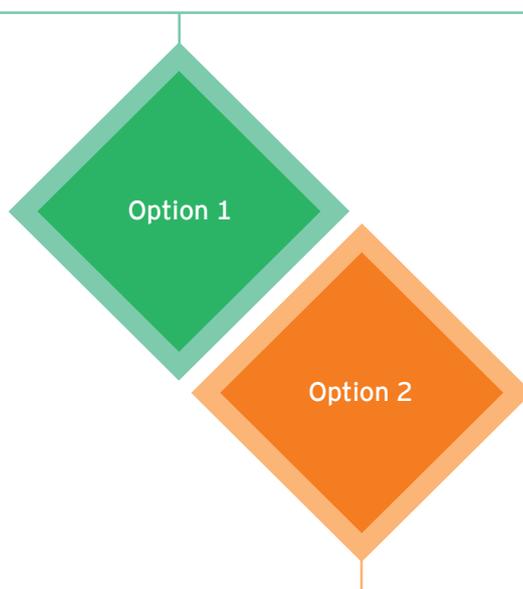
1. Ease of verification and audit
2. Prone to manipulation since 'platform fee only' players (without any prize winnings model) may also offer nominal winnings to lower tax outflow, eg., If platform fee is INR 100, the GST liability would be ideally INR 18. However, if a nominal winning prize of, say, INR 5 is introduced; the platform would have to discharge GST liability of INR 1.8 only ( $INR 100 \times 1.8\%$ ).
3. It would discourage the growth of industry and resultantly, decrease in revenue collections and growth.
4. This principle is not aligned with settled principle of law and accordingly, is prone to lengthy litigation process. May adversely impact the businesses.

Given that the adverse impacts outweigh the benefits for Option 3 substantially, it is recommended to implement either Option 1 or Option 2.

The recommendations therefore are summarized as below:

#### **Tax rake fee at standard 18% rate**

- ▶ Alternatively, it is recommended to crystallize the valuation of such supplies strictly to the rake fee earned by the platform.
- ▶ An amendment to Section 15 of the CGST Act (and similarly to the state GST Acts) shall be carried out specifically to insert the valuation mechanism for gaming companies based on rake fee.



#### **Deemed credit model**

- ▶ Be that as it may, if the GST council deems it simpler to levy GST on entire stake value due to varied rake fee charged by the industry players, it shall contemplate to provide a similar model as adopted by South Africa, Singapore, etc.
- ▶ While GST would be levied on the entire stake value, deemed input tax credit shall be provided for the amount credited to a user's account by the gaming platform
- ▶ This shall achieve the dual purpose of keeping the GST calculation process simplified as well as charging GST on the net rake fee earned by the gaming platform

The crystallization of a valuation mechanism would be a catalyst in enabling Ease of Doing Business and spur growth of the sector hitherto impacted by the regulatory uncertainty on this aspect.



## B. GST rate shall be specifically clarified to be 18%

- ▶ The online gaming industry leverages the technology to enable provision of gaming services to the masses. At best, it provides a platform that assists gameplays among users on a real-time basis. Thus, the business model is akin to that of e-commerce operators or an Information Technology company providing a software.
- ▶ The online gaming industry merely develops the web/application platform and enables its usage against subscription, platform fee or rake fee (as the case maybe). As a principle of taxation, standard rate is levied on a supply irrespective of the end use of such supply. For example, if a software is being deployed in a motor vehicle, such supply of software would not warrant the equivalent GST rate of vehicle being applied on it. This would be arbitrary and whimsical. Therefore, the business case is to levy GST on the supply in question, i.e., technology services being provided by the gaming platform to users.
- ▶ Therefore, to mitigate any risk whatsoever of misclassification of the online gaming industry as betting or gambling, it shall be specifically clarified that applicable GST rate is 18% as per Notification No.11/2017 - Central Tax Rate dated 28 June 2017 (as amended from time to time).



# Glossary

| Particulars | Description                                 |
|-------------|---------------------------------------------|
| CAGR        | Compounded Annual Growth Rate               |
| CBIC        | Central Board of Indirect Taxes and Customs |
| GGR         | Gross Gaming revenue                        |
| RMG         | Real money games                            |

## Meaning/definition

| Particulars   | Description                                                                                                                                                                                                                                             |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Rake fee      | Amount earned by the gaming platform for facilitating gameplays on its platform. The amount is usually a fraction of the stake value. It is also denoted as GGR in common parlance. For uniformity, we have used the term 'rake fee' across the report. |
| Stake / wager | The amount pooled by the player for participating in a single gameplay.                                                                                                                                                                                 |



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