

*Online Games - Whether Game
of chance or Game of Skill!!!*



Online Fantasy Games - Whether Game of chance or Game of Skill!!!



There has been lots of uproar in the industry on treating online gaming at par with Casinos and horse racing. Under GST only the collection of lottery, betting, and gambling as excluded from schedule III of the CGST Act 2017, are subject to GST rate @ 28% . 'Games of skill' played online are considered 'actionable claims' under Entry 6 of the Schedule and are liable to GST at the rate of only 18% levied on the Gross Gaming Revenue (GGR) or the platform fee collected from the participants.

In the 50th GST Council meeting held on July 11, 2023, the GST Council recommended levying of 28% GST on the full face value on Online Gaming, Casinos & Horse racing, irrespective of whether these activities are considered games of skill or games of chance. This led to an outrage in the gaming industry. Resultantly, the GST Council vide its 51st meeting, stated that the decision will be enforced prospectively w.e.f 1st Oct, 2023, and will be reviewed after six months of its implementation. The imposition of GST at a rate of 28% on the entire amount, which is declared to be with prospective effect, serves as clarification; which implies that this legal position has been in place since the inception of the GST.

Tax on Winnings:

- GST on winnings: Since the GST is already levied at the entry level, Winnings will not be taxed when they are used for further game play.
- Income tax on winnings: As per section 194BA of the Income tax act, TDS of 30% is levied on the withdrawal of winnings (this is collected by the gaming company itself before it pays you the net proceeds of the win)

After this meeting, the existing line separating a game of skill from a game of chance has been removed by the government or the finance ministry. Now the GST Council has decided to levy 28% GST on the full value of bets placed in online gaming deposited by the consumer. In a nutshell, when a person deposits Rs. 100 in the Online Fantasy gaming app, Rs. 28/- is straight away contributed towards GST and is only left with Rs. 72 to play with. Furthermore, the Platform fee will be deducted after this. Earlier, the gaming industries were levying GST on the platform fee and not on the full value. So when a person deposited Rs. 100 in the online Fantasy gaming app and placed a bet of Rs. 100 which includes a platform fee of Rs. 10. The 18% was levied on the platform fee of Rs. 10 which came to Rs. 1.80/-

With this amendment now the profit on the player of the online gaming will be affected and same may give discouragement from playing on a regular basis and eventually lead to a reduction in the participation of players. GST being an indirect tax, the gaming companies will be passing on the burden of 28% GST to their customers which can also affect the participation number which will ultimately result in low profits for the gaming companies as well.

*GST
applicable
@ 28%
w.e.f. 1st
Oct, 2023*