

## LAW & POLICY UPDATE

JULY 17, 2023



### Analysis of the 50th GST Council Meeting and the impact of levy of GST on the online gaming industry

In a press release dated June 11, 2023, the Union Finance Minister, Mrs. Nirmala Sitharaman, announced the outcome of the 50<sup>th</sup> Goods and Services Tax (GST) Council Meeting and the significant reforms encompassing changes in GST tax rates for various products and services, as well as measures to enhance trade facilitation and streamline compliance processes.

One of the key objectives of the Council was to review a report submitted by the Group of Ministers (GOM), appointed to examine the taxation aspects of casinos, horse racing, and online gaming, and to finalize the applicable GST rate for these services. The key recommendations are summarized here below.

#### Recommended changes:

- Uniform rate of 28% GST on full face value on casinos, horse racing, and online gaming.
- Reduction in the GST rate on uncooked or unfried snack pellets to 5% and regularized payment of GST on the same during the past period on 'as is basis'.
- Exemption of IGST on Dinutximab (Quarziba) medicine, when imported for personal use.
- Reduction of IGST on medicines and Food for Special Medical Purposes (FSMP) used in the treatment of rare diseases listed under the National Policy for Rare Diseases, 2021 when imported for personal use subject to existing conditions.
- Clarification on supply of raw cotton, including kala cotton, by agriculturists to cooperatives, which is taxable under the reverse charge mechanism.
- Reduce GST on imitation zari thread or yarn from 12% to 5% and regularize issues relating for the past period on 'as is basis'.
- Amendment to the entry in the compensation cess notification to include all utility vehicles meeting specific parameters.
- Reduction in the GST rate on LD slag from 18% to 5% to encourage better utilization and environmental protection.
- Regularization of matters relating to trauma, spine, and arthroplasty implants for the period before July 18, 2022 on 'as is basis' in view of genuine interpretational issues.
- Reduction in the GST rate on fish soluble paste from 18% to 5% and regularized payment of GST on the past period on 'as is basis'.
- On pan masala, tobacco products etc, where it is not legally required to declare the retail sale price, the earlier ad valorem rate as was applicable on March 31, 2023 may be notified in order for levy of Compensation Cess.

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- Inclusion of RBL Bank and ICBC Bank in the list of specified banks eligible for IGST exemption on imports of gold, silver, or platinum.
- Consequential changes to be made in notifications based on the new Foreign Trade Policy, 2023.
- Regularize issues relating to GST on plates and cups made of areca leaves before October 01, 2019.
- Regularize the issues relating to GST on biomass briquettes for the period July 01, 2017 to October 12, 2017.

#### Impact of changes on the online gaming industry:

- Over the past 5 years, the online gaming industry in India has experienced remarkable growth, driven by the widespread availability of affordable smartphones and inexpensive mobile data. This has allowed the sector to attract USD 2.5 billion in FDI, making it one of the fastest-growing industries in India, with an annual compounded growth rate of 28-30%. The decision by the GST Council to impose a 28% GST rate on the full-face value of gaming transactions is expected to have far-reaching consequences, significantly impacting the entire industry and proving detrimental to the growth of this industries in India.
- An immediate and visible impact of the implementation of 28% GST on online gaming in India will be on total prize pools and the face value of online games. Essentially, this tax will be applied to the funds collected by gaming companies from consumers. Consequently, consumers themselves will bear the burden of this tax, leading to increased costs for players.
- In essence, for every INR 100 spent by a player, there will be an additional 'sunk cost' of INR 28 towards GST, on top of the INR 5-10 charged by the gaming platform and a 30% tax deducted at source (TDS) on any winnings earned by the player. This will severely discourage consumers from participating in online gaming, thereby negatively impacting the overall growth of the industry.
- Following the implementation of the new GST rules, taxes on online gaming will be imposed without differentiation based on whether the games require skill or are based on chance. This will eliminate the distinction between games of chance (betting, gambling, etc.) and games of skill, as defined by the Constitution and various State laws, effectively bringing the entire online gaming sector under the umbrella of gambling and, therefore, could be prone to judicial scrutiny.

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**Viewpoint**

The increase in GST may result in a substantial fall in the share prices of companies involved in the online gaming industry and may lead to a major adverse impact on the flourishing online gaming industry in India. Considering that consumers will bear the burden of this tax, they will likely be discouraged from participating in online gaming activities, thereby negatively impacting the overall growth of the industry.

