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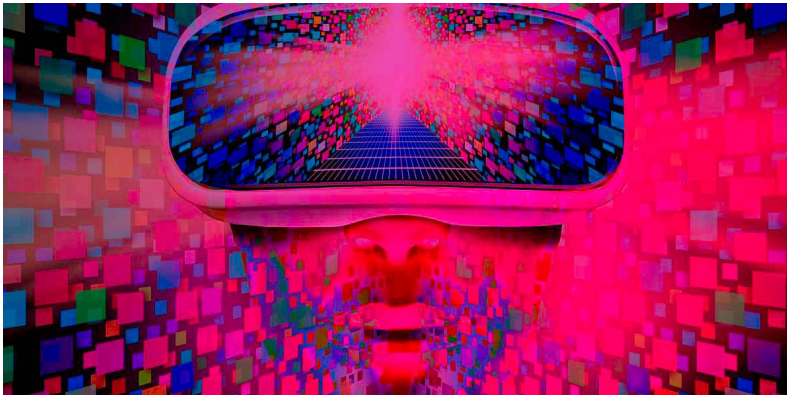
REPORT



TAXATION OF THE DIGITAL ECONOMY

INTERNATIONAL BEST PRACTICES
IN GST FOR ONLINE GAMING

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Introduction

“The gaming market is huge internationally and the number of youth connected to this market globally is increasing. That is why in this year’s budget we have focused on Animation

Visual Effects Gaming Comic (AVGC),¹”

Narendra Modi, Prime Minister of India

Online Gaming has cemented its place as one of the fastest growing segments of the digital economy. It leads the pack in terms of growth, revenue, taxes paid and most importantly, in the thousands of well-paying skilled jobs it generates. There are over 60,000 jobs in the sector and this number will grow to 80,000 by 2025². That apart, the industry has already attracted Rs 20,000 cr in Foreign Direct Investment and this number is expected to swell to Rs 50,000 cr in the next three years.³ Fueled by high smartphone penetration, affordable data, and a skilled population, Gaming is set to grow exponentially. The recent launch of 5G services will also provide a shot in the arm to innovations in the sector.

With homegrown startups led by young, enterprising men and women, India has achieved *Aatma Nirbharta* in the sunrise sector of Gaming⁴. The government is also keen on developing the AVGC sector (Animation, Visual Effects, Gaming, and Comic) and has designated audio-visual services as one of the 12 Champion Service Sectors. It has also announced key policy measures aimed at nurturing sustained growth. India has the potential to create 1.6 lakh jobs annually in the AVGC sector.⁵ To further unleash the scope of the AVGC sector, an announcement was made in the Union Budget 2022–23 for setting

1. Gaming sector has huge Int'l Market, India trying to increase its footprint in it: Modi, The Indian Express, March 3, 2022, 1:37:41 am. Available at - <https://indianexpress.com/article/cities/delhi/gaming-sector-huge-intl-market-india-trying-increase-footprint-modi-7797747/>

2. Year End 2021: It's game on for online gaming industry, just play it right for regulatory clarity, The Financial Express, available at - <https://www.financialexpress.com/brandwagon/year-ender-2021-its-game-on-for-online-gaming-industry-just-play-it-right-for-regulatory-clarity/2389443/>

3. GST on online-skill based gaming, August, 2022, available at <https://www.assocharm.org/uploads/files/Online%20gaming%20-Impact%20on%20the%20industry.pdf>

4. Press release, Ministry of Information and Broadcasting, India achieving Aatmanirbharta in Sunrise Sectors: Toy & Gaming Sector, September 2, 2022, available at - <https://pib.gov.in/FeaturesDeatils.aspx?NotelId=151133&ModuleId=2>

5. Gaming taskforce. Center constitutes task force for development of animation, gaming, visual effects sector, Apr 8 2022, available at - <https://www.thehindubusinessline.com/news/centre-constitutes-task-force-for-development-of-animation-gaming-visual-effects-sector/article65302215.ece>

up an AVGC Promotion Task Force to recommend ways to realize and build domestic capacity for serving our markets and the global demand.

Currently, India has over 950 gaming companies and more than 500 online skill gaming startups with at least 15,000 game developers.⁶ The industry has already produced three unicorns and many more such companies are on the trajectory to achieve that status. The diverse online gaming landscape consists of online games of skill that are held to be legitimate business activities protected under Article 19(1)(g) of the Constitution of India. The operation of games of skill is protected by the Constitution and held as a fundamental right by various Indian Courts thus not being *res extra commercium* in nature.

a. Jurisprudence on *Games of Skill*

During the Constituent Assembly Debates on September 2, 1949, a motion was taken up to discuss the scope of Entry 45 (present Entry 34) dealing with betting and gambling. The move was opposed by Shri Shibban Lal, Shri Lakshminarayan Sahu, and Sardar Hukum Singh. Dr. B.R. Ambedkar explained the rationale behind the entry is to provide powers to the state legislature to regulate betting and gambling. If the entry is omitted, then there would be absolutely no control on betting and gambling by the state. The entry can be used for the purpose of permitting betting and gambling or even for the purpose of prohibiting it. Entry 45 (now Entry 34) was thus agreed to be added to empower States to either regulate/prohibit the said activity.

Games of skill are not governed under Entry 34 of List II, Seventh Schedule of the Constitution of India that pertains to “betting and gambling”. Pursuant to Entry 34 of List II, states either adopted Public Gambling Act, 1867 with minor modifications or introduced their own Gaming laws to either exempt/prohibit/regulate games of skill while prohibiting/regulating gambling and betting. 24 states/UTs exempted Games of skill or Games of mere skill from the ambit of Gambling Act⁷, 4 states regulated Games of skill⁸, and 4 states prohibited all games played for money including games of skill⁹ and the matter is sub judice.

Historically, jurisprudence of online skill gaming has developed over the past 65 years. The Hon’ble Supreme Court in the case of *State of Bombay v. R.M.D.*

6. India Brand Equity Foundation, India’s nascent gaming industry on the rise, Jan 20, 2022, available at - <https://www.ibef.org/blogs/india-s-nascent-gaming-industry-on-the-rise>

7. Arunachal Pradesh, Bihar, Jharkhand, Punjab, Haryana, Manipur, Chandigarh, Himachal Pradesh, Goa, Daman and Diu, Chhattisgarh, Uttar Pradesh, Madhya Pradesh, Uttarakhand, Maharashtra, Gujarat, Delhi, Jammu & Kashmir, Karnataka, Kerala, Rajasthan, Tripura, West Bengal, and Mizoram.

8. Tamil Nadu, Sikkim, Meghalaya, and Nagaland.

9. Andhra Pradesh, Assam, Telangana, and Odisha

*Chamarbaugwalla*¹⁰ and *R.M.D. Chamarbaugwalla*¹¹ v. *Union of India*, has laid down the principle for determining what constitutes a game of skill and chance. The Supreme Court has held that the pre-condition for the determination of games of skill was dependent on the exercise of substantial skill. The Hon'ble Supreme Court in the case of *State of Andhra Pradesh v. K Satyanarayana*¹² while holding rummy to be a game of skill applied the predominant test i.e. where the element of skill predominates the element of chance. The courts have consistently recognised that no game can be considered as a pure game of skill or a pure game of chance and each game will have some elements of chance as well as skill. However, Games of skill will be considered to be those that have a preponderance of skill over chance. Courts have used this test to adjudge the true nature of online games, and have held games such as fantasy sports, rummy etc., to be a game of skill.

There have been consistent judgments wherein courts have held that games of skill and games of chance are two separate classes and games of skill are not betting and gambling and thereby, protected under Article 19(1)(g) of the Constitution of India. However still certain states such as Karnataka, Tamil Nadu, Andhra Pradesh, and Telangana have introduced amendments to their gaming/gambling laws prohibiting all games regardless of it being a game of skill or chance, when played for money.

Notably, the provisions of these legislations are under challenge. The Hon'ble Division Bench of Karnataka High Court in the matter of *All India Gaming Federation v. State of Karnataka*¹³ struck down the amendments to the Karnataka Police Act that prohibited games of skill when played for money - **holding that games of skill are legitimate business activities and games played online and/or with monetary stakes do not change the nature of the game.** Similarly the Madras High Court in the case of *Junglee Games India Private Limited v. The State of Tamil Nadu*,¹⁴ struck down the amended provisions prohibiting games of skill, when played for money.

b. History of Indirect Taxation in India on Online Gaming

In the pre-GST regime, a clear distinction was carved out between games of skill and betting/gambling. Betting and gambling were in the negative list in the Service Tax regime and were the prerogative of the State legislation to levy tax. The Finance Act, 1994 under Section 65-B (15) defined betting and gambling

10 *State of Bombay v. R.M.D. Chamarbaugwalla*, AIR 1957 SC 699

11 *R.M.D. Chamarbaugwalla v. Union of India*, AIR 1957 SC 628

12 *State of Andhra Pradesh v. K Satyanarayana*, AIR 1968 SC 825.

13 *All India Gaming Federation v. The State of Karnataka*, W.P. No. 18703/2021.

14 *Junglee Games India Private Limited v. The State of Tamil Nadu*, W.P.No.18022 of 2020.

as follows: “(15) “*Betting or gambling*” means *putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring.*”

Further, as per Rule 2(1)(ccd) of Service Tax Rules, 1994, online gaming was a part of the definition of online information data access or retrieval services (OIDAR). It state as follows:

“(ccd) “*online information and database access or retrieval services*” means *services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as,–*

- (i) *advertising on the internet;*
- (ii) *providing cloud services;*
- (iii) *provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;*
- (iv) *providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;*
- (v) *online supplies of digital content (movies, television shows, music, etc.);*
- (vi) *digital data storage; and*
- (vii) *online gaming;”*

Under the service tax regime, gaming platforms availed Service Tax registration for payment of service tax under IT/ ITeS Category and discharged service tax on the platform fee charged to the player. The service provided by the gaming platforms was that of an e-commerce intermediary platform that facilitates and enables users to enter inter-se contests, against which they charge a platform fee. The service tax on online gaming was levied at an applicable rate on Gross Gaming Revenue i.e. the platform fee.

Gaming platforms undertook the function of providing a stable back-end technology for the smooth functioning of gaming activities with no role in the contest played. The only role the platform plays is while setting up the predetermined rules and providing features and products that enable the ease of use and access by the players. Therefore, in the erstwhile tax regime, the contribution to the prize pool was considered an actionable claim with no service tax or Value Added Tax (VAT) applicable on the same. The VAT law provided specific exclusions for the actionable claim. It is important to note that the contribution to the prize pool money by the players is held in an independent

account and the only money platform receives is the platform fee which is charged to the players for the services provided by the platform for facilitating the playing of the game.

The abovementioned model of the operation of skill gaming platforms prevails till today and has been carried forward to the GST regime as the online skill gaming industry continues to discharge Goods and Service Tax (GST) on the platform fee charged to the player of the game for the platform service provided by the gaming company availing/facilitating the services of the platform.

The Constitution of India lists “betting and gambling” as a state subject under Entry 34, List II, Schedule VII of the Constitution of India thereby providing powers to the states to regulate the area of betting or gambling. With the introduction of GST on July 1, 2017 State legislations, imposing Betting tax, enacted under Entry 62 of List-II (State List) of the Seventh Schedule to the Constitution which entails *“Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling or any other tax levied by the concerned State”* were subsumed into the Goods and Service Tax.

Currently, online skill gaming operators pay GST at a rate of 18% on Gross Gaming Revenue/Platform fees under Chapter Heading 998439 that pertains to Other Online Content. The Explanatory Note of this Heading to Scheme of Classification of Service states as follows:

“This service code includes games that are intended to be played on the Internet such as role-playing games (RPGs), strategy games, action games, card games, children’s games; software that is intended to be executed on-line, except game software; mature theme, sexually explicit content published or broadcast over the Internet including graphics, live feeds, interactive performances and virtual activities; content provided on web search portals, i.e. extensive databases of Internet addresses and content in an easily searchable format; statistics or other information, including streamed news; other online content not included above such as greeting cards, jokes, cartoons, graphics, maps

Note: Payment may be by subscription, membership fee, pay-per-play or pay-per view.

This service code does not include:

- software downloads, cf. 998434*
- on-line gambling services, cf. 999692*
- adult content in on-line newspapers, periodicals, books, directories, cf. 998431.”*



Landscape of Taxation in various International Markets

In this part we will discuss the understanding of the term online game(s)/ gaming in the international market from the perspective of different jurisdictions, taxation on online games, and the rate of tax assigned for taxing such games of skills in different countries.

a. Taxation Models of Online Gaming

Gross Gaming Revenue (GGR) Tax Model: Under this model, the operator pays tax on the entry amount minus the amount ascertained towards the prize pool. To simplify, tax is payable in the hands of the operator only on the value apportioned towards their platform fee. Generally, the value is subject to additional deductions such as bonuses, discounts (in India) and licensing s (in nations where licensing is a requirement). Hence, a formula to understand the taxable value under the GGR tax model is as under:

$$\text{Taxable value} = \text{Entry Amount} - \text{Prize Pool}$$

FOR INSTANCE:

Table 1: Method of calculating tax in GGR

S. No.	Description	Amount Included
1.	Entry Amount	100
2.	Platform Fees	20
3.	Amount towards prize pool	80
4.	Gross Gaming Revenue	20

(Any applicable discounts and bonuses are deducted on a case-to-case basis.)



Deposit or Turnover Tax Model: Under this model, tax is levied on the entire entry amount and there is no deduction of the prize pool. Thus, the entry amount is the taxable value in a Deposit or Turnover Tax Model with very low tax rates. Globally countries are moving away from the Turnover tax model to GGR model to increase tax revenues and ease compliance. The UK and France case study is discussed later in the report.

Taxable value = Entry Amount

FOR INSTANCE:

Table 2: Method of calculating tax in Turnover Tax model

S. No.	Description	Amount Included
1.	Entry Amount	100
2.	Platform Fees	20
3.	Amount towards prize pool	80
4.	Total value	100

b. Countries following Gross Gaming Revenue (GGR) Tax Model with moderate tax on games of skill

Following table is a summary of taxation models in countries that follow the Gross Gaming Revenue model and details any additional license fee that is collected by the regulatory body to provide the license to operate in the territory, and taxes. It may be noted that most countries have a single tax i.e., either federal tax or state tax.

Table 3: Summary of rate of tax and applicable license fees in the countries following GGR model

S. No.	Country	Tax Base	Federal Tax	State Tax	Other Levies	Total Tax (Federal + State + Levies)	License fee
1.	US: Pennsylvania	GGR	None	14%	None	14%	\$50,000 for 5 years, renewal fee \$10,000 Internet Gaming Permit - \$400000 and Responsible Internet Gaming Fee - \$250000
	US: New Jersey	GGR		10.5%	None	10.5%	Renewal - \$250000 as Internet Gaming Permit and \$250000 as Responsible Internet Gaming Fee

S. No.	Country	Tax Base	Federal Tax	State Tax	Other Levies	Total Tax (Federal + State + Levies)	License fee
	US: Nevada	GGR		3.5% - 6.75%	None	3.5% - 6.75%	The initial fee is \$500,000, which is for two years. The annual fee thereafter is \$250,000
	US: Mississippi	GGR		8%	None	8%	Application Fee - \$5000 Annual License Fee - \$5000
	US: Louisiana	GGR		10% on retail and 15% on online	None	10% on retail and 15% on online	Gaming License - Up to \$100000 as initial investigation fee (advance of \$50000) Sports wagering platform provider - \$250000 for 5 years Fantasy Sports License - for 3 years If 3 year average revenue less than \$100000 or no previous revenue - \$5000 If 3 year average revenue is between \$100000 to \$300000 - \$15000 If 3 year average revenue more than \$300000 - \$40000
	US: Colorado	GGR		10%	None	10%	\$125000 for two years
	US: Missouri	GGR		21%	None	21%	Lower of \$10000 or 10% of net revenue \$5000 - For Internet Fantasy Sports
	US: Iowa	GGR		6.75%	None	6.75%	\$45000 - For Sports Wagering
	US: New York	GGR		15%	None	15%	NA

S. No.	Country	Tax Base	Federal Tax	State Tax	Other Levies	Total Tax (Federal + State + Levies)	License fee
	US: Michigan	GGR		20% - 28%	None	20% - 28%	Application Fee - \$50000 (additional fee applicable proportionate to the cost of investigation) License Fee - Initially - \$100000 Annually - \$50000
	US: Delaware	GGR		15.5% or equivalent to highest rate adopted by another state, whichever is greater tax	None	State Tax is also subjected to 4.5% purse settlement	\$50000 annually
2.	UK	GGR	21%	None	None	21%	Graded application fee along with Annual Fees, based on Gross Gaming Yield (GGY) At the lower end of the spectrum, operators with a GGY below £550,000 will be expected to pay an Application fee of £4,224 and an annual fee of £4,199. At the opposite end, operators with a GGY of £1 billion or greater are subject to a £91,686 application fee and an annual fee of £793,729 plus £125,000 per additional £500 million of GGY.

S. No.	Country	Tax Base	Federal Tax	State Tax	Other Levies	Total Tax (Federal + State + Levies)	License fee
3.	Australia: South Australia	GGR	10%	15%	1% of GGR is levied as community benefit levy	16%	A fixed License fee is imposed by certain states
	Australia: NSW	GGR		15%		12%	
	Australia: Victoria	GGR		9%		10%	
	Australia: Queensland	GGR		15%		16%	
	Australia: ACT	GGR		15%		16%	
	Australia: Western Australia	GGR		15%		16%	
	Australia: Tasmania	GGR		15%		16%	
4.	Sweden	GGR	18%	None	None	18%	Fee for Commercial Online Gambling – SEK 400000
5.	Czech Republic	GGR	23%	None	None	23%	License fee CZK 5,000
6.	Estonia	GGR	5%	None	None	5%	<p>Activity License and Operating Permit required for operating in Estonia</p> <p>The state fee for the activity licence is: 47,940 euros for organising a game of chance; 31,960 euros for organising a toto; 3200 euros to organise a game of skill.</p> <p>The state fee for operating permit is: Regular Fee: Euro 3200 For Lottery: Euro 640</p>

S. No.	Country	Tax Base	Federal Tax	State Tax	Other Levies	Total Tax (Federal + State + Levies)	License fee
7.	Italy	GGR	20% - 22%	None	None	20%	One-off cost of License fee EUR320,000 Biannual concession fees are due, based on a fixed fee (EUR50,000 payable on the 16 January each year) and a variable charge (a small percentage of the gaming turnover posted in the previous six-month period).
8.	Singapore	GGR	7%	None	10% - 25% Gambling Tax		1,100 SGD for the application for a casino license, 22.8 million SGD per year for operating a casino, 19 million SGD per year for operating 2 casinos, 850 SGD for casino license renewal.
9.	Malta	GGR	B2C gaming operators are required to pay a gaming tax at 5% of GGR	None	None	5%	Range anywhere between EUR 25000-35000 Depending on Type of service Offered
10.	Austria	GGR	20%	None	2% - 40%	2% - 40%	Application fee of EUR 10000and EUR 100000 payable when receiving a license
11.	Malaysia	GGR	6%	None	None	6%	Annual Casino License fee : MYR150 Million

S. No.	Country	Tax Base	Federal Tax	State Tax	Other Levies	Total Tax (Federal + State + Levies)	License fee
12.	Philippines	GGR	5%	None	None	5%	<p>Fee for E-casinos: Application Fee \$40,000 in two installments / (\$15,000 at the time of application which is non-refundable and \$25,000 upon issuance of the provisional license which is refundable)</p> <p>Fee for Sports Betting Operations / \$48,000 per year a. Renewal Fee \$40,000 in two installments / (\$15,000 may be offset against gaming levy paid) b. \$60,000 payable upon issuance of license.</p> <p>Fee for Sports Betting License : Application Fee \$26,000 (\$18,000 is refundable if application is unsuccessful) ; a. Probity Cost /\$3,500 b. Upon renewal \$15000 payable c. \$60,000 per annum payable upon renewal of license. (Restrictive Interactive Gaming Tax)</p>

(Observation: Table 3 provides a summary of various taxes levied and rates thereof of the countries following GGR model along with the license fees. Most of the countries follow the GGR model with lower tax rates.)

1. AUSTRIA

Games of skill are not regulated in Austria and therefore not defined under any law. Games of chance on the other hand are regulated by the Austrian Tax Office and defined under Chapter 1 of the Austrian Gaming Act as a game in which the decision on its outcome is solely or predominantly reliant on chance¹⁵. The online games of chances and online betting are operated by the Ministry of Finance and online games of skills are open to market players. However, it is pertinent to note that both the games of skill and the games of chance are taxed as per the GGR model. Therefore, the tax is payable only on the Gross Gaming Revenue, which is calculated in the following manner:

$$\text{Gross gaming revenue (GGR)} = \text{stakes} - \text{winnings}$$

$$\text{Net gaming revenue (NGR)} = \text{GGR} - \text{VAT}$$

Games of skill are taxed at a Value Added Tax rate of 20%, which is a standard rate of tax on platform service provided to the players. However, gambling duty on betting, gambling, lottery, and games of chance in Austria¹⁶ is as follows:

Table 4: Rate of tax on gambling in Austria:

Gaming Product	Basics of Calculation*	Tax Rate
Betting	Turnover tax	2%
Lottery (terrestrial)	Turnover tax	2% - 27.5%
Electronic lotteries (online games of chance)	Gross gaming revenue	40%
Land-based casino	Gross gaming revenue	30%
Slot machines (in casinos)	Net gaming revenue	30%
Slot machines (outside casinos)	Net gaming revenue	10% + municipal fee
VLTs	Net gaming revenue	10% + municipal fee
Other games of chance	Turnover tax	16%
Unlicensed slot machines	Net gaming revenue	30%
Unlicensed VLTs	Net gaming revenue	30%

(Observation: Table 4 indicates that the rate of tax in Austria on gambling and betting (does not include games of skill) on stake is very low. Even some of the games of chance are taxed at GGR

15. Federal Law 28 Nov 1989, https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1989_620/ERV_1989_620.pdf

16 <https://thelawreviews.co.uk/title/the-gambling-law-review/austria>

2. ITALY

Initially, online gaming and gambling activities were taxed as per the Turnover/Deposit Tax Model with the tax rates ranging from 2.5% to 5%. However, in 2010, Italy introduced GGR tax on games of skills, lottery, wagering, and horse riding.

Games of skill in Italy are regulated by the regulations issued by the national gaming authority *Agenzia delle Dogane e dei Monopoli* (ADM). In terms of the regulations, in the event of organizing an online game of skill, the total amount of bets from which the winnings have been deducted shall be subject to tax at the rate of 20% by the operator.

3. AUSTRALIA

Australia is following the GGR tax model thereby tax as imposable under A New Tax System (Goods and Services Tax) Act, 1999 is imposed on the amount waged less the amount towards winning. Thus, taxable value is equal to the income of the operator except in cases where the total monetary prize exceeds the total amount wagered. In this case the rate of tax is zero.

Further, to calculate the global GST amount for online gambling, Division 126, Part 4.4 of Chapter 4 of A New Tax System (Goods and Services Tax) Act, 1999, provides the following formula:

$$(Total\ amount\ wagered - Total\ monetary\ prizes) \times 1/11$$

However, it shall be noted that apart from VAT, the gaming industry is subject to state tax which differs from state to state. Thus, an operator having a license in a particular state is liable to pay VAT as well as state tax in which the game operator is operating.

4. UNITED KINGDOM

The United Kingdom shifted its tax structure from the turnover tax model to the GGR tax model for the online gaming industry. Earlier under the turnover tax model, the UK was levying 6.75% on the buy-in amount. However, with the shift to the GGR model, the tax rate was changed to 15% of the revenue less the winning prize. The main reason for the shift was to reduce the movement of bookmakers to offshore locations with better tax models, which caused a loss of duty revenue for the government.

Further, the operators from outside the UK having a customer base in the UK are also required to pay tax on the gross revenue generated from the customers in the UK at the rate of 21%, the same in terms of Remote Gaming Duty or RGD.

Additionally, it is pertinent to note that prize money earned in the UK is

exempt from taxes.

5. UNITED STATES

In the United States, the tax is determined on a state level. Most states follow the GGR mode of taxation. The rate of tax in various states is captured in the Table No. 3, earlier in the report.

6. SINGAPORE

In Singapore, gaming transactions are regulated under the Remote Gambling Act, 2014. Further, for the purpose of GST, the valuation of online gaming, betting, etc., shall be the buy-in money less the amount equivalent to money received by the winner for successfully participating and winning the game. GST is payable at the tax rate of 7%. The Gambling Duties Act, 2022 imposes tax on the operator of the games at the rate of 10%- 18%.

7. ESTONIA

Estonia follows the GGR tax model and the Value Added Tax Act, 2004, and imposes a blanket 5% rate of sales tax on the profit of the operators, excluding winnings - on all online games - including games of chance, games of skill as well as online betting. It shall be noted that the maximum rate of VAT imposable in Estonia is 20%¹⁷

8. SWEDEN

Gambling in Sweden is regulated by the Swedish Gambling Authority ("*Spelinspektionen*") under the Swedish Gambling Act, 2018. Section 1, of the Swedish Gambling Act, defines Gambling as inclusive of Lotteries, Betting, Combination Gambling, and Pyramid Schemes. A close look at the definitions of Lotteries, Betting, Combination Gambling, and Pyramid Schemes under the Swedish Gambling Act provides an understanding that chance plays a key role in determining the outcome of such activities. The Swedish Gambling Act does not regulate games in which the element of skill is the predominant factor in determining the outcome.¹⁸

Further, tax on Gambling is levied on the Licensed Gambling Operators in terms of the Gambling Tax Act, 2018, at the rate of 18 % on Gross Gambling Revenue.¹⁹ Further, since games of skill are kept out of the Gambling Tax Act, it is taxable at the standard rate of 25% under the Value Added Tax Act.

17. Estonia Tax and Customs Board website, available at <https://www.emta.ee/en>.

18. <https://iclg.com/practice-areas/gambling-laws-and-regulations/sweden>

19. <https://practiceguides.chambers.com/practice-guides/gaming-law-2021/sweden>

9. CZECH REPUBLIC

Gambling is defined under Section 3 of the Gambling Act, 2018 as games in which the outcome is determined by ‘chance’, thereby excluding games of skill from the ambit of the Gambling Act. Further, the activities such as lottery, technical games etc., taxable under the Gambling Act are taxed at the rate mentioned in the table below based on GGR.

Table 5: Types of gambling and rate of tax thereof in Czech Republic

Type of gambling	Tax Levied	Tax Model
Lotteries*	35%	GGR
Technical games*	35%	GGR
Games other than lotteries and technical games	23%	GGR

(Observation: Table 5 indicates that gambling in Czech Republic is also taxed on GGR.)

Further, games of skill, not forming part of gambling are taxed under the Value Added Tax at the standard rate of 21%.

10. MALTA

Gaming in Malta is regulated by the Malta Gaming Authority (MGA) established under the Gaming Act, 2018. The word game defined under Regulation 2 of the Gaming Definitions Regulations, 2018²⁰ is inclusive of both ‘games of skill’ and ‘games of chance’.

Business to Consumer (B2C) Operators are businesses that offer gaming services to consumers. Business to Business (B2B) Operators are businesses that offer gaming services to other Businesses. B2C gaming operators are required to pay a tax at the rate of 5% of the GGR generated during the taxation period.

Gaming service is defined under the Regulations as a game available for participation by players, which is provided below along with the rate of tax leviable thereon:

20 <https://legislation.mt/eli/sl/583.4/eng/pdf>

Table 6: Rate of tax on skill-based games:

Gaming Service	Description	Examples	Gaming Levy
Controlled Skilled Games	Skill Game requiring Stake to participate and is subject to license.	Fantasy Sports	<p>12.5% on Gaming Devices deployed within Gaming Premises</p> <p>15% Gaming Devices deployed within Controlled Gaming Premises</p>

11. MALAYSIA

The Service Tax 2018 Guide on Betting and Gaming (Guide) doesn't define gambling but defines Gambling Operator as a person licensed under any written law involving betting, sweepstakes, lotteries, gaming machines or games of chance and he offers and conducts betting and gaming services²¹. The Guide excludes games of skill from the ambit of 'gambling'²², and thereby, games of skill are taxed under Service Tax Act, 2018 at the standard rate of 6%.

12. PHILIPPINES

Online gaming in the Philippines is regulated by the Philippine Amusement and Gaming Corporation which in its Gaming Site Regulatory Manual (Electronic Games) defines Electronic Games as virtual games of chance i.e., casino games, and mixed games of chance and skills²³. It shall be noted that the definition of Electronic Games includes both games of chance and mixed games of chance and skill within its ambit. Hereby it may be argued that the Electronic Games excludes games of skill and games of mere skill.

Electronic games are taxed at the rate of 5% franchise tax in lieu of VAT²⁴. This Franchise tax is applied on the Gross Gaming Revenue (GGR).

13. MACAU

Gaming in Macau is regulated by the Gaming Inspection and Coordination Bureau of Macau²⁵ (DICJ), except online gaming. Macau does not levy indirect tax on any sale of goods or services. It has also not codified any Value-added

21 Id.

22 https://mysst.customs.gov.my/assets/document/1%20Guide%20on%20betting%20&%20Gaming_230818%20rev3.pdf

23 <https://www.pagcor.ph/regulatory/pdf/GSRM/Regulatory%20Manuals/Gaming%20Site%20Regulatory%20Manua%20for%20Electronic%20Games%20v3.0.pdf>

24 Clarifications on tax treatment of PAGCOR, its licensees and contractees | Grant Thornton

25 <https://www.dicj.gov.mo/web/cn/frontpage/index.html>

tax or Sales tax²⁶. Further, games of chance in Macau are regulated under Macau Gaming Law (Law No. 7 of 2022) where gaming concessionaires and sub-concessionaires are taxed special gaming tax at the rate of 35% of the Gross Gaming Revenue.²⁷ Operators are also subject to pay 2% of GGR for Macau foundations and 3% for funding, social security etc. Further, an additional 5% tax is levied on the commission or other compensation paid to game promoters.²⁸

c. Countries following Deposit or Turnover Tax Model with lower tax rates

Following table is a summary of taxation models in countries that follow the Turnover tax model and details any additional license fee that is collected by the regulatory body to provide the license to operate in the territory, and taxes.

Table 7: Summary of rate of tax and applicable license fees in the countries following Turnover Tax model

S. No	Country	Tax Base	Federal Tax	State Tax	Other Levies	Total Tax (Federal + State + Levies)	License Fee
1.	Cyprus	Turnover	10%	None	3%	13%	None
2.	Belize	Turnover	0.75%	None	None	0.75% upto a maximum of \$ 250,000/-	None
3	Germany	Turnover	5.3%	None	None		1. up to EUR 40 million, a fee of 0.2 % of the stakes or bets, at least EUR 100, 2. over EUR 40 million to EUR 65 million, a fee of EUR 80 000 plus 0.16 % of gaming or betting stakes in excess of EUR 40 million, 3. over EUR 65 million to EUR 130 million, a fee of EUR 120 000 plus 0.1 % of gaming or betting stakes in excess of EUR 65 million, 4. over EUR 130 million, a fee of EUR 185 000 plus 0.6 % of gaming or betting stakes in excess of EUR 130 million.

²⁶ <https://www2.deloitte.com/content/dam/Deloitte/cn/Documents/tax/deloitte-cn-tax-macau-tax-guide-en-210928.pdf> or <https://taxsummaries.pwc.com/macau-sar/corporate/other-taxes>

²⁷ <https://www.al.gov.mo/uploads/attachment/2022-07/5820962c699b6cf21f.pdf>

²⁸ <https://iclg.com/practice-areas/gambling-laws-and-regulations/macau>

S.No	Country	Tax Base	Federal Tax	State Tax	Other Levies	Total Tax (Federal + State + Levies)	License Fee
4.	France	Turnover	20%		Tax rate as well as tax base differs activity wise and different tax slabs are applicable revenue wise		€5,000 for a single application, €8,000 for two applications and €10,000 for three applications). And annual fee of €20,000 for a single licence, €30,000 for two licences and €40,000 for three licences.

(Observation: It can be observed from the table above that the countries following the Turnover Tax model are levying tax at a very low rate to not curb the industry from growing.)

1. CYPRUS

Cyprus follows the Turnover tax model and in terms of the Betting Law, 2019 (Law 37(I)/2019) levies tax at a combined rate of 13% which consists of 10% of net revenue and a 3% contribution to the Authority of which 2% is allocated to the Cyprus Sports Organization and 1% to the gambling addiction programs.

2. BELIZE

Belize follows the Turnover tax model and levies 0.75% tax on turnover up to a maximum amount of \$250,000/-. Licensed Companies may be granted exemption provided they carry out the business outside Belize.²⁹

3. GERMANY

In Germany, betting, gambling, and games of chance are regulated by the Race, Betting and Lotteries Act, 2012. In 2021, the Act was amended to include online games of chance giving effect to the *Glücksspielstaatsvertrag, 2021* or State Treaty on Gambling, 2021. The Treaty defines 'Games of Chance' as under:

"A game of chance is at hand where, in the context of a game, a fee is charged in order to obtain a chance of winning, and the fact of winning or losing depends entirely or predominantly on random events. The decision on winning or losing depends on random events at least when it is dependent on the uncertain occurrence or outcome of future events. Bets on the occurrence or outcome of a future event in exchange for payment are games of chance"³⁰

29. How to get a gambling licence in Belize 2022 (slotegrator.pro)

30 <https://www.gluecksspiel-behoerde.de/images/pdf/GluStV%202021%20english.pdf>

Therefore, it can be inferred that Germany has excluded games of mere skill outside the ambit of the gambling laws and turnover tax model. Games of chance and mixed game of chance and skill are taxed at the rate of 5.3% on the turnover tax model, shifting from GGR tax model.

The shift from GGR model to turnover model is not welcomed in the country by the Game of Chance gaming operators. Further, the European Gaming and Betting Association (EGBA) has mentioned that the rate of tax of 5.3% is high and should be reconsidered. The statement of EGBA is as under:

“we urge the German parliament to reconsider the proposed punitive rate of the tax because it will push German players to use unprotected and unregulated black-market websites and give land-based operators a massive tax advantage”

3. FRANCE - (Proposal to switch from turnover tax model to GGR)

One of the largest nations by GDP with regulated online gambling, France, was following the Turnover tax model. However, in 2020, the French Senate passed a Budget Bill to amend the tax model from Turnover tax Model to GGR with respect to the calculation of tax on gambling and gaming. The Senate noted that the money staked was returned to players as winnings. The report of the Court of Auditors of October 2016 noted that French taxation was heavy because of taxing the turnover as base and high rates. The Court of Auditors proposed to change the tax base to GGR. This is in line with the changes in the UK taxing the GGR from 2001. The amendments are pending rectification by the National Assembly before it becomes the law. Initially, France used to impose a tax of 13.2% on online horse race betting, 9.3% on sports betting, and online Poker, in particular, used to be taxed at the rate of 2% on the amount wagered. Besides, the social security contribution was 1.8% for horse racing, 1.8% for sports betting, and 0.2% for poker. However, in the GGR tax model regime the suggested rate of tax³² are as:

31 <https://www.egba.eu/news-post/germany-online-casino-tax-would-advantage-land-based-operators-in-breach-of-eu-state-aid-rules/>

32 [https://simonsblogpark.com/onlinegambling/simons-guide-to-france-gambling-online-betting-sites/#:~:text=For%20players%2C%20taxation%20of%20gambling,deducted\)%2C%20not%20the%20players.](https://simonsblogpark.com/onlinegambling/simons-guide-to-france-gambling-online-betting-sites/#:~:text=For%20players%2C%20taxation%20of%20gambling,deducted)%2C%20not%20the%20players.)

Table 8: Summarize the proposed rate of tax:

Activity	Rate	Tax Base
Casino tax	Casinos have to pay 28% tax in the first round + then the following progressive tax rate is applied to the remaining revenue in the second round of taxation, based on their annual gross gaming revenue: <ul style="list-style-type: none"> Up to EUR 100,000: 6% EUR 100,001 and EUR 200,000: 16% EUR 200,001 and EUR 500,000: 25% EUR 500,001 and EUR 1 million: 37% EUR 1,000,001 and EUR 1.5 million: 47% EUR 1,500,001 and EUR 4.7 million: 58% EUR 4,700,001 and EUR 7.8 million: 63.3% EUR 7,800,001 and EUR 11 million: 67.6% EUR 11,000,001 and EUR 14 million: 72% EUR 14 million: 83.5% 	Gross gaming revenue
Gaming club tax	Gaming clubs (special type of casino, VIP, entrance fee, dress code) have to pay the following: <ul style="list-style-type: none"> 10% of revenue, up to EUR 100,000 30% of revenue, EUR 100,000 – EUR 1,500,000 40% of revenue, EUR 1,500,000 – EUR 2,600,000 55% of revenue, EUR 2,600,000 – EUR 5,500,000 70% of revenue, above EUR 5,500,000 	Gross gaming revenue
Slot machine tax	11.2% tax is paid on 68% of the gross gambling revenue from slot machines.	Gross gambling revenue from slot machines
Horse racing tax	37.7%	Gross gaming revenue
Online poker tax	40.8%	Gross gaming revenue
Sports betting tax	44.5%	Gross gaming revenue
Online sports betting tax	55.2%	Gross gaming revenue
Lottery tax	54.5%	Gross gaming revenue
Online lottery tax	54.5%	Gross gaming revenue
Lottery-like games	42%	Gross gaming revenue
Online lottery-like games (e.g. bingo, keno, raffles, scratch cards)	42%	Gross gaming revenue

(Observation: It can be observed that the rate of tax differs for different categories however, all the activities including betting and gambling are taxed on GGR.) Further, 20% rate VAT is payable on earnings. Earnings is the amount remaining once the operators have paid their taxes and the winnings to players (earnings = operating revenue - taxes - winnings paid out to players)³³



33 [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)

Learnings from International Markets

Analyzing the global trend, it is seen that most countries globally are following a GGR tax model. Further, many countries following the Turnover tax model are shifting the GGR tax model like the United Kingdom and France (proposing to switch to GGR).

a. Trend of moving towards Gross Gaming Revenue (GGR) with moderate tax rates

Apart from the rates on which tax is levied, the monetary value on which it is determined is also of significance. Markets like France which earlier used to tax the entire amount, or the entire prize pool and contribution have now shifted to taxing only the GGR due to operators resorting to black markets, loss of revenue and non-compliance with the licensing and regulatory system.

Gross Gaming Revenue (GGR) is the difference between contest entry amounts by the players and any monetary payment made as winning i.e prize pool. This concept is based on the 'rake fees' principle which is followed by the biggest international gaming markets in the world.

Considering the impact of online gaming worldwide, countries across the globe are adopting the most favorable legal and tax practices to strike a balance between social regulations and economic development.

CASE STUDY 1³⁴

FRENCH SHIFT FROM TURNOVER TO GGR

The Senate noted as the bulk of money staked was returned to players as winnings, operators were effectively "taxed on sums which they do not receive".

"Regarding taxes, we have now realised that the taxation model where a percentage of stakes is levied does not work"

"The report of the Court of Auditors of October 2016 on the evaluation of the regulation of the games confirmed that the French taxation was heavy because of this choice of base on the bets, especially as the rates are high.

"The report believes that it would be questionable to continue to use as a base the bets that only pass through the operator, rather than being held as revenue. Thus, ARJEL and the Court of Auditors propose to change the tax base to GGR."

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

CASE STUDY 2³⁵**UK EXPERIENCE ON MOVING FROM TURNOVER TAX TO GGR**

The then chancellor of the exchequer, Gordon Brown during his Budget Speech in 2001 announced the change in betting tax regime in United Kingdom from turnover tax to GGR. Chancellor announced scrapping of the then system of taxing in which the Government was collecting betting duty of 6.75% from bookmakers on turnover. Bookmakers will be taxed on their gross profits with effect from January 1 of the 2002. Further, review of the first year of gross profits tax on betting, published in November 2002, established that changes to betting taxation have worked well. Following indications suggest that the changes to betting have worked well:

1. The major bookmakers re-located their offshore on-line and telephone betting operations to the UK so rapidly that the Government was able to introduce the new tax regime three months ahead of schedule on 6 October 2001;

2. Many smaller on-line betting firms have also re-located to, or started up, in the UK to take advantage of the new system;

3. Many new jobs have been created within the UK, both in the traditional high street betting shops and in call centres designed to cater for the growing online and telephone betting markets;

4. As forecast, bookmakers were able to absorb the new gross profits tax and remove deductions, meaning that – for the first time since 1966 – punters were able to bet ‘tax-free’ in high-street betting shops;

5. As a result, industry turnover has risen by an average 35-40 per cent, with record betting on events like the Grand National and the football World Cup;

6. The betting industry has been able to increase its financial support of racing, and these contributions have also been switched to a gross profits basis;

7. The major bookmakers have reported a significant decline in the level of illegal bookmaking activity, as a direct result of removing the tax incentive to use unlicensed bookmakers; and

8. Revenues collected to date are in line with expectations

HM Customs & Excise, The modernization of gambling taxes: consultation on the evaluation of the gross profits tax on betting – one year on, November 2002

³⁵http://news.bbc.co.uk/sport2/hi/front_page/1207748.stm and <https://researchbriefings.files.parliament.uk/documents/SN02151/SN02151.pdf>

b. Determination of Tax Rates

As interpreted through studies of rates in various markets, most of the mature and developed nations have capped the tax rates between 15-20%³⁶ on GGR as it results in the highest revenue generation for their respective economies.

The 2016 Copenhagen Economics report highlighted that a higher tax rate is less attractive for operators to be a part of the licensing system. Unreasonable rates would force the operators to refrain from obtaining a license and thus would not be taxed at all. Through a case study, the report assessed that countries such as Sweden and the UK having a tax rate of 15% had a high compliance rate from gambling operators and therefore high revenue numbers. Any rates higher than 20% would adversely affect operators, especially those working on a smaller margin. This would push the online operators to resort to illegitimate entries or to enter international markets instead of their domestic market, which would further reduce the revenue. The report explicitly states that “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”.

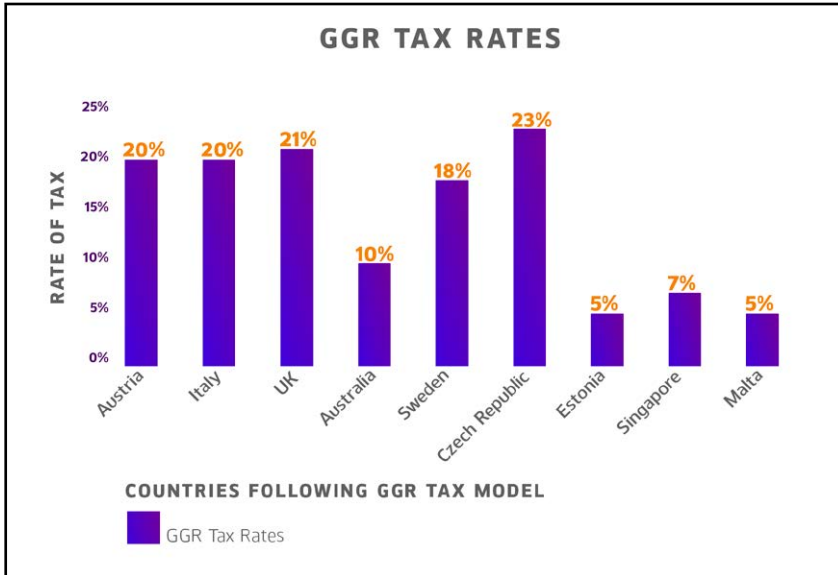
A few countries also follow a tax model wherein they differentiate between games of skill and games of chance, gambling etc., and accordingly charge a different rate of tax, on games of skill, i.e., less than that on betting and gambling. For instance, in Austria the rate of tax on the lottery is 18% but the rate of tax on games of skill is 5%.

Since a higher tax rate will result in less channeling of operators, the ideal structure is to create an equilibrium between the rate and the revenue. Countries like France which had one of the highest rates have shown to have the lowest channeling rate of operators, adversely affecting the revenue even though the gambling volumes have been high in the State. Whereas countries like UK and Denmark have shown to have high channeling rates as well as high gambling volumes³⁷.

36Copenhagen Economics: Report on licensing system for online gambling, 2016. copenhagen-economics-2016-licensing-system-for-online-gambling.pdf (copenhageneconomics.com)

37. Copenhagen Economics: Report on licensing system for online gambling, 2016. copenhagen-economics-2016-licensing-system-for-online-gambling.pdf (copenhageneconomics.com)

The Chart below showcases the tax rates applicable in different countries that have adopted the GGR tax rate:



c. Detrimental impact of Turnover Tax Regime making the industry unviable

One of the proposals considered by the Government of India on the issue of taxation of online gaming is to levy a tax of 28% on the turnover tax basis for the online skill gaming industry. While it may appear to be an attractive model in terms of the increase in revenue to the exchequer, the unintended consequence of the same would be that the online gaming industry will become unviable. This may possibly lead to a shift of users from legitimate platforms to the grey market resulting in revenue losses for the government and the gaming industry.

The impact of the shift in tax regime is illustrated below:

Table 9: Impact of shift to Turnover tax model from GGR tax model

Particulars	Case A	Case B
	Current practice: GST on platform fees (18%)	GST on entry fee valuation (28%)
Entry Fees (A)	100	100
Platform fees (B)	10	10
GST (C)	1.8	21.87
Method of GST calculation	(B*18%)	(Considering A as tax inclusive @ tax rate of 28%)
Prize Pool (D = A-B-C)	88.2	68.13

% change in Price Pool	-	-30%
% increase in GST paid	-	1115%

(Observation: It shall be observed from the table that taxing on turnover is discouraging to the gaming industry as it increases the tax by 1115% which can push the industry out of business and market, reducing the overall revenue of the Government. Turnover tax is an unhealthy tax practice. GGR tax model on the other hand when calculated on the same amount results in a lesser tax amount which will keep the gaming industry in business and subsequently increase the revenue of the Government. Thus, GGR indicates a win-win situation.)

The proposed tax collection is 14 times the current collection, and it exceeds the revenue of the operators. As seen, this will lead to a drastic reduction of the prize pool and disincentivize players to use legitimate platforms. It may also compel users to shift to the illegitimate online offshore gaming platform. It will make the Indian gaming industry unviable, which is expected to achieve 2 billion dollars in 2023.



Conclusion

The findings of this paper clearly point towards a trend of levy of tax, where GGR is considered as the supply of service. We have analysed this for all major jurisdictions in the world and observe that this remains the preferred method of valuation because of its ability to balance the growth of the online gaming sector with the revenue goals and objectives of the taxation authorities. We have also observed that leading economies that adopted the Turnover Tax model have moved to tax on GGR due to the loss of revenue they experienced on account of many such businesses shifting their base of operations.

To this end, international practice clearly indicates a unilateral progression toward the GGR model of taxation. Turnover Tax rate model is slowly and steadily becoming obsolete for the gaming industry.

In India, the gaming industry is currently paying 18% GST on its revenues i.e. platform fee intake (known as 'gross gaming revenue' or GGR) for providing users a platform to play. However, India is also currently witnessing a unique problem with respect to the proliferation of offshore online illegitimate gambling and betting platforms, which are not contributing anything to the country in the form of taxes. It may be readily argued that an onerous taxation regime, will shift users to these platforms from legitimate online skill gaming platforms. Consequently, there will be significant revenue loss, expectedly to the tune of over INR 5000 Crores per year (if we account for a 28% GST on GGR), and an infusion of unaccounted black money in the economy which can be used for illegal activities such as terror financing, money laundering etc. Further, a deviation from international best practices will not only vitiate the well-established difference between games of skill and games of chance but also eventually lead to value erosion for more than 500+ Indian start-ups currently valued over USD 20 billion, which have attracted more than USD 2.5 billion in investments and FDI.

Notably, the cumulative impact of a deviation from international best practices will run afoul of the PM's vision to a) reduce the proliferation of black money in the Indian economy b) Ensure India becomes a global leader in the Animation, Visual Effect, Gaming and Comics sector c) Make India a trillion-dollar digital economy.

We strongly believe that the case studies from UK and French could serve as

the appropriate reference point for determining the taxation of online gaming in India. As we have observed, the shift from turnover tax at the rate of 7% to GGR at 15% in the UK led to new investments and created employment opportunities.

It is, therefore, our recommendation that even if our GST laws are currently creating ambiguity with respect to this subject matter, it would be prudent to adopt necessary changes to such laws to bring them in line with international best practices. This will provide for a balanced approach where the interests of the online skill gaming industry and the revenue authorities are optimally addressed.





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