

# To tax at 18% or 28%? The GST Conundrum for skill gaming sector

## Synopsis

The market value of the Indian skill gaming sector is around Rs 79 billion in the financial year (FY) 2021-22 and may reach Rs 150 billion in FY 2023-24.



For context, in India, historically, the gambling laws provided an exception from their application to games of skill.

In August 2022 the [Group of Ministers](#) (GoM) will suggest a [GST](#) regime for [lottery, casino, and gaming businesses](#). In this article, we discuss the possible approach for the GST regime for the skill gaming industry. The Indian gaming industry has grown substantially and is now in the top five mobile gaming markets in the world.

The market value of the Indian skill gaming sector is around Rs 79 billion in the financial year (FY) 2021-22 and may reach Rs 150 billion in FY 2023-24. The sector contributed Rs 15 to 20 billion in 2020 to the government exchequer and the same is expected to reach Rs 35 to 50 billion by 2025.

Government has through various initiatives demonstrated its support to the industry. The Animation, visual effects, gaming, and comic (AVGC) task force set up in pursuance of the Union Budget 2022 will shortly provide its recommendations for the sector.

Recognizing the vast potential of the Indian gaming industry, Prime Minister Modi applauded the contributions of Indian innovators and application developers. Recently, the Minister of State, [MeiTy](#) indicated support for the skill gaming industry.

An inter-ministerial committee, established by the Central government has been mandated to recommend a uniform regulatory regime for the online gaming industry considering various aspects like promotion of the industry, player protection, ease of doing business etc. In furtherance of this, it is imperative to get taxation policy right.

## Gaming laws in India

For context, in India, historically, the gambling laws provided an exception from their application to games of skill. The [Supreme Court of India](#) and [High Courts](#) have repeatedly adjudicated that skill-based games must not be treated the same way as lottery /betting. Lottery is considered as gambling requiring no skill, hence, becoming res commercium. Whereas skill gaming has been held to be a constitutionally protected activity.

Under the Indian income-tax laws, a tax of 30 % is required to be deducted

before paying income from winnings above Rs 10,000. GST at rate of 28 % is applicable on games of chance, and the skill gaming industry pays 18 % GST on the commission or gross gaming revenue (**GGR**) (i.e., fee charged by online gaming operators).

This is in line with global best practices. Tax rates in countries such as the USA, UK, Germany, and Australia, range between 15% to 20% on either fees (UK) or GGR (USA/ Germany) or margin between money received and money paid out (Australia).

### **Discussion at GoM**

There is ongoing discussion at GoM level, whether GST should be charged at rate of 28% on both, skill gaming and chance gaming, that too on the entire amount which a player deposits for a game.

Illustratively, a 28% GST on Rs 100 of deposit amounts to INR 22 (on a gross basis) vis-à-vis 18% GST on the GGR (say 10% of the platform fee) amounts to Rs 1.8. Such a high GST for the skill gaming industry will be contrary to the support demonstrated by the government for the skill gaming industry. Hike in tax by over 800% - 900%, will drive the players away from portals of tax paying entities to illicit websites, due to substantial reduction in the prize money available for distribution.

This in turn will reduce the business of tax paying entities and thus overall tax collection. Ideally, the legal distinction between game of skill and game of chance should also be recognized in the tax policy. On a related note, there may be a potential legal challenge, if GST is levied on the distributable amount (being actionable claims), which are exempt under GST laws.

### **Suggestion**

Continuation of the existing GST framework (i.e., 18% GST on the GGR) for online skill-based games is the need of the hour. Industry is seeking not exemption from GST, but reasonable taxation. Earliest resolution of this issue in consultation with the industry will show the government's commitment on this sunrise sector.

At best the industry may survive at a 28% rate but an increase in the tax base on the entire game deposit will be fatal. GST should continue to apply on GGR. This will be crucial to prevent exodus of the gaming business from India.

It may also be worthwhile for the GoM to separate out the taxation discussion for skill gaming industry from other entries and formulate its GST proposal in consultation with an inter-ministerial committee that is working on an overall central legal framework for the skill gaming industry. It is important to have a tax regime which is in sync with government's vision for skill gaming industry"

*(Gowree Gokhale is Partner, Nishith Desai Associates & Ipsita Agarwalla is Member, Nishith Desai Associates)*

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