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Death by over-taxation! Why the online gaming industry's fate hangs by a thread

From the removal of the threshold of Rs 10,000 for TDS deduction to a 28% GST on GGR, ministries from MeitY to Finance need to work together.

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Updated: February 14, 2023 09:57 IST



Industry experts opine that they are hopeful separately that the government may clarify that net winnings mean the amount won minus the amount contributed to participate in a game.

It's the era of growing taxes, and that's true for the Indian online gaming industry. In this Budget the government removed the threshold of Rs 10,000 for the TDS (Tax Deduction at Source) deduction. As a result from April 2023, any amount won from playing an online game will be subjected to TDS as per income tax laws. Now add to this the problem of GST under indirect taxation. Here too, the GoM's (Group of Ministers) who together form the GST Council interim report has proposed a 28% GST on the total amount, including the

platform fee. This means that GST will be applicable to gross revenue/total prize pool.

Sample this: if there is a total pool of Rs 100, an online gaming company typically charges 10-20% as a platform fee, which is Rs 10-20. In the proposed scheme of things as opposed to levying a tax on just the platform fee, it has been suggested that a 28% GST should be imposed on the total sum of Rs 100.

“The government’s move to increase taxation in an effort to catch those who have been evading tax, has so far had a boomerang effect. For example, the rate of TCS on foreign remittances has been raised to 20% from five per cent. This means more users will use international sites to purchase tickets. Not to mention, the government’s hard stand on cryptocurrency forced all these companies to move out and work in the international arena. The aim should be to uplift Indian companies by allowing ease of business as opposed to the current scenario. Over-taxation can cripple the industry,” Rameesh Kailasam, president and CEO, of India Tech, an industry body, told BrandWagon Online.

Industry experts believe that the online gaming industry is currently stuck from three corners. On one hand, the prime minister’s office is scrutinising the industry and modus operandi, on another hand, The Ministry of Electronics and Information Technology is working on the formulation of regulations for the industry. And then the Finance Ministry through the Department of Revenue designs taxation. “It is important that policy and taxation are aligned in case of a new-age business. Here, all three parties should work cohesively and in collaboration to create a mechanism to drive growth. Over-taxation not only hampers the viability of a business, over a period of time it also struggles to attract investments,” Gopal Jain, senior advocate, The Supreme Court of India, explained.

The online gaming industry across India was valued at around Rs 7,900 crore in CY2021. The sector is expected to grow at 15% to reach over Rs 15,300 crore by 2024, as per market research firm Statista. In 2021 India recorded about 390 million online gamers. This was an eight percent growth from the previous year with the total number of gamers likely to reach over 450 million by 2023.

Whatmore, about 95 million of these gamers reportedly paid for online games that year. At a time when the online gaming industry has not only attracted FDI but also has generated employment opportunities, there is a fear within the gaming industry that over-taxation will be a deterrent to growth.

“To my understanding, most transactions are micro-transactions and the winnings are also not substantial. In the earlier applicable regime, there was a minimum threshold of Rs 10,000 withdrawal, after which the tax was applicable. In the absence of this threshold, right from the first rupee won, the tax becomes applicable. This appears unreasonable. Especially, for the players, that are not otherwise within the tax-paying bracket. We will need to wait and watch whether this acts as a deterrent for player participation,” Gowree Gokhale, partner, Nishith Desai Associates, said.

Industry experts opine that they are hopeful separately that the government may clarify that net winnings mean the amount won minus the amount contributed to participate in a game. Furthermore, the online gaming industry will need to update its software to ensure that the TDS is deducted as per the prescribed method.

Central Board of Indirect Taxes and Customs (CBIC), under Department of Revenue.

If each online game’s winnings reach Rs 10,000, TDS becomes applicable. Additionally, winnings are subject to a 30 percent TDS deduction.

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