LKS UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

3 AUGUST 2023

INDIRECT TAX

51st GST Council recommendations: Tax to be levied on Entry Fee/Deposit

UPDATE NO. 31 OF 2023

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The 50th GST Council recommended that the actionable claims supplied in online gaming, and horse racing shall be taxed at the rate of 28% on full face value, irrespective of whether the activities are game of skill or game of chance. Subsequently, post stakeholder consultations, the 51st GST Council on 2 August 2023 further announced the following critical recommendations:

- Amendment in Entry 6 of Schedule III of CGST Act, 2017 to tax casinos, horse racing and online gaming along with lottery, betting and gambling.
- Valuation of supply of online gaming and actionable claims in casino shall be at entry level based on the amount paid or payable to or deposited with the supplier by or on behalf of player excluding the amount entered into games / bets out of winnings of previous games and bets and not on the total value of each bet placed. Earlier recommendation to tax each bet placed / game played in the case of online gaming is dropped.
- Insertion of special provision in the IGST Act, 2017 to provide for liability of payment of GST on supply of online money gaming and simplified registration scheme by offshore companies, in addition to the existing OIDAR regulations. Failure to comply with the said provisions would lead to blocking of access to the public under Information Technology Act.
- Specific provisions for valuation of supply of online gaming and actionable claims in casino shall be inserted in the CGST Rules, 2017.
- The Council aims to bring the amendments into force from **1 October 2023.**

During the press conference, Revenue Secretary provided further clarifications on the anticipated developments in relation to the implementation of the amendments:

- Any betting / gambling involved in online gaming, casino and horse racing, being in the nature of actionable claim, had always been taxable at 28%. However, taxation for past period will be based on the decision taken by Apex Court in Special Leave Petition Court challenging the decision of the Hon'ble Karnataka High Court in the *Gameskraft* matter.
- Playing of online real money games using Virtual Digital Assets (VDA) shall be subject to GST. The definition of VDA shall be same as that under the Income Tax Act.
- The definition of *supplier* for the purposes online gaming and actionable claim shall be amended to include platforms arranging online real money games and actionable claims.

- Distinction will be made between online gaming and online money gaming where money is deposited with an expectation of a prize in the form of money or money's worth on some outcome.
- The issue of determination of place of supply shall be clarified through Notifications.
- The taxation policies shall be reviewed 6 months post implementation of the amendments. The subject matter of review will be the rate and the valuation and not the provisions of the Act.

LKS COMMENTS

The Council's decision to levy GST on deposit made by player at entry level has brought a sigh of relief for the sector. This certainly will have a negative impact on prize pool, however it's a balanced approach. The Council's decision to review the tax policies after a period of 6 months is a positive step and will instil a sense of assurance on effectiveness of measures put in relation to offshore gaming players and impact on user base of the sector. Substantive amendment increasing the scope of taxable entry will be prospective. The implementation of the amendment (prospective or retrospective) for past period will be based on the decision taken by Apex Court in Special Leave Petition Court challenging the decision of the Hon'ble Karnataka High Court in the *Gameskraft* matter. This will result in a precarious situation for current investigations being continued till finality is obtained in the Apex Court.

Recognition of use of Virtual Digital Assets (VDA) to cash to play online real money games is a positive development. Acknowledging the use of VDA as a legitimate mode of payment is in line with global VAT developments. The decision to tax deposit is in alignment with income tax provisions for TDS. Bank to bank transfer of money for deposit will create transparency, traceability and monitoring for stakeholders. We need to await fine print of amendments in relation to definition of game, place of supply, offshore gaming etc.

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