L&S UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

16 AUGUST 2023

INDIRECT TAX

GST update on CGST (Amendment) Bill, 2023 and IGST (Amendment) Bill, 2023

UPDATE NO. 33 OF 2022

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

Both the houses of the Parliament passed the Central Goods and Services Tax (Amendment) Bill, 2023 and the Integrated Goods and Services Tax (Amendment) Bill, 2023 on 11 August 2023.

The said bills aim to make the following changes:

A. Central Goods and Services Tax (Amendment) Bill, 2023

1. Insertion of definitions under Section 2 of the CGST Act

'Online Gaming' - clause 80 A

- "Online gaming" means offering of a game on the internet or an electronic network and includes online money gaming.

'Online money gaming'- clause 80B

- "Online money gaming" to mean online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force;

"Specified actionable claim"- clause 102A

- "Specified actionable claim" to mean the actionable claim involved in or by way of—
  (i) betting;
  (ii) casinos;
  (iii) gambling;
  (iv) horse racing;
  (v) lottery; or
  (vi) online money gaming

Amendment of definition to the term 'supplier'- clause 105

A proviso has been inserted to the definition of the term 'supplier' as under:

- Provided that a person who organizes or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

"Virtual digital asset"- clause 117A

- "Virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.

LKS COMMENTS

The above amendments have been proposed to be made in accordance with the recommendations of the GST Council to tax the transactions of casinos, horse racing and online money gaming. Further, the persons organizing or arranging, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims.

2. Insertion of clause (xia) in Section 24 of CGST Act

- 'Every person supplying online money gaming from a place outside India to a person in India'

LKS COMMENTS

This clause has been inserted to provide mandatory registration for the persons supplying the services of online gaming from a place outside India to a person in India so as to tax such services provided by such persons.

3. Amendment to Schedule III of CGST Act

- Paragraph 6 to Schedule III of CGST Act which earlier read as " actionable claims, other than lottery, betting and gambling" has been substituted as under:
- "Actionable claims, other than specified actionable claims'

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LKS COMMENTS

This amendment has been made in accordance with the recommendations of the GST Council in its 50th and 51st Meeting to tax the transactions of casinos, horse racing and online gaming along with lottery, betting, and gambling.

B. Integrated Goods and Services Tax (Amendment) Bill, 2023

1. Amendment to Section 2(17) of the IGST Act.

- The definition of 'OIDAR Service' has been amended by substituting clause (vii) as under:
  "Online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017".

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LKS COMMENTS

This amendment has been made to keep the transactions of 'online money gaming' on a different footing in comparison to the transactions of online gaming from various perspectives including taxability and registration requirement.

2. Amendment to Section 5 of the IGST Act.

- In the proviso of sub-section (1) of this section, the words *"other than the goods as may be notified by the Government on the recommendations of the Council"* would be inserted after the words "integrated tax on goods".

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LKS COMMENTS

The Act provides that IGST on goods imported into India will be levied and collected as per the provisions of the Customs Tariff Act, 1975. However, the bill aims to exempt the levy of IGST on the certain goods to be notified by the Central Government on the recommendations of the GST Council in the manner prescribed under the Customs Law.

3. Amendment to Section 10 of the IGST Act.

- Clause (ca) has been inserted in sub-section 1 as under:

  "where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

  Explanation. — For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person"

LKS COMMENTS

The place of supply of goods made to an unregistered person other than in case of Bill to Ship to Model will be determined as under:

Address of the customer recorded in the invoice- such address will be the place of supply of goods.

Address of customer not recorded in invoice-location of the supplier.

Further, mentioning the name of the State where such goods will be delivered will be deemed to be the address of the recipient.

4. Insertion of Section 14A of the IGST Act.

"(1) A supplier of online money gaming as defined in clause (80B) of section 2 of the Central Goods and Service Tax Act, 2017, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.

(2) For the purposes of complying with provisions of sub section (1), the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in sub-section (2) of section 14 of this Act.

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier.

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

(3) In case of failure to comply with provisions of sub section (1) or sub section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act".

LKS COMMENTS

The proposed amendment is in accordance with the recommendation of the Council to provide simplified registration scheme including a single registration where the supplier of online money gaming is located outside India.

In the absence of taking of registration by such persons, their IP address will be blocked so that any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming would not be accessible to public in India.

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