LKS UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

9 SEPTEMBER 2023

INDIRECT TAX

Online Gaming and Casinos – CGST Rules Amended

UPDATE NO. 35 OF 2023

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The following amendments have been made to Central Goods and Services Tax Rules, 2017 (**'CGST Rules'**) pursuant to the recommendations made by the 51st GST Council Meeting on online gaming and casinos.

Value of supply in case of online gaming and casinos

[Notification No. 45/2023-Central Tax, dated 6 September 2023]

Two new rules, namely Rules 31B and 31C have been inserted in the CGST Rules 2017. These rules provide for a method of valuation of supply leviable to GST in case of online gaming and casinos. The said rules will come into force on further notification by Central Government.

- *Rule 31B – Value of supply in case of online gaming including actionable claims involved in online money gaming.*

  The rule provides that the value of supply of online gaming shall be the total amount paid or payable or deposited by or on behalf of the player with the supplier, by way of money or money's worth, including digital assets. This will also extend to the supply of actionable claims involved in online gaming.
  The proviso to the above rule provides that any refunded or returned amount by the supplier to the player for any reason shall not be deductible from the value of supply. This would include the amount not used but deposited by the player with the supplier.

- *Rule 31C – Value of supply of actionable claims in case of casino.*

  This rule provides that the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –
  i. purchase of the tokens, chips, coins or tickets (or by whatever name called) for use in casino; or
  ii. participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets are not required.

  The proviso to the above rule provides that any refunded or returned amount by the casino on return of coins, chips, tokens etc. for any reason shall not be deductible from the value of supply.

In addition to the above, an explanation has been inserted for the above two rules stating that winnings of a player which are further utilised for playing in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the player.

LKS COMMENTS

- The proposed valuation rules are in line with the press note released after the 51st GST council's decision and proposed amendments made to CGST act.
- A separate valuation mechanism has been explicitly provided for value of supply of online gaming inclusive of actionable claim involved in online money gaming.
- The rules have also provided vide explanation that any amount received by the player by winning any event etc., which is used for playing by the said player in a further event without withdrawing, shall not be includible in the value of underlying supplies. Application of amount from winning wallet for playing games is specifically excluded for GST valuation purpose.
- The rules are silent on treatment of promotional schemes/cashback/ referral bonus /rewards/other bonuses, withdrawable or otherwise, received by the player. Whether various promotional schemes given by supplier in the form of bonus/ cashback will be considered as amount paid/ payable/ deposited on behalf of the player, and would resultantly be included in the value of supply is a point requiring further deliberations. Such promotional schemes/ rewards/bonuses and flow of funds in or from different types of digital wallets need to be examined carefully for GST implications in terms of documentation and cash flow.
- It has to be examined whether the cum tax benefit shall be applicable for deemed valuation of online gaming on the basis of contractual position, or the proposed rules are complete code for valuation of supply of online gaming including actionable claims and supply of actionable claims in case of casinos.
- The above rule provides that any amount refunded or returned for any reason shall not be deductible from the value of supply even where the player does not play the game. There could be a question whether the government under delegated legislation can provide for levy of GST in those cases where there is no supply for a consideration. No change has been proposed in the definition of consideration which provides that a deposit given in respect of the supply of goods or services, or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. This will have an impact on erroneous transfer of wrong amount to the deposit account.
- No changes have been proposed to the rate notification and time of supply provisions so far.
- As announced in the press conference post 51st GST Council meeting, the rules will be implemented along with amendments to the Act. However, alignment of similar amendments to be passed in each state legislature is still awaited.

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