LKS UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

5 OCTOBER 2023

INDIRECT TAX

Online gaming, casinos and horse racing – Changes effective from 1 October 2023

UPDATE NO. 37 OF 2023

Lakshmikumaran & Sridharan attorneys

exceeding expectations
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This update includes the following:

A. Notifications notifying date of effect of changes by CGST (Amendment) Act, 2023 and IGST (Amendment) Act, 2023 in CGST Act, 2017 and IGST Act, 2017

B. Notification amending Central Goods and Services Tax Rules, 2017

C. Other Notifications

A. NOTIFICATIONS NOTIFYING DATE OF EFFECT OF CHANGES BY CGST (AMENDMENT) ACT, 2023 AND IGST (AMENDMENT) ACT, 2023 IN CGST ACT, 2017 AND IGST ACT, 2017

1. Provisions of Central Goods and Services Tax (Amendment) Act, 2023 notified.

[Notification No. 48/2023-Central Tax dated 29 September 2023. w.e.f. 1 October 2023]

The provisions of Central Goods and Services Tax (Amendment) Act, 2023 have been notified with effect from 1 October 2023. The said changes are as follows:

(i) Insertion of definitions under Section 2 of the CGST Act

- The definitions of 'online gaming', 'online money gaming', 'specified actionable claim' and 'virtual digital asset' have been inserted. The same are reproduced as follows:

  <u>'Online Gaming' - clause (80A)</u>
  "Online gaming means offering of a game on the internet or an electronic network and includes online money gaming."

  <u>'Online money gaming'- clause (80B)</u>
  "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)

"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"

"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."

(ii) Amendment of definition of the term 'supplier'- clause (105)

- A proviso has been inserted to the definition of the term 'supplier'. It provides that 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. The same is reproduced 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 in relation to the supply of such actionable claims."

LKS Comments

The above amendments have been 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.

(iii) Compulsory registration of a person supplying online money gaming from a place outside India

- Clause (xia) has been inserted in Section 24 of CGST Act to mandate compulsory registration of 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.

(iv) Amendment to Schedule III of CGST Act

- Paragraph 6 to Schedule III of CGST Act has been substituted to provide that actionable claims other than specified actionable claims shall neither be treated as supply of goods nor services.

- Earlier, the actionable claims other than lottery, betting and gambling were treated neither as supply of goods nor supply of services.

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.

2. Provisions of Integrated Goods and Services Tax (Amendment) Act, 2023 notified.

[Notification No. 02/2023-Integrated Tax dated 29 September 2023 w.e.f. 1 October 2023]

(i) 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"

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.

(ii) 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"* is 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 amendment 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.

Online money gaming notified under proviso to Section 5(1) of the IGST Act

[Notification No. 3/2023-Integrated Tax dated 29 September 2023 w.e.f. 1 October 2023]

- According to the notification, integrated tax under Section 5(1) of the IGST Act shall be leviable on import of online money gaming as goods and proviso to Section 5(1) of IGST Act shall not apply on the same.

(iii) 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."

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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:

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

(iv) Insertion of Section 14A of the IGST Act.

The provision is reproduced as follows:

"(1) A supplier of online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services 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 recommendations 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 event of failure to obtain registration by such persons, their IP address can be blocked so that any information generated, transmit ted, received or hosted in any computer resource used for supply of online money gaming would not be accessible to public in India.

B. NOTIFICATION AMENDING CENTRAL GOODS AND SERVICES TAX RULES, 2017

Notification No. 51/2023-Central Tax dated 29 September 2023 has been issued in supersession of the Central Goods and Services Tax (Third Amendment) Rules 2023 notified *vide* Notification No. 45/2023-Central Tax dated 6 September 2023 (w.e.f. 1 October 2023). The said amendments are as follows:

1. Suppliers of online money gaming from a place outside India to a person in India is not required to declare the PAN, State or Union Territory in REG-01

- Sub-rule (1) of Rule 8 has been substituted to provide that every person liable to be registered under Section 25(1) or any person seeking registration under Section 25(3) must declare PAN and State or Union Territory in FORM GST REG – 01 before applying for registration except the persons specified thereunder.

- Clause (iv) to Rule 8(1) has been amended to additionally provide that a person supplying online money gaming from a place outside India to a person in India referred to in Section 14A under the IGST Act, shall also not be required to declare the PAN, State or Union Territory in Part A of Form GST REG-01 on the common portal.

LKS Comments

The insertion to Clause (iv) to Rule 8(1) has been made to enable the suppliers of online money gaming from a place outside India to a person in India to take registration under the GST law in India in accordance with amendment to Clause (xia) to Section 24 of CGST Act.

2. Suppliers of online money gaming from a place outside India to a person in India required to submit an application in Form REG-10

- Rule 14 of the CGST Rules has been amended to additionally provide that any person supplying online money gaming from a place outside India to a person in India shall be required to submit an application in Form REG-10 at the common portal.

3. Rules 31B and 31C regarding value of supply in case of online gaming and value of actionable claims in case of casinos notified

- Rule 31B and 31C as inserted by Notification No. 45/2023 dated 6 September 2023 have been notified and have come into effect from

1 October 2023.

- These rules provide for method of valuation of supply leviable to GST in case of online gaming and casinos.

- **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. The said rules are same as were introduced previously. The same have been captured in LKS Indirect Tax Update No. 35 of 2023.

- The said rules have been notified within the timeline as recommended by the GST Council.

4. **Tax invoice issued by online money gaming provider to contain the name of State of recipients**

- Proviso to sub-clause (f) has been amended to include 'in cases involving supply of online money gaming or in cases' after the words 'Provided that'.

- As per the amended proviso, in addition to the scenarios captured therein, in case of supply of online money gaming to recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient.

LKS Comments

- This amendment implies that where a recipient of services involving online money gaming is un-registered, tax invoice issued by the registered person shall contain the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient, irrespective of the value of such supply.

5. Rule 64 has been substituted to provide that a registered person providing online money gaming services or OIDAR services from a place outside India to a person in India, shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.

6. Rule 87 has been amended to include provisions related to registered persons supplying online money gaming from outside India to a person in India as referred in Section 14A of the IGST Act, 2017.

7. Form GST REG-10 has been revised to include applications for registration of persons supplying online money gaming and OIDAR services from outside India to a person in India.

8. Form GSTR 5A has been introduced to include details of supplies of OIDAR services and online money gaming from outside India to a person in India.

C. OTHER NOTIFICATIONS

1. **Amendment to Goods Rate Notification**

[Notification No. 11/2023-Central Tax (Rate) dated 29 September 2023. w.e.f. 1 October 2023]

- Entry 227A has been inserted in Schedule IV of Notification No. 01/2017-Central Tax (Rate) dated 28 June 2017 (**'Goods Rate Notification'**) in exercise of powers conferred by sub-section (1) of section 9 and sub-section (5) of section 15 of the CGST Act, 2017. The schedule prescribes CGST at the rate of 14% on the same.

- The said entry covers specified actionable claim involved in betting, casinos, gambling, horse racing, lottery, or online money gaming. The said entry is reproduced as follows:

(1)	**(2)**	**(3)**
227A	Any Chapter	Specified actionable claim; Explanation: "specified actionable claim" as defined in section 2(102A) of the CGST Act, 2017 means 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;

- Entries 228 and 229 of the Goods Rate Notification pertaining to lottery and actionable claim in the form of chance to win in betting, gambling, or horse racing in race club have been omitted. These read as follows:

228	Any Chapter	Lottery
229	Any Chapter	Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club.

- An explanation has also been added to the Goods Rate Notification, which states that the words and expressions used and not defined in this notification, but defined in the CGST Act, IGST Act and the Union Territory Goods and Services Tax Act, 2017, shall have the same meanings as assigned to them in those Acts.

- Parallel amendments have also been made to Notification No. 01/2017-Integrated Tax (Rate) dated 28 June 2017 by Notification No. 14/2023-Integrated Tax (Rate) dated 29 September 2023.

2. Supply of online money gaming, online gaming and actionable claims in casinos notified under Section 15(5) of the CGST Act.

[Notification No. 49/2023-Central Tax dated 29 September 2023. w.e.f. 1 October 2023]

- Section 15(5) provides that notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

- In exercise of powers conferred under Section 15(5) of the CGST Act, the Government has notified the following supplies:
  (i) supply of online money gaming;
  (ii) supply of online gaming, other than online money gaming; and
  (iii) supply of actionable claims in casinos.

LKS Comments

- The said notification gives power to the Government to prescribe Rule 31B and Rule 31C providing for the value of supply in case of online gaming and value of supply of actionable claims in case of casinos.

3. Notification No. 4/2023-Integrated Tax dated 29 September 2023 effective from 1 October 2023

It has been notified that the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of supply of online money gaming as defined under Section 2(80B) of CGST Act provided or agreed to be provided by a person located in non-taxable territory and received by a person in India.

4. Notification No. 50/2023-Central Tax dated 29 September 2023 effective from 1 October 2023

- Notification No. 66/2017-Central Tax, dated 15 November 2017 provides that the registered person who did not opt for the composition levy scheme shall pay tax on the outward supply of goods as per the time of supply provisions and the period prescribed under CGST Act.

- Amendment has been brought to exclude registered persons making supply of specified actionable claims as defined in Section 2(102A) of CGST Act from the purview of aforesaid notification.

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