

## GST and Gaming

### Why in News?

- The Goods and Services Tax (GST) Council recently revisited the issue of tax on casinos, horse racing, and the online gaming industry.
- Initially, the Council proposed a 28% GST on the face value of bets placed by participants, but this decision was met with opposition from the industry and the Electronics and IT Ministry.
- Online gaming players argued that the proposed tax would be detrimental to the burgeoning sector, which has attracted significant investments and generated numerous jobs.
- The players emphasized that the tax should be aligned with global norms, which typically tax the gross gaming revenue (i.e., platform fees) instead.
- Despite pleas from Sikkim and Goa, the Council decided to maintain its stance, with a minor concession regarding repeat taxation on reinvested earnings.
- Finance Minister Nirmala Sitharaman acknowledged that unanimous decisions are not always necessary, citing the example of the taxation of lotteries, which was approved by a majority vote.
- However, the Council's promise to review the tax six months after implementation raises doubts about its conviction in the resolution.
- The uncertainty surrounding the possibility of a review creates ambiguity for businesses and potential investors.
- The Council's inclination to reconsider decisions based on industry representations or demands from individual states may undermine India's reputation as a reliable investment destination with predictable policies.

### What is GST Council?

The GST Council is a constitutional body with the primary responsibility of providing recommendations on matters pertaining to the implementation of the Goods and Services Tax (GST) in India. It was formed by the President of India in accordance with Article 279A (1) of the amended Constitution.

### Background

The Goods and Services Tax regime was implemented following the successful passage of the Constitutional (122nd Amendment) Bill by both Houses of Parliament in 2016. Subsequently, more than 15

### **A tentative rethink**

The GST Council's retake on gaming bets does not provide enough certainty

**L**ess than a month after the Goods and Services Tax (GST) Council appeared to have sealed a compact on the long-deliberated issue of the appropriate tax to be levied on casinos, horse racing and the booming online games industry, it was convened afresh this Wednesday to revisit the matter. The rethink on the Council's move to impose a 28% GST on the face value of bets placed by participants was ostensibly triggered by an outcry from industry and a nudge from the Electronics and IT Ministry that is steering the e-gaming policy. Online gaming players had termed it a death knell for the sunrise sector with billions of dollars in investments and thousands of jobs at stake, and stressed the levy is not in sync with global norms that tax the gross gaming revenue (i.e., their platform fees). Sikkim and Goa's pleas for the casino tax to be also levied in the same manner did not find favour with the Centre and most States, so the Council decided to stick to its stance with one minor, but not trivial concession. Simply put, if one enters the race course on Derby Day and bets ₹1,000 on a horse with moderate odds which ends up winning, and bets part of that bounty on another horse in the next race, the tax levy will remain confined to your initial thousand rupee wager. This formulation addresses the prospect of repeat taxation on reinvested earnings, drawing a muffled sigh from the nascent industry that still remains anxious on the implications of the tax likely to kick in from October 1.

It is no one's case that the GST Council should only take unanimous decisions – as Finance Minister Nirmala Sitharaman pointed out, even the taxation of lotteries was firmed up by a majority vote. But the Council's promise of a review of the tax six months after its implementation, even if it was just an attempt to placate the dissenting voices of small States such as Goa and Sikkim, belies a lack of conviction in the resolution. While users and industry now await the fine print of the legislative changes to GST laws and the rules to be subsequently notified by the Revenue Department, the room for a review, which could swing either way, creates a cloud of uncertainty on business operations and fresh investment plans. The Council has often clarified or tweaked tax treatment for items, when warranted. But announcing a review at the outset sets an awkward and potentially dangerous precedent that could thwart India's aspirations of being a reliable investment destination with predictable policies. The Council should not give the impression that it can be swayed so easily by representations from the industry or demands of individual States.

Indian states ratified the bill in their state Assemblies, and upon receiving the President's assent, the GST came into force.

Members of the Council	Functions of the Council
<ul style="list-style-type: none"><li>• Union Finance Minister (chairperson)</li><li>• Union Minister of State (Finance) from the Centre</li><li>• Nominated minister in-charge of finance, taxation, or any other minister from each state</li></ul>	<ul style="list-style-type: none"><li>• Make recommendations to the Union and the states on important GST-related issues, such as goods and services that may be subjected or exempted from GST, and model GST Laws.</li><li>• Determine various rate slabs of GST.</li></ul>

## Goods and Sales Tax

GST is an indirect tax, meaning customers do not pay it directly to the government. It was implemented on July 1, 2017, following the 101st Amendment to the Indian Constitution. This tax applies to manufacturers, sellers of goods, and providers of services. The GST system is organized into five tax slabs, which are 0%, 5%, 12%, 18%, and 28%, for the purpose of tax collection.

## Decision To Levy 28% Uniform Tax On Online Gaming

- Previously, the ministerial panel considered taxing gross gaming revenue or platform fees, but this idea was not favored.
- The new plan is to impose a uniform 28% tax on various aspects of online gaming, including the face value of chips in casinos, the full value of bets in horse racing, and the total value of bets in online gaming.
- The government intends to amend the GST-related laws to include online gaming and horse racing as taxable actionable claims under the CGST Act, 2017. Previously, only lottery, betting, and gambling were classified as actionable claims.
- Additionally, the government aims to treat all games as demerit goods, attracting a 28% GST rate, removing the distinction between games of skill and games of chance.

## How Will The Tax Work In Practice?

- Currently, gaming companies pay an 18% tax on platform fees. Under the new structure, a 28% GST will be applied to the entire face value of bets or consideration paid, rather than just the platform fee.

### For example

If the platform fee is 10% and a player deposits Rs 100, the platform earns Rs 10, and the GST on Rs 10 is Rs 1.8 (18% of Rs 10). With the new tax, the GST on the same Rs 100 deposit will be Rs 28, resulting in an increase of approximately 15.6 times.

## How Significant Is The Online Gaming Market In India?

- The online gaming industry in India has experienced substantial growth, with a CAGR of 38% between 2017 and 2020, surpassing the growth rates in China and the US.
- It is expected to continue growing at a CAGR of 15%, reaching Rs 153 billion in revenue by 2024.
- India has seen a significant increase in the number of paying gamers, with transaction-based games' revenues growing by 26% and paying gamers increasing by 17% from 80 million in 2020 to 95 million in 2021.

- The Indian mobile gaming industry's revenue is projected to exceed 1.5 billion dollars in 2022 and is estimated to reach 5 billion dollars in 2025.
  - While smaller than the US and China, India's gaming market is still substantial, and it is expected to triple in size by 2025.

## **Who Will Be Affected By The Tax?**

Online gaming is a highly profitable segment of the internet economy in India, with companies like Dream11 making substantial profits. The tax decision applies indiscriminately to gaming and gambling platforms, impacting companies that have lobbied for a distinction between games of skill and games of chance/gambling platforms.

## **How Have Online Gaming Companies Reacted?**

- Online gaming companies have expressed strong opposition to the government's decision, citing that it will lead to an almost 1000% increase in taxation.
- They believe the move is unconstitutional, irrational, and harmful, potentially causing the downfall of the Indian gaming industry and resulting in significant job losses.
- They argue that only illegal offshore platforms will benefit from this tax change.

## **The Government's Intention**

- The government's decision to impose higher taxes on online gaming is motivated by moral concerns about excessive encouragement of gambling, an activity that can be speculative and addictive.
- The government aims to address issues of addiction, particularly among children and teenagers, and believes that stricter regulations, including higher taxes, are necessary based on factors like age and income.

## **Advantages Of The Move**

The government believes that the new tax scheme will bring



## **Issues With The Decision**

- Critics argue that treating the entire gaming industry as gambling goes against established jurisprudence and may contradict the CGST Act 2017.
- They contend that not all skill-based games should be equated with games of chance.
- Furthermore, the increased tax burden may harm online gambling companies and lead to a growth in illegal gambling platforms.
- Some experts also claim that the decision offends Article 14 of the Constitution and could discourage foreign investment while benefiting offshore gambling sites, potentially causing tax losses for the government and exposing Indian gamers to unregulated websites.

## Highlights of the 50th GST Council Meeting

The 50th Meeting of the GST Council, headed by Union Finance & Corporate Affairs Minister Nirmala Sitharaman, took significant strides in the development of Goods and Services Tax (GST). The council deliberated on and recommended alterations to GST tax rates, measures to facilitate trade, and simplification of compliance processes.

### Changes in GST Tax Rates

<b>Recommendations Relating to GST Rates on Goods</b>	
<b>Uncooked/Unfried Snack Pellets</b>	<ul style="list-style-type: none"><li>The rate on uncooked/unfried snack pellets will be reduced to 5% from 18%.</li><li>Payment of GST for past periods will be regularized.</li></ul>
<b>Dinutuximab (Quarziba) Medicine</b>	<ul style="list-style-type: none"><li>IGST exemption will be provided for imported Dinutuximab (Quarziba) medicine for personal use.</li></ul>
<b>Medicines and Food for Special Medical Purposes (FSMP)</b>	<ul style="list-style-type: none"><li>IGST exemption will be extended to imported medicines and FSMP used in the treatment of rare diseases listed under the National Policy for Rare Diseases, subject to existing conditions.</li><li>The exemption will also apply to FSMP imported by Centers of Excellence for Rare Diseases or recommended institutions.</li></ul>
<b>Supply of Raw Cotton</b>	<ul style="list-style-type: none"><li>Supply of raw cotton, including kala cotton, by agriculturists to cooperatives will be taxable under the reverse charge mechanism.</li><li>Issues related to past periods will be regularized.</li></ul>
<b>Imitation Zari Thread or Yarn</b>	<ul style="list-style-type: none"><li>GST rate on imitation zari thread or yarn will be reduced from 12% to 5%.</li><li>Payment of GST for past periods will be regularized.</li></ul>
<b>Food and Beverages Consumed Inside Cinema Halls</b>	<ul style="list-style-type: none"><li>The tax rate was set at 5% without input tax credits, as opposed to the previous 18% on cinema services.</li></ul>
<b>Utility Vehicles</b>	<ul style="list-style-type: none"><li>Entry 52B in the compensation cess notification will be amended to include all utility vehicles that meet specified parameters.</li><li>The ground clearance in unladen condition will be clarified.</li></ul>
<b>LD Slag</b>	<ul style="list-style-type: none"><li>GST rate on LD slag will be reduced from 18% to 5% to promote better utilization and environmental protection.</li></ul>
<b>Implants</b>	<ul style="list-style-type: none"><li>Issues relating to trauma, spine, and arthroplasty implants prior to 18.07.2022 will be regularized due to genuine interpretational issues.</li></ul>
<b>Fish Soluble Paste</b>	<ul style="list-style-type: none"><li>GST rate on fish soluble paste will be reduced from 18% to 5%.</li><li>Payment of GST for past periods will be regularized.</li></ul>
<b>Desiccated Coconut</b>	<ul style="list-style-type: none"><li>Issues relating to desiccated coconut for the period 1.7.2017 to 27.7.2017 will be regularized due to genuine interpretational issues.</li></ul>
<b>Pan Masala and Tobacco Products</b>	<ul style="list-style-type: none"><li>The earlier ad valorem rate applicable on 31st March 2023 will be notified for the levy of Compensation Cess on pan masala, tobacco products, etc., where it is not legally required to declare the retail sale price.</li></ul>
<b>Banks for IGST Exemption</b>	<ul style="list-style-type: none"><li>RBL Bank and ICBC Bank will be included in the list of specified banks eligible for IGST exemption on imports of gold, silver, or platinum.</li><li>The list of eligible banks/entities will be updated as per the Foreign Trade Policy 2023.</li><li>Consequential changes will be made in notifications in accordance with the new Foreign Trade Policy 2023.</li></ul>



<b>Plates and Cups made of Areca Leaves</b>	<ul style="list-style-type: none"><li>• Issues relating to GST on plates and cups made of areca leaves prior to 01.10.2019 will be regularized.</li></ul>
<b>Biomass Briquettes</b>	<ul style="list-style-type: none"><li>• Issues relating to GST on biomass briquettes for the period 01.7.2017 to 12.10.2017 will be regularized.</li></ul>

## Other Changes

### Exemption from GST

- GST Council exempts cancer-related drugs, medicines for rare diseases, and food products for special medical purposes from GST.

### Establishment of GST Appellate Tribunals

- The Council examined proposals from states to establish 50 Benches of the GST Appellate Tribunals in the country.
- The initial Benches will be set up in state capitals and locations where High Courts have Benches.

### Concerns Raised on GST Network and PMLA

- Some states expressed criticism regarding the recent decision to bring the GST Network (GSTN) under the purview of the Prevention of Money Laundering Act (PMLA), administered by the Enforcement Directorate (ED).
- Tamil Nadu, in particular, argued that this inclusion contradicts the interests of taxpayers and the objective of decriminalizing GST offenses.
- The Revenue Secretary assured the Council that it was in line with the requirements of the Financial Action Task Force.
- It was clarified that the ED will neither receive nor provide information from the GSTN, and the notification is aimed at empowering tax authorities to combat tax evasion and money laundering.