

# India's 28% GST on Online Gaming: Implications and Controversies

written by King Stubb & Kasiva | October 4, 2023



In a landmark step that has sent shockwaves across the booming online gaming industry in India, the Goods and Services Tax ("GST") Council recently announced its decision to impose a 28% GST on the full-face value of online gaming transactions. This decision has prompted significant anxiety among industry players, who fear its possibly devastating implications for the sector's growth, investment, and employment prospects. Despite concerns from various sources, the government seems firm in its decision, raising worries about the industry's future and the potential impact on customers.

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## Background and Industry concerns

In recent years, the online gaming [business in India](#) has experienced enormous expansion. It is expected to reach \$5 billion by 2025, expanding at a compound annual growth rate of 28-30%. The recent decision by the GST Council to impose a 28% GST on the face value of wagers, inclusive of platform fees and net wins, has concerned industry participants.

Representatives from over 130 companies and trade organisations in the gaming industry have signed an open letter to the government voicing their worries. They contend that such a high GST rate would render the industry unprofitable.<sup>[1]</sup> The imposition of a 28% tax on the face value might result in a nearly 1,000% increase in taxation, which could result in job losses, discourage foreign investments, and drive gamers to illicit offshore platforms.

In addition, there is a lack of clarification regarding the applicability of the new GST rate to various areas of the gaming business, such as in-game app purchases, PC games, console games, esports, and so on. This lack of clarity has left some gaming enterprises uncertain about how to comply with the new tax laws.

## Intent of India's GST Council

Indian law has traditionally distinguished between games of skill and games of chance. Games of skill were respectable economic pursuits, whereas games of chance were not. Nonetheless, a recent ruling by the Karnataka High Court reclassified certain online games, such as rummy, as games of skill, subjecting them to GST only on player fees and eliminating the prize element as an "actionable claim."<sup>[2]</sup> The recent initiative by the GST Council tries to change this understanding, putting the 'actionable claim' element within the jurisdiction of GST. This shows that the Council intends to overturn the court's decision and perhaps raise online gaming revenue.

## Is GST Levy Legally Tenable?

The legal viability of this proposed GST tax raises significant concerns. While the Supreme Court has supported GST on certain actionable claims, such as lottery, gambling, and betting, this action would make online skill-based games the only actionable claim subject to GST, potentially constituting "hostile discrimination." The decision might alter the tax structure of the online gaming business if any further legal issues develop.

## When Will the Levy Come into Force?

The GST Council intends to enact the suggested modifications by October 1, 2023. Nonetheless, the complexity of the legislative process and the reluctance of some state governments imply that this schedule may be

optimistic. The implementation date is significant, as it will affect both companies and consumers in the online gaming industry.

## **Will GST Levy Be Retrospective?**

The administration has indicated that the modifications will be made via a “clarificatory amendment.” This raises concerns regarding the potential for the GST on online gaming to have a retroactive effect, which may have devastating ramifications for the business. Past attempts to grant modifications retrospective effect have been disputed and given effect prospectively by Indian courts.

## **Impact on Government Revenue**

This GST charge, which is intended to enhance government revenue, could have unforeseen repercussions. The online gaming sector has grown substantially, and charging excessive taxes and regulatory compliance may deter players and platforms, resulting in a decline in government revenue. The principle of the Laffer curve demonstrates that overly high tax rates can lower tax collection.

## **The Way Forward**

In light of the issues raised by the proposed amendment, a more acceptable approach could consist of increasing the GST rate just on platform fees or applying a lower GST rate on the amount deposited with the platform. This would accord with worldwide best practices and promote the growth and compliance of the industry. Parallel legal challenges are possible, and companies may need to adapt to the new GST regime.

The decision by India’s GST Council to levy a 28% GST on online gaming has created debate and apprehension among industry professionals. While the government seeks to prevent gambling, industry stakeholders say that the high tax rate might have catastrophic repercussions, such as job losses, foreign investment restrictions, and a possible transfer to illegal offshore platforms. The future of the online gaming sector is questionable due to the intention of implementing this reform. Given the industry’s pleas, only time will tell whether the government will reconsider its decision. FAQs

## **When is the 28% GST on online gaming transactions expected to come into effect?**

The GST Council intends to execute the proposed amendments by October 1, 2023, although the legislative procedure and attitudes of state governments could affect the actual implementation date.

## **Will the GST levy on online gaming be retrospective?**

There are concerns that a “clarificatory amendment.” could result in a retroactive application of the GST. Retroactivity might have enormous repercussions for the online gaming business, and earlier attempts to make

retrospective changes to Indian law have been met with court challenges.

## **What could be the unintended consequences of imposing a high GST on online gaming?**

Although the GST is intended to boost government revenue, excessive taxation and regulatory compliance may discourage players and platforms. This could lead to a drop in government revenue, as high tax rates can result in decreased tax collection.

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[1]

<https://www.cnbctv18.com/finance/tax-on-platform-fees-or-grr-not-on-full-bet-value-online-gaming-industry-writes-open-letter-to-pmo-17230411.htm>.

[2] Gameskraft Technologies Private Limited Vs Directorate General of Goods Services Tax Intelligence, Writ Petition No. 19570 of 2022.

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