



IMPLEMENTING AMENDMENTS PERTAINING TAXATION OF ONLINE GAMING AND CASINO

Amendments under the Central Goods and Services Tax Act, 2017 (CGST Act)

CBIC has notified 1 October 2023 as the date from which the amendments to the CGST Act as proposed by the Central Goods and Services Tax (Amendment) Act, 2023 (CGST Amendment Act) would come into effect. The gist of these amendments are as under:

- **Section 2 of the CGST Act:**
The definitions of the terms ‘online gaming’, ‘online money gaming’, ‘specified actionable claim’ and ‘virtual digital asset’ (VDA) have been introduced and the definition of ‘supplier’ has been amended.
- Section 24 of the CGST Act has been amended to mandate a supplier of online money gaming from a place outside India to a person in India to obtain GST registration.
- Entry 6 to Schedule III of the CGST Act has been amended to stipulate that ‘Actionable claims, other than specified actionable claims’ will neither be treated as a supply of goods nor a supply of services.
- It is also provided that the aforementioned amendments shall be without prejudice to the other legal provisions prohibiting/restricting/regulating betting, casino, gambling, horse racing, lottery, or online gaming.

[CGST Amendment Act¹ and Notification no: 48/2023-Central Tax dated 29 September 2023]

Amendments under the Integrated Goods and Services Tax Act, 2017 (IGST Act)

CBIC has notified 1 October 2023 as the date from which the amendments to the IGST Act as proposed by the Integrated Goods and Services Tax (Amendment) Act, 2023 (IGST Amendment Act) would come into effect. The gist of these amendments are as under:

- **Section 2 of the IGST Act:**
The definition of ‘Online Information and Data Access or Retrieval services’ has been amended to exclude ‘online money gaming’.
- Proviso to Section 5(1) of the IGST Act is amended to exclude goods as notified by the Government, on which, IGST may not be required to be levied in terms of Section 3 of the Customs Tariff Act, 1975 read with Section 12 of the Customs Act.
- Section 10(1) of the IGST Act is amended to provide that in case of supply of goods made to an unregistered person, the place of supply shall be the location as per the address of such recipient recorded in the invoice issued. Further, in cases where the address of the recipient is not recorded in the invoice, the place of supply shall be the location of the supplier.
- Section 14A of the IGST Act is inserted to provide for the collection of GST on -
 - ‘Online money gaming’ supplied by a person located outside the taxable territory to a person located in India and for the compliance obligation of such supplier, including the requirement of taking a single registration under the Simplified Registration Scheme (under Section 14(2) of the IGST Act) and the provisions dealing with payment of tax on such supplies.
 - In case of failure to adhere to the aforesaid provision for obtaining registration and payment of tax, access to the platform shall be blocked for access by the public in the manner provided under the Information Technology Act, 2000.

[IGST Amendment Act¹ and Notification no: 2/2023-Integrated Tax dated 29 September 2023]

Amendments under the Central Goods and Services Tax Rules, 2017 (CGST Rules)

Effective 1 October 2023, CBIC has notified the following amendments to the CGST Rules:

- **Registration (Rules 8 and 14):**
 - **Rule 8 - Application for registration:**
Suppliers located outside India supplying online money gaming to a person situated in India (as referred under Section 14A of IGST Act) to be excluded from obtaining normal GST registration process through Form GST REG-01.
 - **Rule 14 - Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India:**
Suppliers located outside India supplying online money gaming to a person situated in India (as referred under Section 14A of the IGST Act) to obtain GST registration by furnishing Form GST REG-10.
- **Valuation (Rule 31B and Rule 31C) (newly inserted)² :**
 - **Rule 31B - Value of supply in case of online gaming including online money gaming:**
 - Value of supply shall be the total amount paid/payable to or deposited with the supplier, by way of money or money's worth, including virtual digital assets (VDA), by or on behalf of the player.
 - The amounts returned or refunded by the supplier to the player (including for reasons that the player did not use the amount for participating in the event) shall not be deducted from value of the supply of 'online money gaming'.
 - **Rule 31C - Value of supply of actionable claims in case of casinos:**
 - Value of supply shall be the total amount paid/payable by or on behalf of the player for -
 - Purchase of tokens, chips, coins, or tickets, by whatever name called, for use in the casino; or
 - Participating in any event, game, scheme, competition, or any other activity or process, in the casino, where tokens, chips, coins, or tickets, by whatever name called, are not required.
 - The amounts refunded by the casino to the player on return of tokens, coins, chips, or tickets, as the case may be, or otherwise, shall not be deducted from the value of the supply of actionable claims in the casino.
 - An Explanation has also been inserted which provides that the value of supply in both the above cases (under Rules 31B and 31C of the CGST Rules) shall not include any amount received by the player by winning any event, including game, scheme, competition, or any other activity, which is used for playing in a further event without withdrawing.
- **Tax Invoice (Rule 46 of the CGST Rules):**
In case of supply of online money gaming to an unregistered recipient, the tax invoice issued by the supplier to contain the name of the State of the recipient, instead of the address of the recipient along with its PIN code.
- **Return (Rule 64 of the CGST Rules):**
Suppliers located outside India supplying online money gaming to a person situated in India (as referred under Section 14A of the IGST Act) to file return of supply of online money gaming to persons in India in Form GSTR-5A.
- **Payment of Tax (Rule 87 of the CGST Rules):**
Suppliers located outside India supplying online money gaming to a person situated in India (as referred under Section 14A of the IGST Act) can deposit money in the Electronic Cash Ledger through International Money Transfers by SWIFT.
- **Forms (Form GST REG-10, Form GSTR-5A):**
Form GST REG-10³ and Form GSTR-5A⁴ have been amended in line with the aforesaid amendments to include relevant fields for Suppliers located outside India supplying online money gaming to a person situated in India (as referred under Section 14A of the IGST Act).

Notifications stipulating the GST rate on supply of 'specified actionable claim'

Applicable GST rate on supply of 'specified actionable claim':

- Notification nos.: 1/2017-Central Tax (Rate) dated 28 June 2017, 1/2017-Integrated Tax (Rate) dated 28 June 2017 and 1/2017-Union Territory (Rate) dated 28 June 2017 specifies the applicable rate of GST on supply of goods.
- Effective 1 October 2023, the aforesaid notifications have been amended as under:
 - The aforesaid notifications have been amended to provide that supply of 'specified actionable claim' would be leviable to GST @ 28%. The term 'specified actionable claim' has been defined to have same meaning as assigned under Section 2(102A) of the CGST Act to mean the actionable claim involved in or by way of -
 - Betting;
 - Casinos;
 - Gambling;
 - Horse racing;
 - Lottery; or
 - Online money gaming.
 - Further, an Explanation has also been inserted to the notification to provide that words and expressions used and not defined in the aforementioned notifications, but defined under the CGST Act, the IGST Act and the Union Territory Goods and Services Tax Act, 2017 shall have the same meanings as assigned to them in those Acts.

[Notification nos.: 11/2023-Central Tax (Rate), 14/2023-Integrated Tax (Rate) and 11/2023-Union Territory Tax (Rate) dated 29 September 2023]

²The earlier valuation mechanism in respect of Online Gaming and Casino Industry which was notified vide Notification no:45/2023 - Central Tax dated 06 September 2023 (our alert can be accessed [here](#)) has been effectively suppressed by this Notification. However, there is no change in the language employed in the Rules presently notified and the Rules proposed to be notified earlier (but not made effective).

³Application for registration of person supplying online money gaming from a place outside India to a person in India or for registration of person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient in India.

⁴Details of supplies of online information and database access or retrieval services by a person located outside India made to non-taxable online recipient (as defined in IGST Act) and to registered persons in India and details of supplies of online money gaming by a person located outside India to a person in India.

Notifications pertaining to 'time of supply' and 'value of supply'

Notifying supplies whose value of supply would be determined in the prescribed manner:

- Section 15(5) of the CGST Act empowers the Central Government to notify the class of supplies whose value may be determined in a prescribed manner notwithstanding the other provisions concerning the value of supply provided under Sections 15(1) or 15(4) of the CGST Act.
- In exercise of the aforesaid power, effective 1 October 2023, CBIC has notified the following supplies:
 - Supply of online money gaming;
 - Supply of online gaming, other than online money gaming; and
 - Supply of actionable claims in casinos.

[Notification no: 49/2023-Central Tax dated 29 September 2023]

Amendment in exemption granted from payment of GST on advances received for supply of goods:

- Notification no: 66/2017-Central Tax dated 15 November 2017 inter alia exempts all taxpayers from payment of GST on advances received for supply of goods. The aforesaid exemption was not available to taxpayers opting for the composition levy under Section 10 of the CGST Act.
- Effective 1 October 2023, the aforesaid notification has been amended to also exclude registered persons making supply of specified actionable claims as defined under Section 2(102A) of the CGST Act.
- Accordingly, such suppliers would be liable to pay GST on earliest of the following events:
 - The date of issue of invoice by the supplier or the last date on which he is required, under Section 31 of the CGST Act, to issue the invoice with respect to the supply; or
 - The date on which the supplier receives the payment with respect to the supply.

[Notification no: 50/2023-Central Tax dated 29 September 2023]

Notification amending the First Schedule to the Customs Tariff Act

Effective 1 October 2023, the following amendments would be made to the First Schedule to the Customs Tariff Act, 1975:

- **Chapter 98:**
 - The Chapter heading of Chapter 98 has been amended to include 'actionable claims'.
 - A new sub-heading '9807' has been inserted to cover 'Specified actionable claim'. Further, the tariff entries covered under the new sub-heading are as under:

Sub-heading /Tariff entry	Description	Standard Basic Customs Duty (BCD) rate
9807	Specified actionable claim	
9807 10 00	Actionable claim involved in or by way of betting	Nil
9807 20 00	Actionable claim involved in or by way of casinos	Nil
9807 30 00	Actionable claim involved in or by way of gambling	Nil
9807 40 00	Actionable claim involved in or by way of horse racing	Nil
9807 50 00	Actionable claim involved in or by way of lottery	Nil
9807 60 00	Actionable claim involved in or by way of online money gaming	Nil

- A Chapter Note in Chapter 98 has been inserted to provide that the expressions 'Online money gaming' and 'specified actionable claim' to have same meanings as provided under Section 2(80B) and 2(102A) of the CGST Act.
- In addition to the above, a new tariff item '2207 10 12' having the description 'Spirits for industrial Use' has been inserted attracting standard BCD rate of 150%. A Supplementary Note has been inserted to clarify that 'Spirits for industrial use' means rectified spirits which are used for industrial preparation of pharma, food, healthcare products or such other products, except for use in preparation of alcoholic liquor for human consumption.

[Notification no: 72/2023-Customs (NT) dated 30 September 2023]

Miscellaneous Notifications

Levy of IGST under Section 5(1) of the IGST Act on supply of online money gaming:

- As highlighted above (in the amendment to the IGST Act), proviso to Section 5(1) of the IGST Act empowers the Government to notify certain goods on import of which, IGST may not be required to be levied as Customs duty.
- In exercise of above power, CBIC has issued notified 'supply of online money gaming' as the goods on import of which, the aforesaid proviso shall not apply. In respect of such supplies, IGST would be leviable and collected under Section 5(1) of the IGST Act.

[Notification no: 03/2023-Integrated Tax dated 29 September 2023]

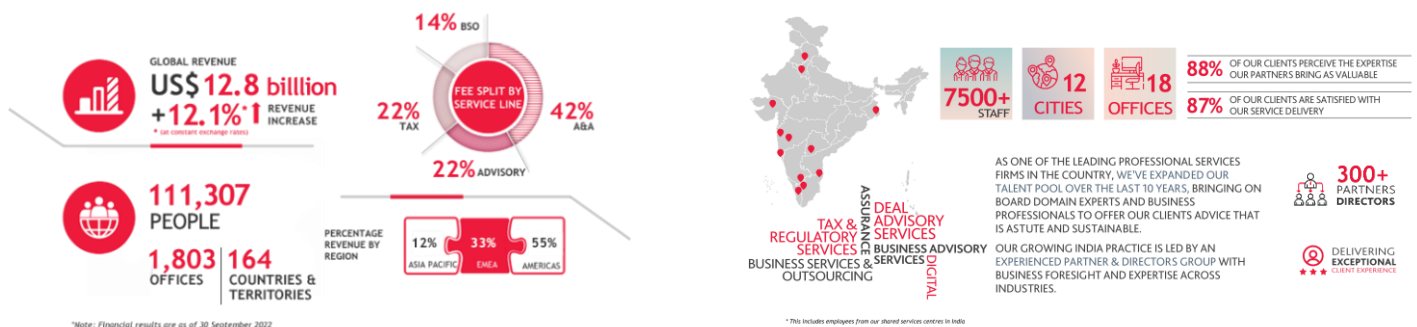
Notifies officers empowered to grant registration in case of supply of online money gaming:

- As highlighted above, the supplier (located outside the taxable territory) who provides or agrees to provide supply of 'online money gaming' to a person located in India is inter alia required to obtain registration under the GST law in terms of Section 14(2) of the IGST Act.
- The CBIC has notified the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration to the aforesaid persons.

[Notification no: 04/2023-Integrated Tax dated 29 September 2023]

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