



# ONLINE GAMING IN INDIA

## The Taxation Quandary

March 2023



23:58

Saturday, 20th March

Monday 20th  
Real Socialist - F...

Today  
Shopping 24 Photo  
SIGNA - Create Summit Changes  
SIGNA - Website Components  
Hillside Education - Proposal

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GAME  
*Night*

GAMER  
PLAY&WIN



GAME  
ROOM



LEVEL  
UP



GAME  
*Night*

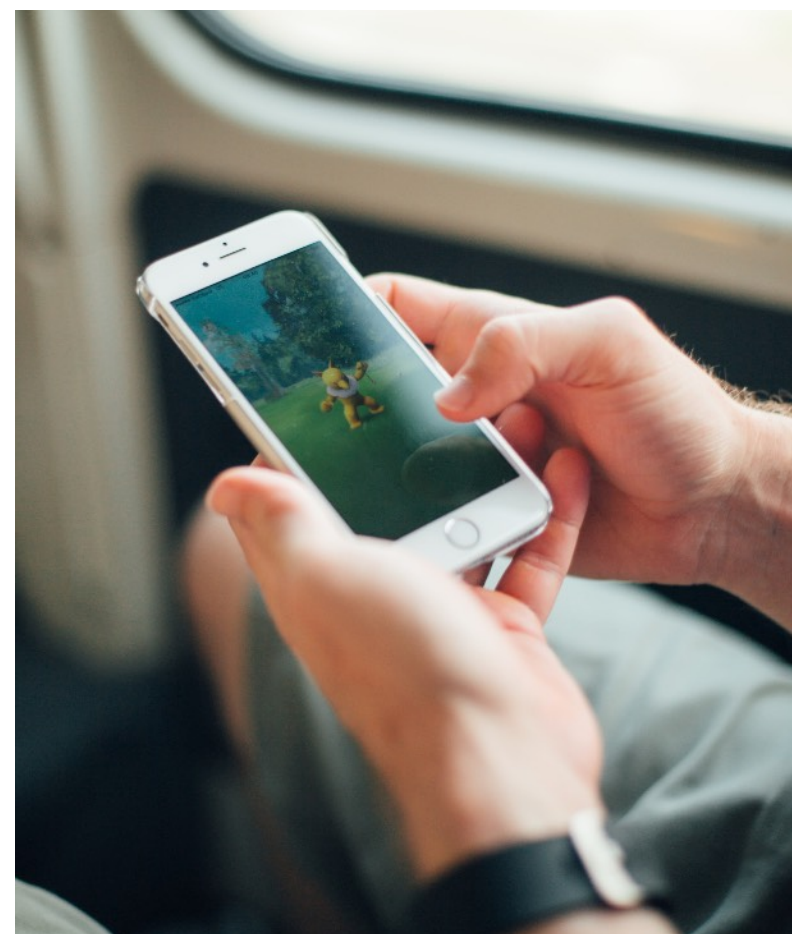
LEVEL  
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# Executive Summary

The online gaming sector in India is a rapidly growing industry that holds the promise of contributing significantly to India's GDP, generating employment and fostering innovation. The industry has also been hailed by the Hon'ble PM after the Budget last year and called for the constitution of an Animation, Visual Effects, Gaming and Comic (AVGC) Task Force.



"Today in India, Animation, Visual Effects, Gaming, and Comic is a developing market. India is in the top five countries in the mobile gaming industry and in the coming two years, this sector will reach more than 3 lakh crore INR valuation. We aim to make India a global gaming hub."

– Hon'ble PM Shri Narendra Modi

Statistics reveal that the Indian online gaming market is expected to grow at a CAGR of around 27% over the next five years. In addition to having a huge potential to boost India's GDP, this industry is anticipated to be a significant job generator, with the ability to add more than 1 million jobs by 2030. It is also important to note that this sunrise sector will contribute significantly to the \$1 trillion digital economy that India aims to achieve by 2025.



However, to enable this growth, it is important to realize that the online gaming sector thrives on innovation, and innovation needs a stable and predictable regulatory environment. Over-taxation is likely to make the gaming industry unviable and result in a loss to the exchequer. An unfavourable tax environment for the sector further adds to the already existing on-ground business challenges. In addition, compliance norms that are cumbersome and onerous for a typical gamer could ultimately result in players shifting to illegal offshore betting and gambling apps, leading to a loss of players for the legitimate industry back home and eventually loss of significant tax revenue to the government. For a dynamic and nascent industry like online gaming, a robust and enabling regulatory framework would be an effective way to ensure a responsible, transparent, and safe online gaming environment.

The growth of this sunrise industry vitally depends on the role played by the government in providing a favourable and predictable regulatory and tax regime for not only existing players but also incremental foreign investment to come into the country. In this light, it becomes important to consider the various challenges faced by the industry, especially with respect to taxation.

“Today, the Animation, Visual effects, Gaming, and Comics (AVGC) sector is witnessing rapid growth in India. India is among the top 5 markets in the world when it comes to mobile gaming. As per the estimate, this sector is expected to reach 3 lakh crore in the next 2 years. Now the point is, we cannot stop our child from playing games in the family. But, will they just be playing games developed outside India or India will do something on its own? Hence, in order to give a chance to our country’s talent to innovate – there is tremendous potential for Create in India and Brand in India.”



Hon’ble PM Shri Narendra Modi

February 2022

# 01

## Introduction



This paper attempts to give an overview of the online gaming sector while highlighting the challenges faced by the users and the industry, especially with respect to taxation, both direct and indirect.

The online gaming industry is going through significant changes. Participation and engagement in gaming is more recognised and being encouraged as the business shifts from being confined to a pastime activity among friends and family to a booming online industry providing entertainment. The country's gaming market is expanding because of improved digital connectivity, shifting social interaction requirements, and an increasing number of young people. The gaming business offers a wide range of opportunities for direct monetization, user interaction, and brand promotion due to its worldwide appeal and social nature.

The introduction of the digital age has completely transformed the gaming business, despite the fact that gaming techniques extend back to the early 17th century. For this industry, the internet has unlocked a whole new world of possibilities. As the popularity of online gaming increases, businesses have significantly enhanced the gaming experience they provide. Due to the constantly growing number of consumers who have access to a broad variety of online games, there is intense rivalry amongst businesses. As a result, game developers and gaming intermediaries are looking for new methods to improve their offerings and maintain consumer interest.

The industry's development trajectory has made having a regulatory structure that ensures integrity and openness more necessary. This Paper attempts to give an overview of the online gaming sector in India, and to provide an insight on development and revenue creation scope of online gaming, while highlighting the challenges pertaining to the current taxation regime.

With an abundance of entertainment alternatives available on online media channels, the online gaming market offers great potential for expansion. Indian operators will be able to tap and ride this tide with the help of a clear regulatory framework that, among other things, does not stifle innovation and growth, creating enormous income and job possibilities in a rapidly expanding sector.





# 02

## Understanding Online Gaming Sector



With the advent of internet, social media, and smartphones, the gaming industry that started initially as console and PC gaming, found itself gain immense traction through mobile gaming.

India's gaming industry has a predominantly young and growing user base and is growing owing to factors like widening access to higher internet speed, more significant investments into the sector, and an evolving regulatory environment.

The humble beginnings of India's online gaming industry can be traced back to the late 1990s and early 2000s, when console and PC gaming brought several middle-income Indians to digital gaming platforms.

The early 2000s continued seeing improvements in consoles and PC gaming, and rising incomes brought more Indians onto such platforms. Although gaming consumption was limited to a niche customer segment due to the high cost of PCs and consoles, online multiplayer role-playing and first-person shooters underlined the potential for the growth of online gaming in India.

Till the mid to late 2000s, the gaming industry was dominated by consoles and PC games. However, growing internet penetration, the dawn of social media, and increased digitalization introduced a large percentage of Indians across ages and socio-economic statuses to the world of online gaming. The online population began utilizing social media to

explore, learn and share online games, and games such as Farmville gained immense prominence amongst the younger demographic active on social media.

However, the true revolution for online gaming came in the mid 2010s when the advent of smartphones and affordable internet access led to a significant shift towards mobile gaming. It changed how games had shifted from pre-loaded games on devices to app-based games downloaded through the app stores.

Recent years have seen the online gaming sector in India on a steady upward growth trajectory, driven by the increasing penetration of internet and smartphone usage at a reasonable cost, India's young demography, with a significant percentage of the population under the age of 25 and increasingly sophisticated and engaging games. The sector is also attracting investment from venture capital firms and foreign companies looking to tap into the massive potential of the Indian market.



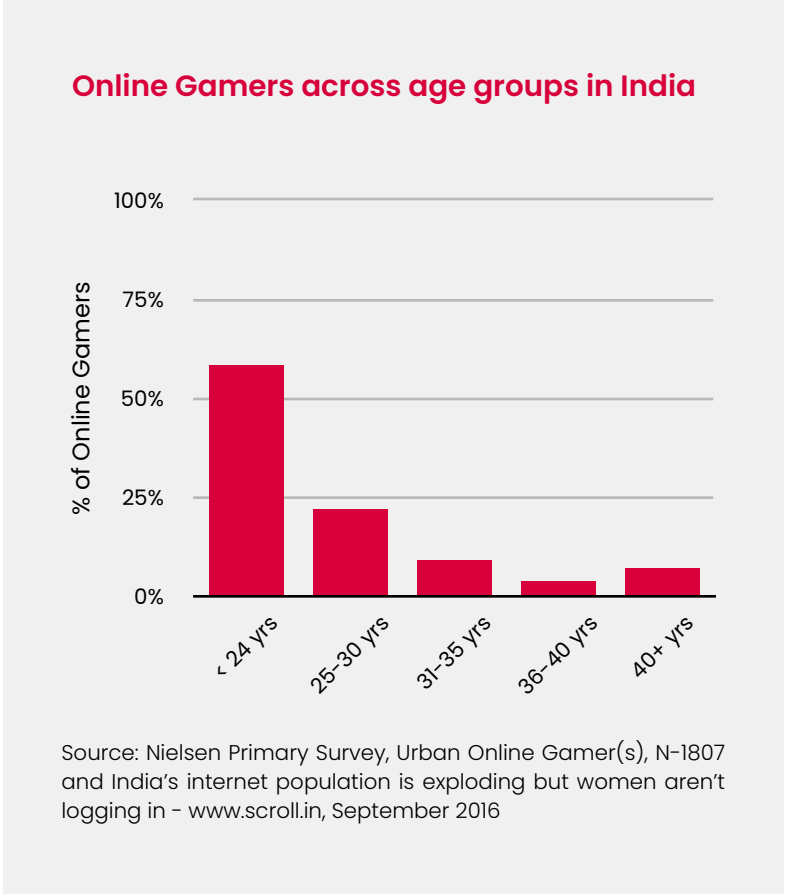
Various sub-sectors of the online gaming industry include casual games (mostly free-to-play), Real Money Games that charge an entry fee, Esports where games are played competitively between professional players, and Fantasy Sports.

The gaming industry consists of several sub-sectors, including PC and console games that dominated the segment in the early 2000s. The online revolution has brought millions of people online as casual gamers engaged in playing simple, easy-to-play games over a short duration. Casual games are free to play and mainly depend on advertising revenue, while Real Money Games (RMG) refer to games that charge an entry fee from players and where the players have a chance to win more money than they had put into the game.



Esports includes games played competitively between professional players or amateurs, usually in organized gaming tournaments or leagues. Esports tournaments have been gaining traction and are expected to become mainstream events, with major tournaments hosted on a global scale. These competitive tournaments often have teams, sponsors, and major players all vying to emerge as winners. Currently, India has around 600,000 e-sports players and 100,000 e-sports teams. Another sub-sector is fantasy sports, wherein users or “managers” build a virtual team consisting of real-life athletes who earn fantasy points based on their real-life performance statistics in offline matches and game plays.

Technology advancement has also seen the use of Virtual Reality (VR) and Augmented Reality (AR) technology to immerse the players in the game world and enhance the overall gaming experience for the users. VR and AR have often been touted as the future of gaming worldwide by several international experts and are likely to pave the way for future growth of the sector in India as well.



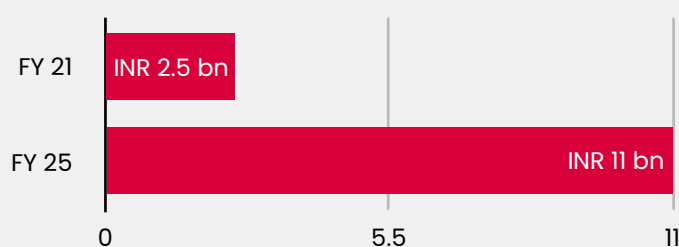


Online gaming has penetrated Tier 2 and even Tier 3 cities, with almost the same traction as in metro cities.

Today, online gaming is not just limited to metro cities but has also penetrated tier 2 and even tier 3 cities and towns in the country, with the sector witnessing almost equal traction from gamers in these cities as it does from metros. Easy access to affordable internet plans and smartphones, along with increased awareness through individual content creators and YouTube gaming channels, have helped to remove the stigma around playing online games and treating them as an acceptable form of entertainment.

India is projected to become one of the world's largest mobile gaming markets by 2025.

**India's Online Gaming Industry Revenues**  
(in INR Billion)



The future of online gaming in India looks promising, with India emerging as one of the world's largest mobile gaming markets, with an estimated 303 million mobile gamers as of today. The Indian government has also extended its support to the sector, framing draft gaming rules that have been welcomed by India's real-money gaming start-ups and industry associations. Further, the government plans to launch its own game development program to promote domestic game development in India.

Despite concerns over the potential negative impact of excessive gaming on children and young adults, the Indian gaming industry will likely continue on its high growth trajectory driven by factors such as increasing internet penetration, the proliferation of affordable smartphones, rising disposable income, and innovations in gaming experiences, adding new features that will help the Indian gaming industry achieve remarkable heights and place the country at the epicentre of an explosion of the global gaming economy.



# 03

## The Market Economics



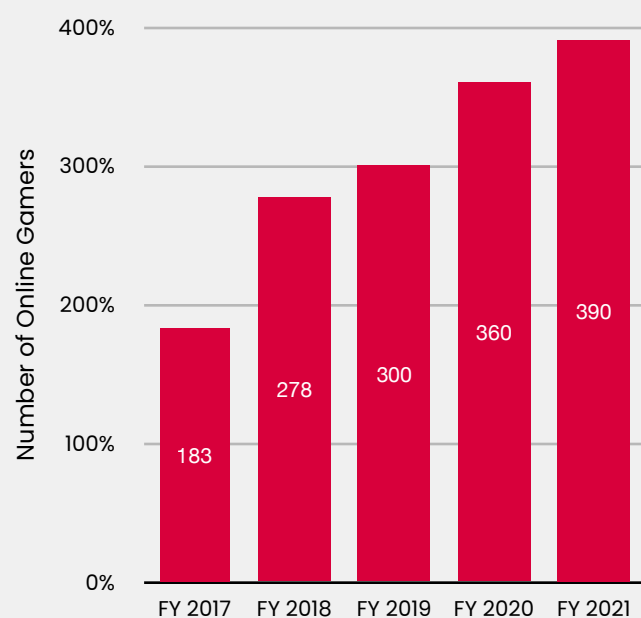
The Indian online gaming user base recently overtook that of the US with more than 500 million players.

Despite being one of the fastest-growing sunrise industries in India, the online gaming industry is still considered to be in its formative years. While the industry has been growing rapidly in recent years, it is still developing and maturing, with the Indian gaming market being relatively small compared to other major gaming markets such as the US and China.

However, the Industry has witnessed phenomenal growth and recently overtook the United States of America in terms of the user base that exceeded 500 million.

Despite bringing some challenges, the COVID-19 pandemic has dramatically accelerated the growth of the online gaming industry in India. The pandemic has also acted as a major boon for the online gaming sector bringing millions of casual gamers who began playing online games during the COVID-19 pandemic. Lockdowns and social distancing measures saw people spending more time on online games leading to a surge in revenues for the domestic gaming Industry companies. Online games such as PUBG, Call of Duty, and Ludo King, among others, saw a vast number of users during the pandemic.

**Number of Online Game Players in India**  
(in Million)



Source: Statista

Lockdowns and social distancing norms during the Covid-19 pandemic helped catalyse the growth of the industry.



The potential of the online gaming industry can be gauged by the fact that it has already produced three unicorns out of the 100+ in the country, despite being a sunrise sector.

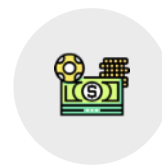
The scale of growth of the online gaming industry in India can be gauged from the fact that out of India's more than 100 unicorns, the gaming industry, despite being in its initial stages, has produced three unicorns, namely: Games 24X7, Dream11, and Mobile Premier League (MPL) and is likely to contribute more unicorns to the Indian start-up sector as there are currently more than 500+ gaming studios in India.

The sector's potential for future growth has attracted several international game developers who plan to expand into India, with venture capital firms investing heavily in Indian gaming start-ups. This suggests that there is still much room for growth and development in the industry.

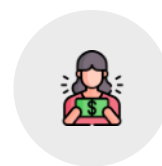
As per Invest India, India's gaming industry is on the rise and on the cusp of exponential growth. By FY23, the industry is projected to grow by 20-30% and is expected to reach a value of INR 380 billion by 2026.



In 2021, the revenue from online gaming grew 28% to reach \$1.2 billion. By 2024, this figure is estimated to reach \$1.9 billion.



The Gaming industry has also been a recipient of significant funds in the funding and M&A space. Between Jan-Sep 2021, the sector received \$1.6 billion in investments (funding and M&A), with Real Money Games (RMG) attracting \$700 million from investors.



India also has the fastest percentage of new paying users (NPU) in gaming worldwide for two consecutive years. In 2020, it stood at 40%; in 2021, it increased to 50%, reflecting the steadily increasing growth path of the sector.



Further, the country is also the largest mobile gaming market in terms of app downloads.



UP emerged as the top destination for mobile gamers, followed by Maharashtra, Rajasthan, Bihar and West Bengal.

On its part, the Indian Government has also taken several steps to promote the growth of the domestic gaming Industry.



The Government amended the Allocation of Business Rules and designated MeitY as the nodal ministry for the online gaming sector and recently introduced the new draft gaming rules that brought much-needed clarity for the sector and were welcomed by several of India's most prominent gaming start-ups.



The Indian Government is setting up a National Animation, Visual Effects, Gaming and Comic (AVGC) Centre of Excellence in collaboration with IIT Bombay.



Several states, such as Karnataka and Telangana, have dedicated state-level AVGC policies in place.

In fact, according to India Mobile Gaming Report 2022 by Gaming Platform Mobile Premier League, Uttar Pradesh has emerged as the top destination for mobile gamers, followed by Maharashtra, Rajasthan, Bihar, and West Bengal. Growth of this sector unveiling a multipronged benefit; firstly, a talent pool of ultra uber coders are getting created, secondly, the masses are, in some way or another, gaining exposure to technology and swiftly becoming a part of the digital society.

With several profitable unicorns, the domestic gaming Industry is a significant contributor to high-tech skilled jobs, creating thousands of jobs directly and indirectly. Further, the domestic gaming industry contributes immensely to the economy and is one of the substantial digital and television advertisers.





# 04

## Decoding Sector Uncertainties in India



Lack of clarity regarding legislative jurisdiction and also inadequate set of laws addressing the online gaming industry have been among the issues facing the industry.



### Lack of clarity with respect to legislative jurisdiction

Until recently, online gaming was part of a regulatory grey zone as there was no comprehensive legislation addressing it explicitly. According to the Constitution, while 'betting and gambling' falls under the legislative jurisdiction of states (entry 34 of List-II of the Seventh Schedule), there was no such entry for 'online gaming'. This implied that it falls under the ambit of the Centre (as per entry 97) to regulate as such. The same regulatory uncertainty prevailed with respect to the taxation of online games. In the first public consultation on the draft online gaming policy – amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 – since it was released on January 2, it was highlighted that online gaming rules are being drafted in a way that online games come under the jurisdiction of the centre. This is certainly a step that will bring some clarity to the industry. In addition, it has also been highlighted in the Parliament that online gaming platforms are intermediaries and therefore subject to the IT Act and Rules therein. Hence it is safe to say that online gaming would come under the ambit of Union's exclusive jurisdiction under entry 31 of List-I.



### Inadequate existing legal framework

At the central level, regulatory discourses regarding the online gaming industry often mention two sets of laws – the archaic Public Gambling Act, 1867 and the more recent Information Technology Act, 2000. The Public Gambling Act, 1867 deals with prohibiting gambling and betting in physical premises referred to as "gaming or common gaming houses" while exempting games that involve 'mere skill' from the provisions of the Act. Clearly, since the statute was enacted much before the advent of the internet and online gaming, only games involving physical premises are addressed and not those in the virtual space. On the other hand, the Information Technology Act, 2000 regulates cyber activities in India and prescribes penalties for certain cybercrimes. Here as well, the law until recently was not evolved enough to deal with the changes taking place in the online gaming world.



States across India have varying set of laws and regulations pertaining to online gaming sector which further complicates things for an industry that is borderless.

At the state level, individual states & UTs have either adopted the Public Gambling Act, 1867 (such as UP, Bihar, MP) or have devised their own laws regulating betting and gambling (such as Karnataka, Tamil Nadu, Kerala, Sikkim, etc.). However, although most state regulations specify the legality of certain games, they do not cover the same games when the game is in an online setting and most states have excluded games of mere skill from the ambit of these legislations. Furthermore, in the absence of appropriate regulations, online gaming is governed by the prevailing laws of betting and gambling, even if the gaming in question is not based on chance, i.e., it is a game of skill. Some states that have recently amended their laws to incorporate online gaming are as follows:



### Sikkim

The state enacted the Sikkim Online Gaming (Regulation) Act, 2008, and issued the Sikkim Online Gaming (Regulation) Rules, 2009 to permit certain online games such as roulette, blackjack, poker, etc. to run after obtaining a license from the State. Sikkim was in fact the first state to have enacted a law for online gaming.



### Nagaland

The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 empowers the state to issue licenses for games of skill.



### Telangana

The Telangana Gaming (Amendment) Act, 2017 prohibits all forms of real-money gaming, irrespective of whether the games are of skill or chance.



### Andhra Pradesh

The Andhra Pradesh Gaming (Amendment) Act, 2020 also prohibits gaming for money, be it those involving skill or chance.



### Kerala

The state government had issued a notification specifically banning online rummy when played for money. However, the Kerala High Court quashed the same in 2021. The market is now open for online gaming.



## Karnataka

The state banned all types of online gaming through the Karnataka Police (Amendment) Act, 2021. However, the Karnataka High Court struck down major portions of the amendment on grounds of it being arbitrary and irrational since it did not distinguish between games of skill and games of chance, imposing a sweeping ban on all. This market is now open for online gaming.



## Tamil Nadu

The state had come out with the Tamil Nadu Gaming and Police Laws (Amendment) Act, 1930, which prohibited money-based online games of skill. The Madras High Court struck it down in 2021 calling the amendment 'unreasonable, excessive and manifestly arbitrary'. This market is now open for online gaming.





The proposed draft amendments to the IT Rules (Intermediary Guidelines & Digital Media Ethics Code), 2021 are a welcome step towards bringing some uniformity for the sector, but come with some shortcomings.

The Central government recently announced its plan to bring the online gaming industry within the purview of the Ministry of Electronics and Information Technology (MeitY), and amid the ongoing efforts to regulate the industry in India, the ministry also proposed amendments to the Information Technology Rules (Intermediary Guidelines and Digital Media Ethics Code), 2021. This action is a step toward establishing a uniform and comprehensive law for India's online gaming sector, which was desperately required to encourage investment and safeguard player interests.

Given that India is one of the world's four largest gaming marketplaces, the demand for regulation arose in response to an increase in incidences of money laundering and addiction brought on by online gaming. The move was well received by the gaming sector because legal clarity will give it the credibility and legitimacy that was long overdue. Additionally, it will also broaden investment prospects while protecting the rights of skilled gamers, whose numbers are anticipated to grow from 360 million in 2020 to 700 million by 2025.

However, the proposed amendments come with their own set of challenges. One of the main challenges posed by the new rules is the requirement for online gaming companies to appoint a Chief Compliance Officer and a nodal contact person for handling user complaints. This can be a significant burden for small and medium-sized enterprises, as they may not have the resources or expertise to comply with these requirements. The rules, regardless of size or country of origin, club all online gaming intermediaries in the same bucket. However, this approach can have a significant negative impact on small, newly established gaming companies and may unfairly burden start-ups.





Proposed draft amendments such as the need to appoint a Chief Compliance Officer, removing content that seems violative of the rules within a short time frame, possible arbitrary action by states and hard KYC norms would pose considerable challenges for the industry.

An additional obstacle faced by online gaming companies is the mandate to furnish information within a 24-hour timeframe upon receiving an order. This creates an uneven playing field for intermediaries involved in the online gaming industry, resulting in a more rigorous compliance burden that can prove to be challenging to fulfill, particularly for newly established startups.

In India, where online gaming is governed by the states, each state has a different stance on gaming. Many states have attempted to bring online gaming within their jurisdiction even if such game formats are not in the form of betting and gambling. While multiple courts have struck down these attempts, highlighting regulatory overreach and manifest arbitrariness in decision making, the online gaming industry continues to remain under a very delicate structure where States can continue to attempt to proscribe online games of skill. MeitY's attempt to regulate the structure must be welcomed in this regard. It is hoped that with the notification of the IT Rules for Online Gaming, SRB registered games will enjoy safe harbour across the country given the fact that such games will not be in the nature of betting and gambling. Gaming companies face large uncertainties and may still be at risk of unreasonable arbitrary actions due to the need to

comply with laws related to betting and gambling. It is crucial to safeguard online games that have previously obtained registration from self-regulatory organizations in accordance with established rules and are free from all gambling and betting-related laws. Even though self-regulatory organizations are obligated to meet the registration criteria for online games under these rules, the demand for them to comply with betting and gambling laws continues to put online gaming intermediaries in a vulnerable position to arbitrary actions by states. This lack of regulatory clarity could impede the responsible growth of the industry.

On 2<sup>nd</sup> January 2023, the Union Ministry of Electronics and Information Technology revealed proposed changes to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, also known as the IT Rules. These changes are intended to safeguard online gamers from harm and regulate various aspects of online gaming. Overall, the proposed changes to the IT Rules 2021 are a positive step, and despite these difficulties, the Indian online gaming market is anticipated to grow significantly over the next few years. However, for this business to grow, a stronger framework is required.



# 05

## Clarity on TDS Norms

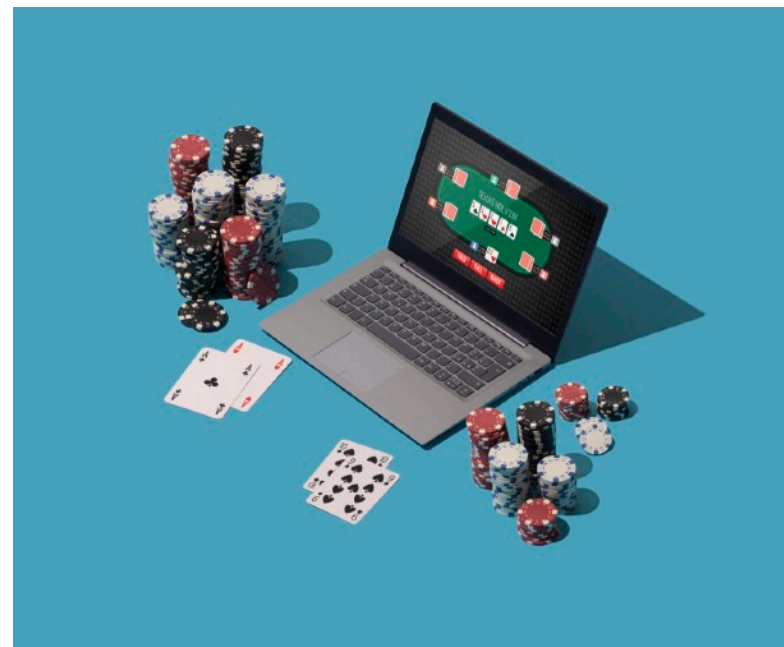


With the removal of the threshold limit of Rs.10,000 the TDS will now be applicable only on the net winning amount at the time of withdrawal or at the end of the financial year.

A multitude of people partake in various forms of financial gaming, including fantasy leagues, card games, and online contests. The taxation of winnings from such activities has previously been regulated by Section 194B of the Income Tax Act, which provides for withholding tax on winnings from lotteries, crossword puzzles, and other games where the winnings surpass INR 10,000. The taxation of these winnings in the hands of individual players falls under the purview of Section 115BB of the Act, which imposes a tax rate of 30%.

Earlier this month, the government put forth a proposal that would bring a significant shift to the online gaming landscape in the country. The proposal entailed the imposition of a 30% tax on the net winnings garnered from online gaming, effectively doing away with the previously established threshold limit of Rs 10,000. This move signified the government's commitment to regulating the online gaming industry and ensuring that all its participants fulfil their tax obligations.

With the recent announcement of Budget 2023-24, the Finance Bill 2023 has also introduced a standalone tax code applicable to the realm of online gaming, a move that has been in line with industry expectations. The provisions within the bill, including the withholding tax under Section 194BA and the income tax on winnings from online games under Section 115BBJ, serve to reinforce the government's commitment to regulating this rapidly growing sector. Moreover, the government's differentiation between gaming and gambling through separate tax policies demonstrates their acknowledgement of the distinct characteristics of each.







The Budget has also finally addressed the persistent request from the industry to incorporate the offset of losses in the calculation of gains from online games. While the threshold limit of Rs. 10,000 for calculating TDS on online gaming has been removed, the details on the computation mechanism are awaited. Essentially, this implies that TDS will now be applicable only on the net winning amount at the time of withdrawal or at the end of the financial year, from the game wallet.

This makes the definition of Net Winnings crucial, as illustrated in the accompanying table:

- Two individuals, Player A and B, have INR 1000/- each to play online games of skill for their entertainment on a monthly basis
- They play 5 games against each other with a Contest Entry Amount (CEA) of INR 200 per game
- Gross Gaming Revenue (GGR) for the gaming platform is 10% of total CEA

Winner	CEA (per player)	CEA (Total)	DDR (10% of total CEA)	Prize Pool	Winnings		Net Winnings	
					A	B	A	B
A	200	400	40	360	160	0	160	-200
B	200	400	40	360	0	160	0	-40
A	200	400	40	360	160	0	160	-240
A	200	400	40	360	160	0	320	-400
B	200	400	40	360	0	160	160	-240
Withdrawal / End of FY (31 Mar) Point of TDS					480	320	160	-240

.....  
**Prize Pool** = Total Contest Entry Amount (CEA) (-) Gross Gaming Revenue (GGR)  
 .....

.....  
**Winnings** = Prize Pool (-) CEA  
 .....

.....  
**Net Winnings** = Winnings (-) Losses  
 .....



Accordingly, it would be ideal to streamline the applicability of the amendments for "online game" and establish a singular effective date of April 1, 2023.

The recent Budget proposal, though commendable in its efforts to simplify the taxation regime for online gaming winnings, also has the potential to discourage casual players from participating. By eliminating the TDS threshold, even small winnings will be subject to tax, impacting individuals who do not spend or win significant amounts. This change could prove detrimental to the growth and engagement of casual players in this sector, which is an unfortunate outcome for a sector that is already popular, thriving and has the potential to grow exponentially in times to come.

Another major issue arising from the Budget 2023 announcement is the different 'effective dates' of the newly introduced sections, in relation to the applicability of the TDS on online games.

From AY 2024-2025, it is proposed that the newly introduced section 115BBJ, which defines online gaming and specifies the manner in which net winnings are calculated, will be effective from 1 April, 2024. On the other hand, the new TDS provisions on winnings from online gaming under section 194BA are proposed to come into force from 1 July 2023.

Accordingly, income from online gaming would be subject to the modalities set out in section 115BBJ and ITRs for AY 24-25, corresponding to FY 23-24, are

to be filed in the manner set out in section 115BBJ. However, for the purpose of TDS, the present TDS provision, i.e., section 194B shall continue to be in force till 30 June 2023, and from 1 July 2023, the new provision, i.e., section 194BA would be applicable.

The above anomaly will result in additional TDS liability for platforms arising out of short deduction of TDS, due to implementation of Section 194B from 1 April to 30 June, 2023.

Due to the above, the industry will face severe challenges in making the necessary technological changes twice within a short period of three months, as several tax regimes will be applicable. The repeated developments will also lead to higher costs for the industry resulting in unnecessary expenses that will be difficult to bear for several smaller gaming companies.

Accordingly, it would be ideal to streamline the applicability of the amendments for "online game" and establish a singular effective date of April 1, 2023. Alternatively, the current tax regime could be continued for the period between April 1, 2023, to June 30, 2023, without applying the amended section 194B. This would help to eliminate any discrepancies in interpretation and operational challenges, leading to a more effective and efficient administration of provisions for the online gaming industry.



06

**Viabile GST  
Framework  
for the Industry**



Most countries today are following the Gross Gaming Revenue (GGR) tax model wherein GST is levied on the platform fee unlike the turnover tax model wherein GST is imposed on the contest entry amount.

When it comes to taxation, both the rate of tax as well as the monetary value on which the tax gets levied are of key importance. Countries around the world have adopted varied rates of taxation as well as models in order to strike a balance between having a robust taxation regime for the sector given its popularity and addressing the need for social regulation. Globally, most countries today are following the Gross Gaming Revenue (GGR) tax model. In this model, GST is imposed on the platform fee amount. Some countries also follow the turnover tax model, wherein the GST is levied on the contest entry fee instead of the platform fee. A few other countries have a differential tax regime, wherein online games are taxed differently depending on whether they're games of skill or games of chance.

### France



Here GST is applicable on the gross gaming revenue (GGR). The country moved to the GGR tax model after operators started resorting to the black market, leading to a loss of revenue to the government and non-compliance with the licensing and regulatory system.

### Sweden and UK



They also follow the GGR tax model. Both countries saw high tax revenues due to a high compliance rate among gaming and gambling operators.

### Austria

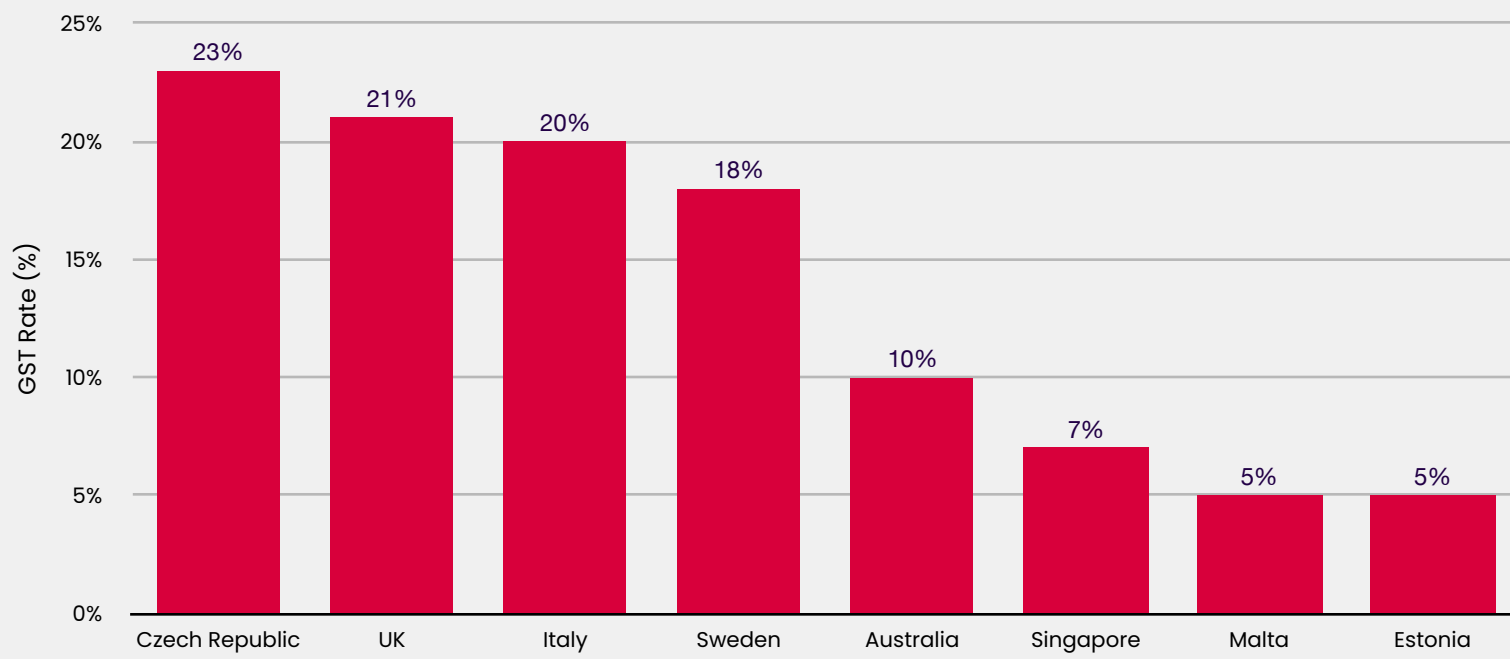


A few countries such as Austria differentiate between games of skill and games of chance/ gambling and tax both differently. The tax rate on games of skill is usually lesser than that on betting and gambling. For instance, Austria taxes lotteries at 18% but the rate of tax for games of skill is 5%.





GST Rates across Countries following the GGR Tax Model





Evidence from countries where the sector has developed well show that the GGR tax model enables the industry to remain viable and flourish, whereas the turnover tax model gradually drives the industry out of business, ultimately leading to a loss to the exchequer due to the significantly higher tax impact & leakages in tax revenue due to transfer of business from legitimate platforms to illegitimate offshore operators. This can be seen in the following illustration where we present different scenarios:



	<b>Current Scenario:</b> 18% GST on Platform Fees	<b>Scenario A:</b> 28% GST on Platform Fees (GGR Tax Model) <b>Viable Option</b>	<b>Scenario B:</b> 28% GST on Entry Fees (Turnover Tax Model) <b>Unviable Option</b>
Entry Fees (A)	100	100	100
Platform Fees (B)	10	10	10
Method of GST Calculation	(B * 18%)	(B * 28%)	(A * 28%) [A is inclusive of tax]
GST (C)	1.8	2.8	21.87
Prize Pool (D = A - B - C)	88.2	87.2	68.13
% Change in Prize Pool	-	-1.14%	-30%
% Change in GST Paid	-	55.5%	1115%

As can be seen above, the turnover tax model increases the tax impact by a massive 1115%, which is large enough to discourage users to play online games and thus render the gaming industry financially unviable while also reducing the overall tax revenue of the government. The prize money also

reduces by ~ 30%. On the contrary, the GGR tax system produces a lower tax amount in both the 18% and 28% scenarios, while maintaining the industry's viability and ensuring consistent growth in GST revenue to the exchequer as the industry grows.

# 07

# Way Forward



Favourable regulatory support and a growth-friendly tax framework for the online gaming sector are the need of the hour.

Indian online gaming industry requires government support to achieve its full potential. The Centre as well as State governments can help the industry become a world leader by introducing certain changes considering the following parameters:

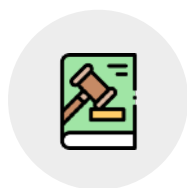


01

### Taxation | A growth-friendly tax framework

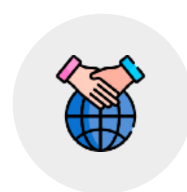
As highlighted in the report, over-taxation would gradually lead to attrition of legitimate players to illegal offshore gambling apps, reduce revenues for legitimate gaming companies, and in turn result in a loss to the exchequer by way of reduced direct and indirect taxes. On the other hand, a tax regime that is enabling the industry would be a win-win for all stakeholders. Empirical evidence from countries where the sector has developed points that the GGR tax model enables the industry to remain viable and flourish. With the imminent changes to the TDS regime, it can be readily argued that all monetary transactions in an online real money game will be taxable. Therefore, there is no justification for levying GST on the total face value apart from the fact that such a move will be a significant departure from the established legal protection accorded to games of skill and will peg India as an outlier in the global arena, where most developed economies are taxing online gaming on GGR.





**02**  
**Regulation** | Favourable regulatory support

The draft amendments to the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in relation to online gaming provide much-needed policy clarity for online gaming in India. However, it seems unclear whether Online Gaming Intermediaries need to comply with the prevailing betting and gambling laws of individual states in addition to the proposed amendments. Some more clarity on this would be valuable to both the users as well as the industry to give them a sense of certainty.



**03**  
**Assistance** | Cooperation and coordination with global counterparts

As it has done with film co-production, the government may assist in the organisation of collaborations and exchange programmes with counterparts from major nations of the globe.



**04**  
**Special Status** | Confer Special Economic Zone status

Create areas with infrastructure specifically for online gamers to practise and compete in as well as for game creators to produce intellectual property.



**05**  
**Inclusion** | Grassroot level inclusion and recognition

The inclusion of online gaming in academic curricula will increase awareness of opportunities in the gaming industry for both players and developers.



Governments around the world have created policies to support and promote their online gaming industries, thereby enabling their youth and economy. The future of online gaming beholds a lot, and a stronger and classified gaming ecosystem is the need of the hour.



# References

1. <https://www.taxmann.com/post/blog/6426/winnings-from-online-games-might-have-to-pay-higher-tax/#:~:text=Under%20the%20Income%20Tax%20Act,are%20applicable%20in%20case%20of>
2. [https://www.business-standard.com/article/current-affairs/up-emerges-top-gaming-destination-tier-2-3-towns-outpacing-metros-report-123011500424\\_1.html#:~:text=22%3A55%20IST-,Uttar%20Pradesh%20has%20emerged%20as%20the%20top%20destination%20for%20mobile,Premier%20League%20released%20on%20Sunday](https://www.business-standard.com/article/current-affairs/up-emerges-top-gaming-destination-tier-2-3-towns-outpacing-metros-report-123011500424_1.html#:~:text=22%3A55%20IST-,Uttar%20Pradesh%20has%20emerged%20as%20the%20top%20destination%20for%20mobile,Premier%20League%20released%20on%20Sunday)
3. <https://www.fincash.com/l/tax/tax-on-online-gaming-in-india>
4. <https://taxguru.in/income-tax/taxation-online-gaming-taxation-perspective.html#:~:text=This%20income%20is%20taxable%20at,Surcharge%20for%20Health%20%26%20Education%20Cess>
5. <https://www2.deloitte.com/ua/en/pages/pressroom/deloitte-press/2021/esports-official-recognition.html>
6. <https://www.aigf.in/game/predictable-progressive-taxes-for-online-gaming-needed-experts-suggest/>
7. <https://www.taxback.com/blog/the-ultimate-guide-to-gambling-tax-rates-around-the-world/>
8. <https://www.news18.com/news/tech/they-dont-pay-taxes-all-india-gaming-federation-wants-government-to-tackle-foreign-online-gaming-companies-6655801.html>
9. <https://www.fortuneindia.com/macro/5000-cr-revenue-loss-if-online-gaming-gets-turnover-tax-says-study/110750>
10. <https://www.lakshmisri.com/insights/articles/taxes-on-online-gaming-resolving-the-tds-anagram/>
11. <https://www.deccanherald.com/brandspot/pr-spot/income-tax-on-online-gambling-winnings-revealed-1149725.html>
12. <https://www.millenniumpost.in/big-stories/predictable-and-progressive-taxes-key-to-make-india-global-gaming-hub-experts-claim-503665>
13. <https://www.medianama.com/2022/05/223-online-gaming-industry-tax-demands-views/>
14. <https://www.cnbctv18.com/personal-finance/cbdt-likely-to-issue-clarification-on-taxation-of-gains-made-via-online-gaming-14820601.htm>
15. [https://www.business-standard.com/article/economy-policy/predictable-progressive-taxes-for-online-gaming-needed-experts-suggest-122122800459\\_1.html](https://www.business-standard.com/article/economy-policy/predictable-progressive-taxes-for-online-gaming-needed-experts-suggest-122122800459_1.html)
16. <https://www.adityabirlacapital.com/abc-of-money/tax-on-winnings-of-game-shows-and-lottery#:~:text=Section%20194%20B%20requires%20that,of%2030%25%20is%20now%20applicable>
17. <https://cleartax.in/s/taxes-on-lottery-puzzles-game-shows>
18. <https://g2g.news/gaming/stricter-tds-norms-for-online-gaming-income-may-be-announced-in-union-budget-2023-24/>
19. <https://www.livemint.com/money/personal-finance/income-tax-rules-on-winnings-from-online-gaming-11599610787190.html>
20. <https://news.cleartax.in/gom-seeks-legal-opinion-on-differently-taxing-online-games-of-skill/8440/>
21. <https://news.cleartax.in/industry-says-28-gst-on-online-gaming-could-fuel-the-black-market-and-deter-fdi/8095/>



22. <https://news.clear-tax.in/industry-says-28-gst-on-online-gaming-could-fuel-the-black-market-and-deter-fdi/8095/>
23. <https://news.clear-tax.in/online-gaming-industry-requests-government-to-retain-gst-18/8028/>
24. <https://brandequity.economictimes.indiatimes.com/news/research/countries-with-thriving-online-gaming-industry-levy-gst-on-gross-gaming-revenue-report/96281671>
25. <https://timesofindia.indiatimes.com/business/india-business/explained-why-online-gaming-is-set-to-get-costly/articleshow/91881721.cms>
26. Online gaming: Lens on winners to pay taxes, update ITRs (indianexpress.com)
27. <https://www.expatica.com/es/finance/taxes/taxes-in-spain-471614/>
28. <https://www.cnbctv18.com/economy/gst-on-online-gaming-how-online-gaming-is-taxed-in-other-countries-13974022.htm>
29. <https://news.bloombergtax.com/tax-insights-and-commentary/bet-on-more-tax-questions-in-the-recession-proof-gaming-industry>
30. <https://www.cnbctv18.com/economy/gst-on-online-gaming-how-online-gaming-is-taxed-in-other-countries-13974022.htm>
31. <https://www.cnbctv18.com/economy/gst-on-online-gaming-how-online-gaming-is-taxed-in-other-countries-13974022.htm>
32. India Appoints Nodal Ministries to Regulate Online Gaming, E-sports Industries - India Briefing News India Legitimizes Online Gaming, E-sports Industries by Appointing Nodal Ministries (india-briefing.com)
33. India's Nascent Gaming Industry On The Rise | IBEF
34. Gaming Industry in India - Invest in Gaming Companies (investindia.gov.in)
35. 2020: The up and coming year for Indian gaming industry! - Hindustan Times
36. Online Gaming or Digital Gaming in India - S.S Rana & Co (ssrana.in)
37. How online gaming is caught between state legislations and public interest litigations | The Financial Express
38. Here's how online gaming and E-sports are taxed in India | The Financial Express
39. Draft amendments to the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in relation to online gaming | Ministry of Electronics and Information Technology, Government of India (meity.gov.in)
40. Gambling Laws in India 2023: Is online gambling legal in India? (sevenjackpots.com)
41. <https://www.cnbctv18.com/economy/gst-on-online-gaming-how-online-gaming-is-taxed-in-other-countries-13974022.htm>
42. <https://www.cnbctv18.com/economy/gst-on-online-gaming-how-online-gaming-is-taxed-in-other-countries-13974022.htm>
43. <https://thelawreviews.co.uk/title/the-gambling-law-review/france>
44. <https://www.xace.io/payments/germany-online-gambling-statistics-2022>
45. <https://empire-global.medium.com/online-gaming-in-sweden-explained-7a90791e0172>
46. <https://iclg.com/practice-areas/gambling-laws-and-regulations/norway>



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