

Tax Flash News

22 August 2023

Amendment to CGST Act and IGST Act for levy of GST on online money gaming

GST Council in its 50th meeting had recommended a uniform GST rate of 28 per cent on the full-face value of bets placed /chips purchased in casinos, horse racing and online gaming. In the 51st meeting, GST Council recommended certain amendments to Central Goods and Services Tax Act, 2017 (CGST Act), Schedule III to the CGST Act and Integrated Goods and Services Tax Act, 2017 (IGST Act) to provide clarity on such taxation.

In pursuance of the recommendations of the GST Council, bills to amend the CGST Act and IGST Act were presented to the Parliament. The Central Goods and Services Tax (Amendment) Act, 2023¹ and the Integrated Goods and Services Tax (Amendment) Act, 2023² received assent of the President on 18 August 2023.

Gist of major amendments

1. Definitions

- a. Definitions of online gaming, online money gaming, specified actionable claim and virtual digital asset are inserted in the CGST Act.
- b. "Online money gaming" includes events even if the outcome of the performance is based on skill.
- c. A proviso has been added to the definition of "supplier" to include supplier of specified actionable claims within its ambit. An electronic or digital platform operator shall also be deemed to be supplier of such specified

actionable claims even if such actionable claims are not supplied by such operator or consideration is not routed through such operator.

2. Compulsory registration

Every person supplying online money gaming from a place outside India to a person in India will now have to compulsorily obtain registration under GST.

3. Schedule III – Activities which are neither supply of goods nor supply of services

- a. "Actionable claims, other than lottery, betting and gambling" were treated neither as a supply of goods nor a supply of services.
- b. The words "lottery, betting and gambling" are now replaced by words "specified actionable claim".
- c. "Specified actionable claim" is separately defined to mean the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery, or online money gaming.

4. Scope of levy and collection under the IGST Act

- a. Section 5(1) of the IGST Act is the charging section for the levy of integrated tax on all inter-State supplies of goods or services or both.

¹ The Gazette of India, CG-DL-E-18082023-248183 dated 18 August 2023

² The Gazette of India, CG-DL-E-18082023-248184 dated 18 August 2023

- b. The levy on the import of goods, however, is governed by the proviso to this sub-section which states that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975.
- c. Goods duly notified will now be excluded from the ambit of this proviso.

5. Place of supply of goods

- a. The place of supply of goods where the supply involves movement of goods and where it does not involve movement of goods is prescribed under clause (a) and (c) respectively of section 10(1) of the IGST Act.
- b. A new clause (ca) is inserted to prescribe that, notwithstanding clause (a) and (c), in case of supply of goods to an unregistered person, the place of supply will be :
 - the location as per the address of the said person recorded in the invoice; and
 - the location of the supplier where the address of the said person is not recorded in the invoice

6. Special provisions³ for specified actionable claims supplied by a person located outside India

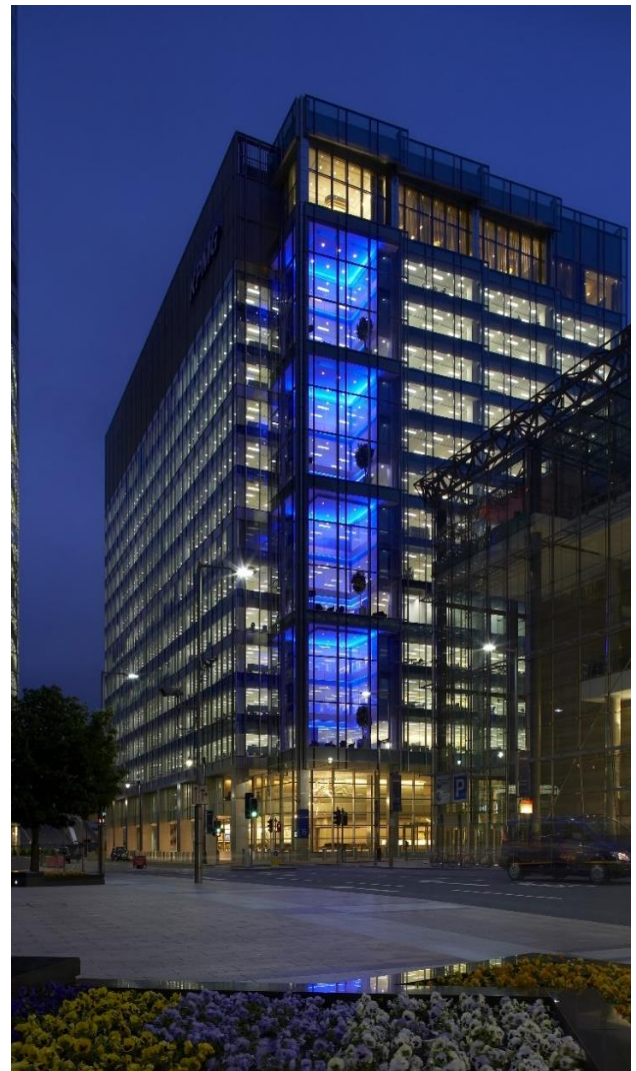
- Supplier of online money gaming from outside the taxable territory will be liable to pay integrated tax on such supply made to a person in the taxable territory.
- A single registration under the Simplified Registration Scheme is to be obtained by such supplier.
- In case of non-compliance, information/data in any computer resource used for supply by such a person will be blocked for access by the public.

Our comments

The CGST and IGST Amendment Act, 2023 will come into force on such date notified by the Central Government.

The provisions expand the scope of online money gaming to include even the games where skills of the players are important. Further, it also covers the digital or electronic platform operator into its fold even where such operator does not provide such services on its own or does not handle the money/consideration.

The GST Council in its 50th meeting had recommended amending GST law to make the ISD mechanism mandatory prospectively for distribution of input tax credit of such common input services procured from third parties.



³ Section 14A of the IGST Act

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