

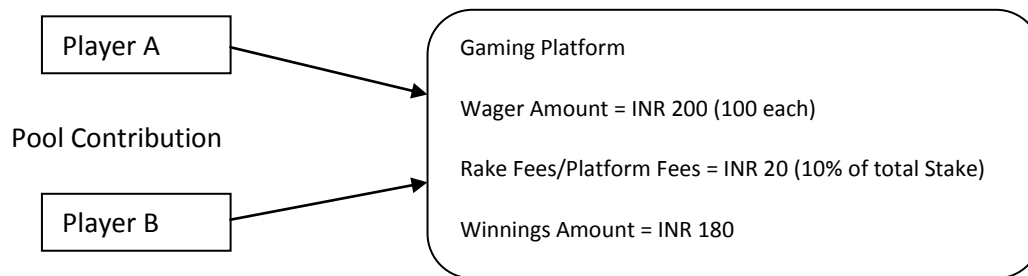
Online Gaming Industry and GST Implications

Brief Introduction about the Online Gaming Industry

Sports and gaming have been a traditional source of rejoice, recreation and engagement for players and spectators alike. Within it, online gaming provides avenues for an on-demand, real-time game play without the limitations of a physical venue and time zones. COVID-19 and the resultant social distancing norms have further forced the masses to explore alternative means of recreation and social engagement and in turn, aided the growth of online gaming. The online gaming industry offers various playing formats which can be majorly classified into **card-based games** such as Rummy and Poker, **fantasy sports**, **competitive skill-based games** commonly known as e-sports and **casual games** such as Chess, Ludo, Candy Crush, Temple Run, etc. The key market players in India enabling the online gaming experience comprise of Dream11, MPL, PayTM First Games, Ludo King, Nodwin, Nazara, etc.

The Indian online gaming industry is expected to reach US\$2 billion by 2023 in terms of rake fees earned and currently is the **fourth largest** online gaming market globally.

Business Model (Fantasy Sports)



Steps	Particulars	Description
1	Initial Deposit	The players deposit money through authorized payment gateways and the gaming platform has no rights over such deposits
2	Joining Contest	<ul style="list-style-type: none"> Out of the money deposited, the players joins the contest and the amount pooled is called wager amount (stake value) The gaming platform charges platform Fees/rake fees and the same is considered as the consideration for providing services. Remaining stake is distributed as winnings to the winner
3	Declaration of winners and transfer of winnings	Post the completion of the match, winners are announced and the winning amount is transferred to the winners in the gaming wallet and the same is available for withdrawal by the winner

Current GST Implications in India and Globally

As per the existing provisions under GST law, the activity of the online gaming platform to enable gameplays against a rake fee gets covered under the ambit of 'supply' under Goods and Services Tax (GST) law. Therefore, GST is applicable on the revenue accruing to industry players. Presently, as per High court judgments, the platform fees charged by the company is covered under **entry 998439** and therefore is subject to **18% GST**. Globally, there are three options in practice to charge GST which are as follows:

1. **GST on rake fee value:** This suggests a levy of GST only on the rake fee i.e. consideration received by the gaming platform. It is presently being followed across the online gaming industry in **India** and is in alignment with existing GST mechanism to levy tax on consideration only.
2. **Deemed credit model:** This has only two data metrics to be considered - wager and pay-outs. The deemed credit model is followed by the likes of **Australia, Singapore and South Africa** which provides for levy of tax at standard rate on the entire wager amount and simultaneously allow deemed credit of the tax paid on amount that is distributed to the players (i.e. winnings/payouts). Under this model, GST is initially levied on wager amount i.e. INR 200 and later on deemed credit on winnings amount of INR 180 is allowed which gives the net effect of collection of GST merely on the Rake fees of INR 20.
3. **GST on entire stake value but at a nominal rate of say 2.8%:** This is simpler to calculate as it has only one data metric to be tracked by business i.e. stake value. However, the mechanism would be discriminatory for industry players having low rake since GST outflow would be high whereas margins are lower.

Summary of Existing global practice is as follows:

Country	Valuation Model	Tax Rate
Isle of Man	Rake Fees Based	20%
France	Stake Value	1.8%
Australia	Deemed Credit	20%
Singapore	Deemed Credit	7%
Germany	Rake Fees Based	19%
UK	Rake Fees Based	20%

Recent Recommendations of GoM

The Group of Ministers (GoM) has agreed to recommend hiking the GST rate on casino, racecourse and online gaming services to **28 per cent**. It is ambiguous whether this tax rate would be applicable on rake fees or wager amount. However, the recommendation is subject to the final approval of the GST council, which will discuss it and will take the final call.

Author's Opinion

The key to survival of this industry is the value on which the GST will be charged. Any attempt to levy GST on the entire wager amount potentially leads to economic unviability of the business model and could force the closure of the businesses. It is noteworthy that globally no country has levied such high tax rate and most importantly, almost all of the countries charge GST on rake fees.

The author believes that the valuation mechanism in levying GST on the entire wager value vis-à-vis the rake fee element should be clearly outlined by the Government to avoid any ambiguities and potential litigations leading to tax demands. There is a lot of potential in the online gaming industry and to fully realize it, a levy of standard GST rates is recommended. Ideally the government should draw a valuation mechanism supporting the current practice of levying GST @18% on the rake fee i.e. consideration received by the gaming platform. This will bring this industry at par with other segments of the economy, giving it the room to grow exponentially and generate tax revenue at the same pace. The GoM

recommendation to levy 28% GST on wager amount might turn out against the government's intentions to setup a startup network in India and is clearly not supporting the slogan of honorable Prime Minister '**Startup India, stand up India**' as this decision can lead to closure of over 400 gaming start-ups that are accelerating the growth of the sector.

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