

Executive Summary of TIOL Report

A Conducive Policy Framework for GST on Online Gaming

- a. Hon'ble Prime Minister of India, Shri Narendra Modi, in his speech, shared his vision for India to be a global gaming hub expected to be worth INR 3 lakh crore (400 billion USD approximately) in the next two years. India's online gaming industry is growing and there is a direct correlation between the growth of the industry and Digital India Initiatives. The online gaming industry today is an embodiment of Make-in-India and Digital India and there is a need for a comprehensive, rational, and progressive GST taxation framework to make India a global leader in gaming.
- b. With close to 20,000 games across the spectrum with several game formats, and business & revenue models (entry fee, subscription model, in-app purchases, etc), the government has been constantly facing the issue of how to determine what constitutes online gaming and gambling and betting. This lack of clear distinction has resulted in a multitude of litigations and tax uncertainty for both the government as well as the industry.
- c. The report highlights the historical jurisprudence on gaming, betting, and gambling, including the current regulatory changes introduced by the central government such as issuing draft Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules ("Draft Rules") to provide a responsible and accountable regulatory framework for online gaming intermediaries ("OGI") and proposal to recognize online gaming as a new industry, separate from lottery, gambling or betting with new provisions under the Income Tax Act.
- d. The report further highlights the indirect tax jurisprudence in pre-GST as well as post-GST regime that has always maintained a distinction between betting and gambling and online gaming while determining the rate of tax and value of supply. However, the government has been constantly facing the issue of how to determine what constitutes online gaming and gambling and betting.
- e. To prevent revenue leakage due to misclassification and a multitude of litigations, to promote revenue growth, and to scale up venture capital and private equity investments, tax certainty is a key factor. These issues faced by the tax authorities are addressed by the regulatory framework by MeitY and therefore, provisions under GST laws need to be in *pari-materia* with the provisions in IT Act/rules and Income Tax Act.
- f. The report also analyzes the proposal of the government to levy GST on the entire contest entry amount (CEA). The findings of the Report suggest that such a taxation regime will overburden the legitimate online gaming industry and make the business

unsustainable. As a result, there will be a significant decline in the revenue potential that could have been generated from the industry.

g. Taking the above into consideration, the Report recommends that:

- There is a need for a progressive, stable and comprehensive GST tax policy for online gaming that is in consonance with the principles of taxation and international best practices.
- Basis for calculation of GST should be gross gaming revenue.
- Further, in order to curb offshore betting and gambling activity and revenue leakage, a task force with representatives from the RBI, Central Board of Indirect Taxes and Customs, Financial Intelligence Unit and the Department of Revenue Intelligence may be constituted.