

# GST and Online Gaming in India

The Impact on Users 2023



Study and Legal Primer  
by EWA Centre



## Acknowledgement

We would like to express our sincere gratitude to those who have contributed to the successful completion of the EPWA and Youth Ki Awaaz survey.

We would also like to thank our survey partner Youth Ki Awaaz for aiding in surveying to gather data on the impact of increased GST rate on players.

We thank Sandeep Chillana for his expert advice on the subject and for giving us thoughtful feedback, discussions, and additional background information.

This paper will serve as a valuable resource to online gamers and interested stakeholders in the taxation of online gaming in India.

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Design : Goodness of Design

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## Research Methodology

This paper collected, collated and reconciled the response of skill based online gaminer users and their approach towards a proposed increased Goods and Services Tax Rate.

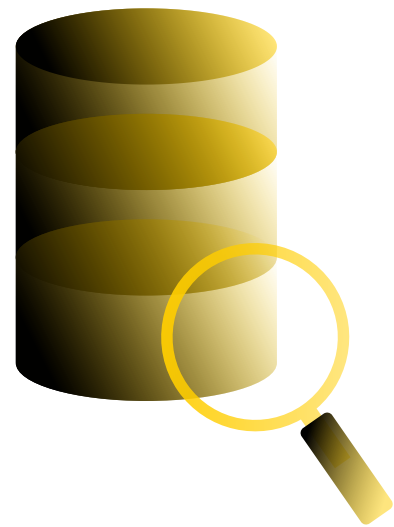
The study involved desk review and empirical research using quantitative data analysis.

EPWA, along with Youth ki Awaz, a media platform for youth, has undertaken a survey. Keeping in mind the linguistic mix of the country, the research has been conducted in both major languages, i.e., English and Hindi. The survey was conducted among online players who play games across categories such as card games, fantasy sports, AAA, chess, board games, quizzes, puzzles, online fantasy games and other skill based online games.

The proposed class size for the survey was 1000 players.

However, EPWA and YKA received an overwhelming result, and about 10,000 players participated in the study.

The research has considered regulatory and legal updates as of July 5, 2023.



## Abstract & Highlights

Online games have evolved tremendously over the past decade, with today's gamers choosing to play on virtual platforms and in the convenience of their homes.

The category of online gamers varies from card games, AAA games, e-sports, fantasy games, casual online games like candy crush, fruit chop, snooker and online chess.

The review of literature and law indicates essential insights into the attitudes and perceptions of online gamers. It highlights the need to consider legal and sociological development while formulating rules and policies that are fair, transparent, and effective in promoting compliance among taxpayers.

This paper examines the implication of indirect taxation of online gaming in India and highlights the issue they face.

EPWA and YKA have surveyed to analyse the effect of increased taxation on online gamers.

Based on the survey, it is concluded that over 60% of online gamers will refrain from playing online gaming due to increased GST rates.

## Introduction 01

The global gaming market was valued at USD 198.4 Billion in 2020 and is expected to reach USD 314.4 Billion by 2026, growing at a CAGR of 9.64% between 2021 and 2026. India is expected to become one of the world's leading markets in the gaming industry, growing steadily for the last five years. It is expected to reach three times in value and reach USD 3.9 billion by 2025.

The Indian online gaming industry is growing annually at a rate of 30% and is one of the fastest-growing segments within the media and entertainment sector. As of May 2022, the country accounted for 19.2% of worldwide game downloads.

During the Union Budget 2022-23, the Prime Minister speaking on the announcement of the Animation, Visual Effects, Gaming and Comics (“**AVGC**”) Promotion Task, highlighted that India is one of the top 5 markets in the world for mobile gaming. The gaming industry is at the core of the AVGC sector and drives growth across its entire ecosystem.

The gaming industry comprises 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. 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.



Ministry of Information and Broadcasting, “AVGC Promotion Task Force, Realising AVGC-XR Sector Potential in India”, <https://mib.gov.in/sites/default/files/AVGC-XR%20Promotion%20Taskforce%20Report%20-%202022.pdf>

Economic Times, “Big Bang Growth of India’s Gaming Industry”, <https://economictimes.indiatimes.com/news/international/business/big-bang-growth-of-indias-gaming-industry/articleshow/92053190.cms>

Digital Gaming India Expo, “Digital Gaming India Expo Future Scenario of the Gaming Industry in India: A USD 5 Billion Opportunity”, <https://www.digitalgamingindiaexpo.com/about-us.aspx>

See at 1

Primus Partners, “Online Gaming in India: Taxation Quandary”, March 2023, <https://primuspartners.in/docs/documents/ltOAZaeMVPLOkrH54fDe.pdf>

## Current regulatory system 02

The Central Government, on December 23, 2022, issued a notification bearing F. No. 1/21/13/2021-Cab, which amended the Government of India (Allocation of Business) (Three Hundred and Seventeenth Amendment) Rule, 2022 (“**GOI Rules**”) to include online gaming under the Ministry of Electronics and Information Technology (“**MeiTy**”) and E-sports as subject under the Ministry of Youth Affairs and Sports (“**MYAS**”).

After that, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 (“**IT Intermediary Rules**”) were incorporated in April 2023.

The IT Intermediary Rules have essentially (a) defined online gaming, (b) identified the provisions to qualify as an Online Gaming Intermediary (“**OGI**”); and (c) and proposed the constitution of Self Regulatory Body (“**SRBs**”) for ensuring that the online gaming intermediaries are organising permissible online real money games, i.e. games which are not like gambling, betting and wagering.

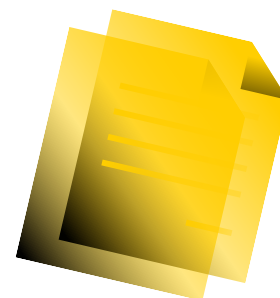
The IT Rules lay down the provisions to distinguish online gaming from gambling, betting and wagering and has offered a mechanism to self regulate the online gaming industry.

MeiTy has also proposed introducing Digital India Act, 2023, with the view that a new digital law should be evolvable and consistent with changing market trends, technological disruption, development in international jurisprudence and global standards for qualitative service/products delivery framework. The Digital India Act explicitly identifies that various types of intermediaries, including gaming intermediaries, shall be governed under the same.

Additionally, The Ministry of Finance on February 1, 2023, while passing the Finance Act, 2023 has proposed to tax income from online gaming. The Income Tax Act, 1961 (post-Finance Act, 2023) ( “**IT Act**”) has introduced specific provisions with respect to the taxation of online gaming. Earlier winnings from online gaming were taxed similarly to gambling and betting activities. Section 115 BBJ and Section 194 BA has been introduced to the IT Act for taxability of ‘net winning’ from online gaming.

## Legislative Background 03

Courts have time and again tried to settle the conundrum by establishing jurisprudence over the subject matter:



The High Court of Karnataka in ***Gameskraft Technologies Private Limited v. Directorate General of Goods Services Tax Intelligence, Writ Petition No. 19570 of 2022***, the Hon'ble Court has held that online rummy differs from betting, gambling, lottery, and betting. Moreover, the prize pool money is an actionable claim, and GST shall be charged only on contest entry fees at 18%.

The High Court of Madras in ***Junglee Games India Pvt. Ltd. v. State of Tamil Nadu and Ors., 2021 (8) TMI 1377***, Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 (Act 1 of 2021), which amends the Tamil Nadu Gaming Act, 1930, was declared to be ultra vires the Constitution in its entirety and struck down as a consequence. The court observed that the amendment act seeks to prohibit all kinds of games being played on the online platform irrespective of whether it requires skill to play or not. The Apex Court observed that the competition in online gaming is skill-based and amounts to business activity, and it should be safeguarded under Article 19 (1) (g) of the Constitution of India.

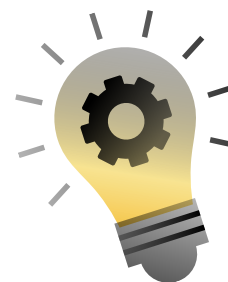
The Hon'ble Supreme Court in ***Skill Lotto Solutions Pvt. Ltd. Vs Respondent: Union of India (UOI) and Ors., 2020 (43) G.S.T.L. 289 (S.C.)***, held that in a lottery, no element of skill is involved, the money that is won is solely based on luck, and thus, the entire lottery ticket is chargeable to tax.

On an analysis of the judicial precedent, the Hon'ble Courts of the country have always considered the fact to distinguish the 'game of skill' from the 'game of chance' and it is necessary to consider a predominance of skill factor in online games.

## Understanding GST and Its Implications for Online Gaming in India 04

A key aspect of the GST structure is the categorisation/classification of goods and services into different tax slabs based on which the applicable tax rate is levied. Broadly, it consists of 4 tax slabs divided into schedules.





### The four schedules in which most goods and services are classified are:

- i. Nil (treated as 'Exempt' category): includes predominantly daily household goods such as milk and vegetables.
- ii. **5%:** includes essential commodities such as food, basic clothing, and healthcare services.
- iii. **12% and 18% (applicable to common goods and services):** includes most goods and services consumed by most of the population. It covers processed food, electronic goods, and restaurant services.
- iv. **28% (applicable to luxury and sin goods and services):** The highest slab of 28% is for luxury items and sin goods deemed harmful or demerit goods. It includes luxury cars, tobacco products, aerated drinks, betting and gambling.

Ideologically, one of the primary reasons for imposing the highest GST rate on luxury and sin items is to promote social welfare. By subjecting these goods and services to a higher tax rate, the government aims to discourage consumption among the affluent. Sin items like tobacco products, aerated drinks, gambling, and betting, have adverse health and societal consequences. Imposing a higher GST rate on these items is a deterrent to their consumption, encouraging individuals to make healthier choices. This approach aligns with the government's efforts to promote public health and reduce the social costs associated with harmful habits.

In online gaming, online gamers deposit money with the online gaming company to participate in the game. Such deposits can be categorised as follows:

- **Gross Gaming Revenue ("GGR"):** This portion of the money is charged by the company as a platform fee as the consideration for facilitating the gameplay by the gaming platform.
- **Prize Pool:** The remaining amount is distributed to the winners as a prize pool.

As per Section 15(1) of the CGST, the value of the supply of goods and services for levy of GST is the price paid or payable for the said supply (i.e., transaction value) where the supplier and recipient are unrelated and the price is the sole consideration. Schedule III of the CGST Act provides that “actionable claims, other than lottery, betting and gambling”, shall be treated neither as a Supply of Goods nor a Supply of Services.

The prize pool money held by the Platform as a custodian is an actionable claim, and the Platform has no right over it.

The current position taken in the case of online gaming is that the money received by the online skill-based gaming operators towards the supply of service is the GGR, and the prize pool is merely a 'transaction in the money' over which the online skill-based gaming operator has no right or interest either in present or the future. Such prize pool amount is not considered as part of the consideration of the taxable supply for GST.

The GST Rate of Supply notified under Notification 11/2017-Central Tax dated 28.06.2017, categorises Online Gaming under HSN Code 9984 and HSN Code 9997, which is chargeable at the rate of 18% GST, whereas, Gambling activities are categorised under HSN Code 9996 which is chargeable at the rate of 28% GST.

## Recent Changes Proposed in GST for Online Gaming

### Analysis of updated GST rates for online gaming services

Since the inception of GST, betting and gambling were subject to a higher tax rate of 28%, and online gaming was subject to a tax rate of 18%. However, the 47th Meeting of the GST Council, held on 28th and 29th June 2022, has proposed a tax rate of 28% on online gaming; on a reading of the minutes of the meeting, it appears that online gaming has been brought under the umbrella of lottery, betting, gambling and casinos. While the other legislative schemes have distinctly defined online gaming, there is a lack of definition of online gaming under GST.

On perusal of the report of the Group of Ministers (“GoM”) on Casinos, Race Courses and Online Gaming submitted to the GST Council, it seems that the Policy Makers suffer from heavy confirmation bias and have a prejudicial mindset against the upcoming technological advancement. “The report of the GoM has principally taken into consideration three factors for determining the GST rate for online gaming, racing and casino, which are as follows:



- First was the rate, what rate should be applied to these three different sectors whether that should be 18% or 28%.
- The second issue was whether GST should be charged on the platform's service fee or the participation fee's entire value.
- Third issue was regarding Casino, which was a very different game and a form of betting with multiple factors. That in Casino, the different activities such as entry fees, fees for the food that one ate inside, the fees for the chips that one bought and even the transportation of the players were different aspects, and the GoM had to deliberate as to how to tax these different activities within the overall casino activity. Other online gaming, horse racing and casino were three very different activities. Though all had a sense of betting and gambling, the way they were run was very different. That GoM needed uniformity in the rates and valuation while understanding each game."

**The GoM has proposed that the valuation of online gaming shall be in the following manner:**

"In the case of online gaming, the activities are taxed at 28% on the full value of the consideration, by whatever name such consideration might be called including contest entry fee paid by the player for participation in such games without making a distinction such as games of skill or chance."

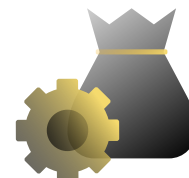
Thus, the GoM is not only proposing a GST rate on online gaming, but the policymakers have also proposed increasing the tax burden by levying a tax on the contest entry fee. Currently, GST is only levied on the Gross Gaming Revenue ("**GGR**"), i.e., the portion of the fee charged by the gaming company, rather than levying tax on the entire pool of money.

The GST Council in the 47th Meeting has relied upon two judgments, i.e., ***Skill Lotto Solutions (supra)*** and ***Sunrise Associates v. Govt. of NCT of Delhi and Ors.***, wherein the Hon'ble Supreme Court has held that the ticket money for the lottery is an actionable claim and is chargeable to tax.

The GST Council has referred to the abovementioned judgments, which have reduced online gaming to a mere game of chance by completely overlooking that winning in online gaming is not just a matter of chance. Rather, it requires skills to play such games. It is essential to understand that if a player is playing chess offline by depositing an entry fee to play, they shall not be brought under the umbrella of such a stringent taxing regime; on the contrary, if such a player is playing the same gaming online, the game of chess will be considered at par with betting, gambling, lottery. It shall be subject to GST implications like betting, gambling, and lottery.

## Online gaming is mentally strenuous, and chance or luck does not win the prize money.

High Court of Karnataka in **Gameskraft Technologies Private Limited (supra)**, the Hon'ble Court has categorically specified that online gaming should not be categorised as a game of chance and has observed that the concept of *res extra commercium* does not apply to 'game of skill'. The court has held that online games such as Rummy are mainly/preponderantly/substantially based on skill, not on chance, and is not equivalent to 'gambling or betting'.



The Hon'ble Court has also categorically ruled that the words "gambling", "game of chance", and "game of skill" have developed meanings in judicial parlance. Therefore, applying the principle of *nomen-juris*, the words should be construed in their legal sense instead of general parlance. While "gambling" or "game of chance" have been held to involve chance as a predominant element. On the other hand, a "game of skill" has an exercise of skill which can control the chance. The element of chance cannot be overruled entirely in any case, but what is to be seen is the predominant element. In a rummy game, a certain amount of skill is required because the fall of the cards has to be memorised, and building up rummy requires considerable skill in holding and discarding cards.

### The Hon'ble Court has concluded as under:

- There is a distinct difference between games of skill and chance. In **All India Gaming Federation and Ors. vs. State of Karnataka and Ors.**, whether played online or physically, with or without stakes, would be games of skill, and a predominance test would apply.
- As per Section 7(2) of the CGST Act, 2017, read with Schedule III of the IT Act, 'Games of skill' are not a "supply".
- Gambling refers to games of chance played with stakes, while games of skill, played with or without stakes, are not considered gambling.
- A game of chance and skill is gambling if it is substantially and preponderantly a game of chance, but not if it is substantially and preponderantly a game of skill.
- There is no distinction between offline/physical rummy and online/electronic/digital rummy; both are considered games of skill.



- Other online/electronic/digital games that are substantially and preponderantly games of skill are also not considered gambling.
- The terms “betting” and “gambling” mentioned in Entry 6 of Schedule III to the CGST Act do not apply to online games of skill.
- The subject of online gaming platforms is not taxable as “betting” or “gambling” under the CGST Act and Rules.

The imposition of a tax rate of 28% on online gaming is also violative of Article 14 of the Constitution of India. To be valid under Article 14 of the Constitution of India, a legislative classification must fulfil two conditions, i.e., intelligible differentia and reasonable nexus. The categorisation of online gaming and gambling is illogical since they are not inherently the same. The items that are grouped must have a commonality between them, and such commonality must have a rational relation to the object sought to be achieved by the statute in question. The GST Council has proposed to classify online gaming and gambling together as one class, albeit without any commonality. The Policy Makers have merely presumed that game of chance and the game of skill fall under the same umbrella and should be uniformly taxed. Generally, goods have been put under a high tax rate to discourage people from consuming or availing of such activities. excessive taxation of gambling and other activities like smoking and drinking is to discourage the public from such activities. Whereas online gaming, such as online chess, football, cricket or any other fantasy sport, does not have negative societal consequences, these are the modern methods of earning money and shaping the economy.



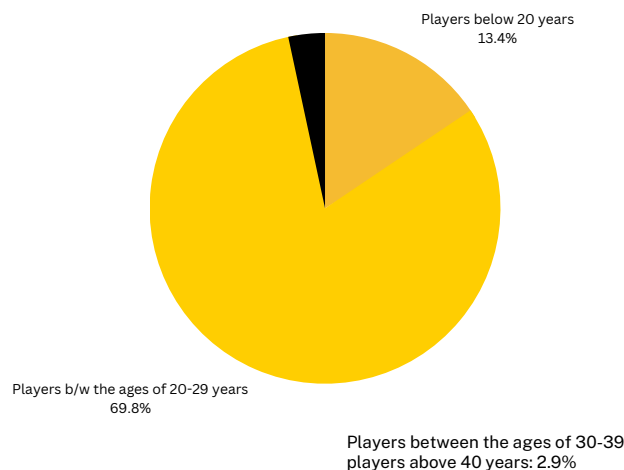
## • Research Findings

Games and sports have been the most effective form of entertainment. Earlier games were classified into indoor and outdoor, requiring physical interaction. The digital wave pivoted through COVID-19 in the last two years has brought in a new category of games, i.e., Online games. With the advent of technology, outdoor games such as cricket and football can be played in the comfort of homes. The entertainment sector has always played a significant role in creating jobs and providing livelihood to a major section of the economy. With the internet becoming a part of every individual's life, the opportunity to dwell in newer forms of employment is increasing rapidly.

Revenue from global online gaming is estimated to grow from US\$38 billion (approx.) in 2019 to US\$122 billion (approx.) by 2025. Also, the revenue generation from the domestic market for online gaming is estimated to grow from US\$906 million in 2019 to over US\$2 billion in 2023. The compound annual growth rate of the gaming industry is of approx 22%. In 2021 India recorded about 390 million online gamers.

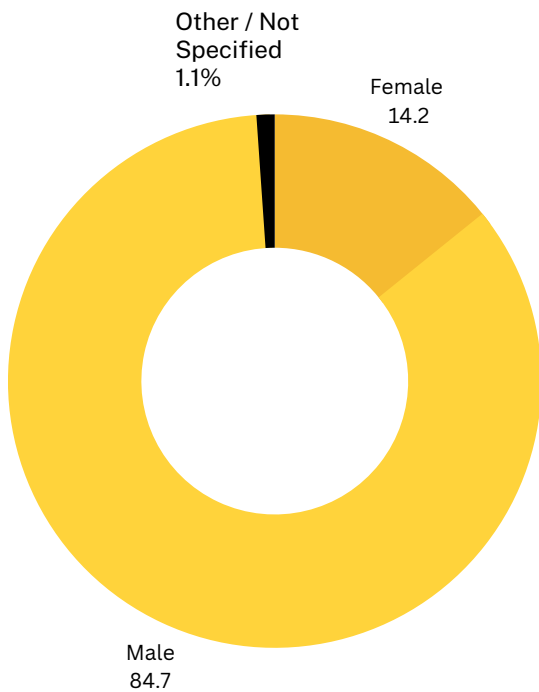
EPWA along with YK organised a survey, the survey size was 11,000 online gamers, and the survey subjects were interviewed in both Hindi and English. The survey results and data points highlight the following:

Players from the age group of 20-29% are more engaged in online games, with a whopping percentage of 69.8%. The players below 20 years of age comprised 13.4% of the survey data, and only 2.9% were from the age group of 30-39 and above 40 years of age.

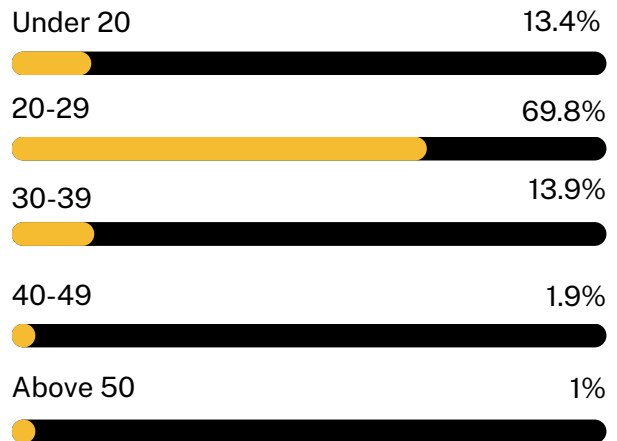


Ernst and Young, "Online gaming in India- the GST conundrum", [https://www.ey.com/en\\_in/media-entertainment/online-gaming-in-india-the-gst-conundrum](https://www.ey.com/en_in/media-entertainment/online-gaming-in-india-the-gst-conundrum)

Anushree Bhattacharyya, Yash Sharma, "Death by over-taxation! Why the online gaming industry's fate hangs by a thread", [https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/NDA%20In%20The%20Media/Quotes/Death-by-over-taxation!-Why-the-online-gaming-industry%E2%80%99s-fate-hangs-by-a-thread-\\_-The-Financial-Express.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/NDA%20In%20The%20Media/Quotes/Death-by-over-taxation!-Why-the-online-gaming-industry%E2%80%99s-fate-hangs-by-a-thread-_-The-Financial-Express.pdf)

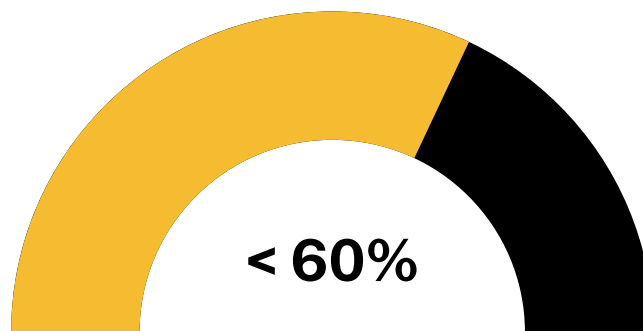


### Age



### Gender

Based on the survey, it appears that the age group of 20-29 is more engaged in playing online games, with a higher dominance of male population than female.



### The implication of Increased GST

More than 60% of the players answered that they would refrain from playing online games due to the increased tax burden.

### Gaming and Gambling

Based on the survey, online players agree that professional games should not be taxed as betting or gambling.

#### IV. Impact on Online Gaming Consumers

The increased tax burden is going to have an adverse effect on the online gaming industry. Based on the survey conducted by EPWA and YKA, it has been concluded that 61 out of 100 online gamers are less likely to continue playing online games due to a significant increase in tax burden.

Changes in pricing and affordability of online gaming services.

Based on the survey conducted on the age group of 18 to 50, it is concluded that more than 60% of players will refrain from playing online games due to increased tax burden.

It is important to note that the increase in the tax rate from 18% to 28% will result in a significant tax burden.

Illustration:

Earlier GST Rate = 18% tax on GGR.

If an online player deposits INR 100 for playing a game, this amount shall have two components. First shall be the GGR, and the other shall be the prize pool; if INR 10 out of INR 100 is the GGR, a player shall pay GST on such a portion only, i.e., 18% of INR 10, which is INR 1.8.



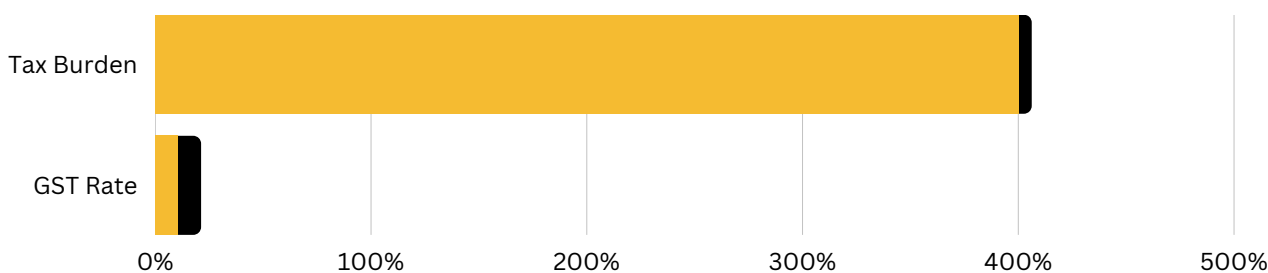


Players from the age group of 20-29% are more engaged in online games, with a whopping percentage of 69.8%. The players below 20 years of age comprised 13.4% of the survey data, and only 2.9% were from the age group of 30-39 and above 40 years of age.

### Proposed Tax Regime

As per the proposed regime, an online gamer shall be liable to pay tax on real money, i.e., 28% of INR 100, which is INR 28.

Thus, we conclude that the actual increase in tax burden is 400%, as against a 10% increase in the GST rate.



### Analysis of consumer behaviour shifts and market dynamics

In an earlier qualitative study by EPWA and VMLS Chennai, 80% of professional online gamers express that taxation issues hinder a professional online gamer.

### V. Effects on Online Gaming Companies

Online Gaming companies currently charge a service fee on which GST is levied; a GST on the total value of the participation fee at 28% burdens companies with a tax rate heavier than the revenue itself. The increased GST rate and GST charge on the entire money online gamer deposits will increase the burden on the online gaming company to collect taxes from the players indirectly, which will be deposited by the gaming company.

## Conclusion & Recommended policy changes.

*Reconsidering GST on the entire money and continue charging GST only on the GGR.*

*The prize pool amount should be treated as an actionable claim and not a good.*

*acknowledge that money won from online gaming is not a mere matter of chance but the gamer's skill.*

*considering judicial and regulatory development in online gaming and accordingly drafting policies within this framework.*

The amendment of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules ("**IT Rules**") defines online gaming as an "online game", which means a game offered on the Internet and accessible by a user through a computer resource if he deposits with the expectation of earning winnings."

The IT Rules have also formed SRBs, recognised by the Government of India, to approve the functioning of online real money games, differentiating such gaming activities from wagering, i.e. betting and gambling and providing recognition to online gaming intermediaries. The IT Rule also provides for the certification of 'permissible online real money game providing it with a legal status.

The GST Council should consider the Information Technology Act and allied rules to remove its constraints.

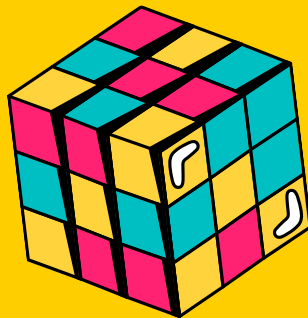
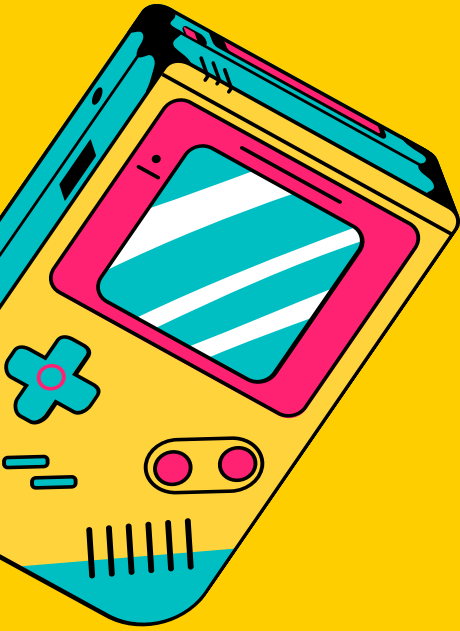
The IT Rules, judgements and regulatory updates all point towards fair play and user safety. A catastrophic effect of incremented GST Rates could also push the operators out of business and force users to play on illegitimate platforms and have no recourse in cases of abuse.

Concludingly, with the participation of online users in national and international tournaments, the development of games by developers and the investments in the platforms perhaps requires a deeper legal and ideological insight.



# Your right to play

↘ [www.epwa.in](http://www.epwa.in)



**epwa**  
Your right to play.

**YKA**  
YOUTH KI AWAAZ

Esports Players Welfare Association (EPWA) is a New Delhi Based Section 8 Company registered in New Delhi. EPWA is a membership-based players' collective organization with a board of advisors and volunteers assisting us in solving problems faced by skill-based online gamers in India. EPWA currently has around 18,000 members across India. ([www.epwa.in](http://www.epwa.in)). EPWA, conducts research through its research arm EWA Centre.

Contact: [info@epwa.in](mailto:info@epwa.in)