



The Changing Tax Landscape of Online Gaming in India

Introduction

The Indian Government's stance on online gaming has consistently been one of deterrence rather than facilitation. This intent was unmistakably signalled through the fiscal architecture itself: winnings from online games were brought under Section 115BBJ of the Income-tax Act, 1961, subjected to a flat thirty per cent tax without deductions, while the GST Council, from October 2023, imposed a steep twenty-eight per cent levy on the full face value of deposits in online gaming platforms. These twin measures placed online gaming in the highest tax brackets available under both direct and indirect tax regimes, underscoring the State's disapproval of the activity. Yet, notwithstanding this punitive tax treatment, online gaming continued to remain a legal enterprise, operating in the regulatory vacuum of an absent governing statute.

It is precisely this gap that 'The Promotion and Regulation of Online Gaming Bill, 2025', recently introduced in Lok Sabha, now seeks to fill. For the first time, the legislative intent goes beyond discouragement through taxation: it proposes to render the very activity of online money gaming illegal, thereby transforming the fiscal, legal, and compliance landscape of the sector. If passed by both Houses of Parliament and enacted into law, this Bill will dramatically alter the tax landscape of the online gaming industry, contracting the revenue base under both Section 115BBJ of the Income-tax Act and the 28% GST levy on deposits, and shifting the taxable focus away from wagers and chance-based gaming towards the narrower domains of internet-based e-sports and digital service models.

Commencement and Applicability

Clause 1(3) of the Bill provides that the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The legislation thus contemplates commencement at a future notified date, and the Government may well implement its provisions in phases, beginning with the constitution of the regulatory authority envisaged under Section 8.

The territorial scope of the Bill is also significant. It extends not only to the whole of India but also to online money gaming services offered from outside India to users located within the country. This extra-territorial application will have important enforcement consequences for tax authorities dealing with offshore gaming operators.

Definitional Nuance: Section 2(f) of the Bill vis-à-vis Explanation to Section 115BBJ of the Income Tax Act, 1961

A careful reading of the statutory texts reveals a subtle but important divergence. The Explanation to Section 115BBJ of the Income-tax Act, 1961 defines an "online game" in the limited sense of any online game "offered on the internet". By contrast, Section 2(f) of the Promotion and Regulation of Online Gaming Bill, 2025 employs a much broader formulation: an online game is one "managed and operated as a software through the internet or any other kind of technology facilitating electronic communication."

This drafting difference expands the scope of regulation beyond what the tax law presently recognises. To illustrate, consider an e-sports tournament played in an enclosed stadium over a local area network (LAN) without public internet connectivity. Such a tournament would fall within the ambit of an "online



game” under the Bill, but it would not meet the narrower “offered on the internet” condition in Section 115BBJ. Similarly, interactive gaming conducted over set-top boxes or DTH backchannels, or mobile-based quiz formats running through USSD/SMS protocols rather than internet connectivity, would be covered by the Bill but not by Section 115BBJ.

The compliance consequence is material. Winnings from such non-internet but electronically communicated games may not fall within the special taxation regime of Section 115BBJ and its related TDS obligation under Section 194BA. Instead, they may be governed by the general provisions of the Act. At the same time, the broader regulatory net of the Bill will apply in full. In short, the Bill seeks to regulate the entire online or electronically mediated gaming ecosystem, while the Income-tax Act selectively targets internet-offered money games for fiscal purposes.

Carving Out of Online Money Games from Section 115BBJ and the Compliance Paradox

An even more far-reaching impact arises from the definition of “online money game” in Section 2(g) of the Bill, which expressly prohibits such games. Since the very activity of offering or participating in an online money game becomes illegal, the scope of Section 115BBJ is effectively carved back. The provision had originally been enacted to tax precisely such games, i.e., online games involving deposits of money or stakes in expectation of winnings. After the Bill’s commencement, no lawful online money gaming platform can exist in India, and thus the legitimate application of Section 115BBJ shrinks considerably.

That said, illegality of the source does not imply non-taxability of the income. Any winnings derived from prohibited online money games will remain taxable under the Income-tax Act, as the jurisprudence is well settled that even income derived from unlawful activities is not exempt from tax. Participants cannot take shelter under the prohibition to argue that their winnings escape tax.

This, however, creates a compliance paradox. If a taxpayer were to disclose such winnings openly under Section 115BBJ at the prescribed thirty per cent rate, the disclosure would constitute an admission of participation in an activity now criminalised under the Online Gaming Bill. This could expose the declarant to penal and prosecution consequences under that law. The behavioural incentive, therefore, is for many such participants to suppress such income.

Should such suppression be detected—for example, through banking trails, foreign remittance data, or enforcement inquiries—the tax authorities would be entitled to invoke Section 68 (unexplained credits) of the Income-tax Act. Once so classified, the harsh charging provision of Section 115BBE would apply, taxing the unexplained sums at an effective rate of seventy-eight per cent plus applicable surcharge and cess. Thus, paradoxically, by prohibiting online money games, the Bill may indirectly expose undeclared winnings to a much harsher fiscal consequence than would have applied under Section 115BBJ.

Income-Tax Consequences for E-Sports and Social Games

The recognition of e-sports as a legitimate form of sport preserves the taxation framework under the Income-tax Act, but with an important limitation. Since Section 115BBJ applies only to online games “offered on the internet”, only internet-based e-sports tournaments would be covered by its ambit. Winnings from such tournaments will continue to attract the flat rate of thirty per cent, with mandatory



deduction of tax at source under Section 194BA. However, e-sports played and conducted through non-internet electronic communication technologies—such as LAN-based tournaments in physical arenas or private closed networks—while still “online games” under the Bill, would fall outside Section 115BBJ and instead be taxed under the general charging provisions of the Income-tax Act.

Professional gamers, who may derive additional income streams from sponsorships, endorsements, streaming contracts or merchandising, will be taxable under the head “Profits and Gains of Business or Profession.” Social and educational games, on the other hand, do not entail monetary rewards. For users, participation has no tax consequence. For operators, subscription fees and access charges will be taxed as ordinary business income, subject to the usual corporate tax regime.

GST Implications: From Wagers to Services

The most striking GST consequence of the Bill is the probable elimination of the twenty-eight per cent levy on deposits in online money games. With the prohibition of such games, the taxable event itself disappears. This represents a significant contraction of the GST base, as industry estimates had earlier projected annual collections upwards of ₹15,000 crore from this levy.

Going forward, e-sports activities will attract GST at the standard rate of eighteen per cent on participation fees, sponsorship contracts, advertising revenues and broadcasting rights. Prize money itself, being in the nature of a transfer and not consideration for supply, will not be subject to GST. Similarly, subscription or access fees for social and educational games will be taxed at eighteen per cent, including where such services are provided from offshore platforms to Indian users under the OIDAR provisions.

Thus, the GST framework undergoes a fundamental reset—from a high-yield, dispute-prone model based on taxing wagers at twenty-eight per cent, to a more modest but stable service-based regime at eighteen per cent.

The Litigation Overhang

It bears noting that even as the Bill was introduced, the Supreme Court was seized of pending appeals by leading online gaming companies challenging retrospective GST demands. The central issue was whether online games such as rummy, poker or fantasy sports involving money stakes or wagers would fall under the classification of ‘game of skills’ attracting 18% GST rate or under the ‘game of chance’ category attracting a higher GST rate of 28%. With conflicting High Court rulings and demands running into thousands of crores, the fiscal stakes were immense.

The new Bill may render the prospective classification debate moot, since the underlying activity is now prohibited. However, the retrospective demands for the pre-2025 period will continue to be litigated, and the Supreme Court’s verdict will remain critical in determining the fiscal liability of industry participants for past years.

Conclusion

The contrast between the pre-2025 and post-2025 regimes could not be sharper. Under the earlier framework, online money games were lawful and heavily taxed: Section 115BBJ ensured thirty per cent income-tax collection, Section 194BA imposed strict TDS, and GST at twenty-eight per cent on deposits



provided a robust indirect tax base. Post-2025, online money games stand prohibited. The surviving taxable activities are confined to e-sports and social or educational games, taxed under ordinary service provisions at eighteen per cent GST and, in the case of e-sports winnings, under Section 115BBJ.

For the Income-tax Department, the focus shifts to ensuring compliance in e-sports winnings and integrating professional gamers into the tax net, while also dealing with the paradox of undeclared illegal winnings under Sections 68 and 115BBE. For GST authorities, the emphasis is on treating gaming as a digital service, enforcing the eighteen per cent levy on participation, sponsorship and subscription fees, and ensuring OIDAR compliance by foreign operators.

The Promotion and Regulation of Online Gaming Bill, 2025 represents not merely a regulatory intervention but a fundamental reset of India's tax architecture for the gaming sector. By outlawing online money games, the Government has abandoned a high-yield but socially contentious tax base. In its place, a smaller but more coherent tax base has been created around e-sports and social gaming, aligning with skill, digital services, and professionalisation rather than wagers and chance.

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