



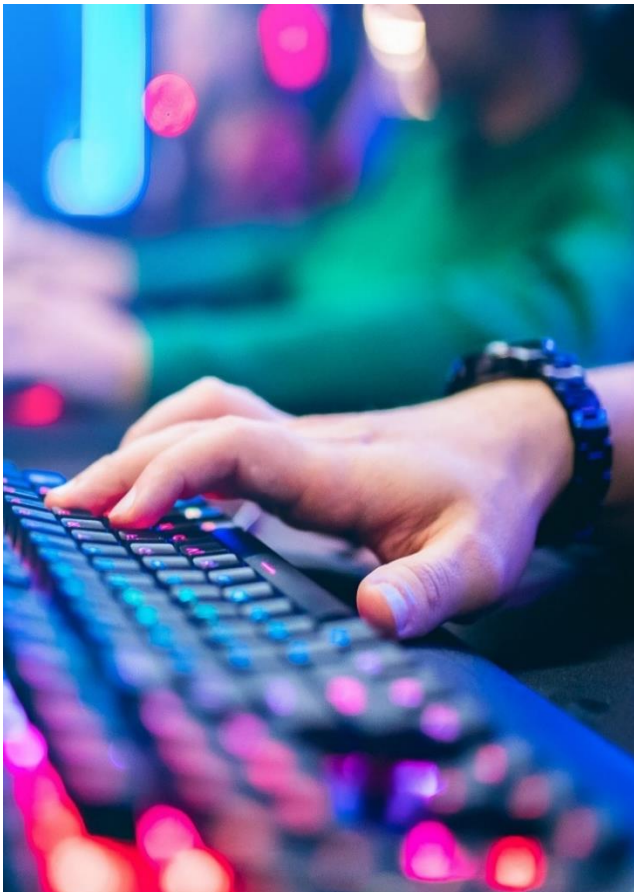
ONLINE GAMING INDUSTRY AN OVERVIEW

BDO IN INDIA
2024

The online gaming industry is one of the fastest-growing industries worldwide. While its full potential is yet to be unleashed, it has risen exponentially over the past few decades to become a billion-dollar industry with significant growth potential.

Consistent with the global industry, the Indian gaming industry has gained prominence over the years and is witnessing tremendous growth owing to faster internet speeds and rising smartphone adoption. The industry in India is expected to experience exponential growth in the coming years.

With the fast-paced evolution of an industry come regulatory hurdles which require legal and jurisdictional redressal. While India did not have a comprehensive legal framework to govern the gaming industry, it was governed by the respective State laws. However, recently the Ministry of Electronics and Information Technology notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 (Rules) under the Information Technology Act, 2000 (IT Act) to regulate the online gaming sector. These rules primarily focus on setting up self-regulatory bodies and additional diligences to be undertaken for online real money games. Further, games that allow wagering on their outcome have been specifically excluded from the purview of online games that are regulated. The taxation on these games remains a challenge, and the debate of whether the game is a game of skill or a game of chance will continue.



ONLINE GAMING MODELS

Online games are categorised into Monetary and Non-monetary games. Monetary game platforms charge users a fee for facilitating gameplay. In some cases, users are required to invest money to be eligible for winning prizes out of pooled amounts depending on the game's outcome. In certain e-sport games, the gaming platform is free. However, additional features like a player's life, progressing the game, boosting a player's performance, etc., are chargeable.

CLASSIFICATION BASED ON FORMATS:



CASUAL GAMES

Skill-based games that generally do not involve money or monetary rewards.



CARD-BASED GAMES

Games such as Rummy, Poker, etc., where money is wagered on the outcome of the game and prize money is received.



FANTASY SPORTS GAMES

Games where players make virtual teams comprising proxies of real players. Based on the statistical performance of players in actual games, a reward from the overall prize pool is earned.



EDUCATIONAL GAMES

Games designed with an educational purpose.

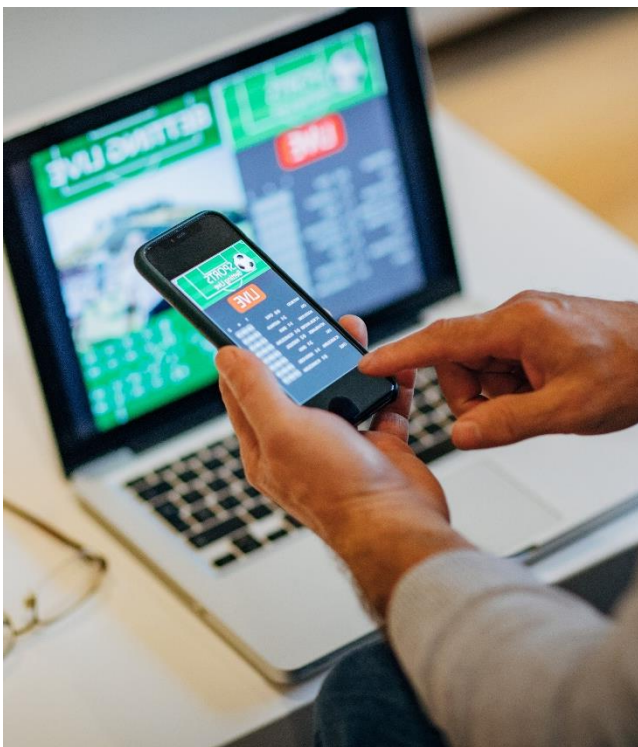
KEY TAX CHALLENGES IN INDIA

The online gaming industry currently faces several challenges from a tax perspective resulting in certain implications and impediments that may impact the industry's business operations. We have highlighted key challenges from a tax perspective as prevalent in the industry including dealing with GST on prize money vis-à-vis platform fees & TDS on winnings.

► Money pooled for distribution as prize money (subject to platform fees)

Various High Courts have observed that prize money qualifies as an 'actionable claim' and therefore, no GST is applicable on the same. However, GST authorities wish to levy GST on the same. Therefore, the issue of the applicability of GST on winnings remains controversial and requires the alignment of tax positions industry-wide. It is worthwhile to highlight that the regime to tax winnings and corresponding withholding tax liability on the said winnings has changed in India effective 1 April 2023, and accordingly, the impact on the business and its systems, addressing transitional tax issues, dealing with legacy issues pertaining to withholding of taxes as per the old regime, etc., need to be addressed appropriately and promptly.

- ▶ **Platform fees retained by the gaming platforms**
GST authorities have contended the highest GST rate at 28%, whereas many industry players argue it to be 18%. The Group of Ministers (GoM) is still contemplating the GST rate to be levied on online games involving skill vs online games of chance. Currently, 28% GST is applicable on actionable claims in the form of betting and gambling, and whether such rate will continue to apply to initial betting/ gaming amount, or entire prize money is also an unresolved dispute as of date. Also, the online gaming rules prescribed under the IT Act that have excluded 'wagering' will merit consideration by the GoM while making any decisions on these issues. The fine print of the final report/ provisions from the GoM will have to be evaluated in detail to understand the impact only after the GoM and the Finance Ministry arrive at a conclusion basis their findings.
- ▶ **Withholding tax implications on complex solutions**
Withholding tax implications with respect to payment for solutions like SaaS, cloud services, other subscription-based platforms, etc., provided by non-resident entities is another key issue. Recently, the provisions of Indian tax laws have been amended to tax non-residents on royalty and/ or FTS at 20% (earlier 10%), compelling the non-residents to avail treaty benefits, if available, and undertaking relevant compliances (including obtaining electronic Form 10F and consequently PAN in India, filing return of income in India, etc.). The said compliances could in turn prove to be onerous for the taxpayers and the existing contracts would need to be revisited as well. Further, non-residents having a significant economic presence in India or those liable to Equalisation Levy in India may have different tax implications on the payer and this needs to be examined by Indian companies while making payments to avoid tax scrutiny in the future.
- ▶ **A non-resident gaming company serving Indian end-users**
Evaluation of online gaming services or sale of advertisement space provided by a non-resident company located outside India entails the provision of 'Online Information Database Access and Retrieval Services'. It is necessary to determine if a non-resident company is required to obtain GST registration and follow compliance mandates in India. This evaluation becomes relevant, especially with the proposed amendment to the GST law. The amendment seeks to delete the phraseology of the supply being 'essentially automated and involving minimal human intervention' from the existing definition of OIDAR services, thereby expanding their scope, which is likely to bring in more non-resident gaming companies providing online games to Indian users within the ambit of OIDAR.
- ▶ **Provision of vouchers, loyalty points, reward points to players**
Withholding of taxes on such vouchers, etc., wherein a certain element of benefit or perquisite is present would entail liability of withholding obligations under newly introduced sections 194R and 194S of Indian tax law & is an area that needs deliberation & resolution.
- ▶ **Location of Intellectual Property (IP) owned by a gaming company**
Another area that requires deliberation pertains to ownership and holding of an IP which is driven by a variety of factors: whether it is owned onshore or offshore, protection of IP, value generation, etc. Likewise, payment of royalty and related withholding tax aspects, etc., are key points to be considered while undertaking business structuring/ restructuring.



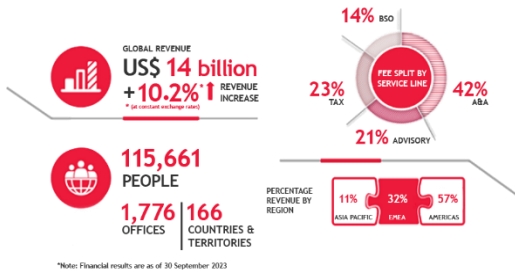
OUR SERVICES

Backed by global expertise, coupled with years of experience & domain knowledge, BDO in India tax experts understand the nuances of tax and compliance-related challenges and work to provide solutions to address challenges faced by the industry on account of evolving tax laws. Our services are designed to provide businesses:

- Assistance in setting up a presence in India and developing a model/ framework to operate in India.
- Assistance in developing systems to accommodate tax-related issues and undertaking day-to-day compliances towards direct and indirect taxes so entities can focus on core competencies.
- Framing litigation strategies and providing representation services regarding the issue under consideration before the tax authorities to seek clarification from the respective authorities.
- Providing technology-enabled tools, maintenance tracker of ongoing litigations, issuance of Form 15CA/CB and management of Y-o-Y tax positions of company.
- Structuring/ restructuring of the business operations to strategise and accommodate any deal arrangements.
- Advisory on a case-to-case basis depending on the operating model.

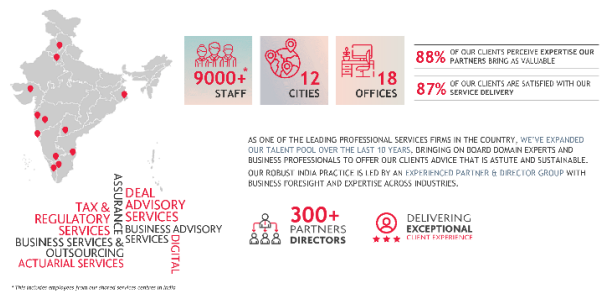
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For any content related queries, you may write in to taxadvisory@bdo.in

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