

Technology & Tax Series

July 30, 2020

TECHNOLOGY & TAX SERIES – ISSUE III: ONLINE GAMING | BUSINESS MODEL CASE STUDY

While much has been spoken about the digital revolution in India, the gaming industry has undoubtedly emerged as a clear winner outperforming other traditional digital companies. In financial year 2019, the gaming industry has emerged as the leader by growing at rate of 41.6%. With an upsurge in user engagement on gaming/gambling platforms and in-app purchases, it is expected that the gaming industry is likely to display a strong growth of 32.2% CAGR from financial year 2019 to financial year 2024. COVID-19 has accelerated the existing revenue trends in the gaming industry and reports suggest that the growth has been significantly stronger than anticipated due to increase in demand and falling cost of advertising on social platforms.

India has been a forerunner in adopting changes in tax laws to keep pace with the digital world. Some recent changes in this regard include the introduction of significant economic presence, expansion of attribution rules and expansion of equalization levy to apply on e-commerce operators. On the indirect tax side, with the introduction of Goods and Services tax (“GST”), the Indian government has overhauled the erstwhile indirect tax regime in relation to service tax, excise duty etc with different rates of tax applying to gaming (18%) and gambling (28%). Whether a game is one of gambling or gaming can have significant tax consequence for gaming companies and with in-app purchases like loot boxes becoming popular, the distinction between gambling or gaming may have become much narrower. Considering the tax impact due to the classification, it is becoming increasingly contested by tax authorities. The tax base amount on which taxes are payable are also a significant point of concern for the industry.

In this context and in continuation of our ‘Technology & Tax Series’, we are pleased to announce the third issue of this series: **‘Online Gaming | Business Model Case Study’**

In this issue, we briefly discuss the global advancements in online gaming laws as well as gaming laws in India. We deep dive into the operational business model and legal structure of gaming operators (based on publicly available information) to determine the potential issues that may arise from a tax perspective. We specifically deal with the operational differences between direct betting model, Peer-to-peer model, skill-based gaming and casual social gaming. We highlight how different tax outcomes, particularly on attribution under Pillar I principles, may arise due to operational differences of various products and ad based revenue that gaming operators may make. Further, we lay down the structural relationships as part of the case study to reflect several market realities noticed in gaming operators. We then analyze the impact of income-tax provisions inter-alia including provisions related to significant economic presence, attribution rules, transfer pricing, equalization levy, and provisions under tax treaties in relation to permanent establishment among other issues. We also delve into the potential implications for each model under the GST regime in detail. We end the discussion in this case study by highlighting some upcoming tax issues that may be of relevance for gaming operators.

With increasing the rise of gaming industry and complexities of laws, we are certain that this report would be of interest to you. Please note that this report is only for private circulation and is available only on a request basis. Please send an email on [digitaltaxseries\(at\)nishithdesai.com](mailto:digitaltaxseries(at)nishithdesai.com) to request for a copy of the case study.

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