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GST – A New Landscape on Online Gaming, Casinos, Horse Racing w.e.f. October 1, 2023

Background:

GST Council in its 50th and 51st GST Council meetings recommended the substantial changes to the taxation landscape on the actionable claims supplied in Casinos, Horse racing and Online gaming, will be taxed @ 28% on full face value, irrespective of whether the activities are a game of skill or chance.

Accordingly, the GST Council recommended certain amendments in the CGST Act 2017 and the IGST Act 2017, including amendment in Schedule III of CGST Act, 2017, to provide clarity on the taxation of supplies in casinos, horse racing and online gaming.

The Council also recommended to insert a specific provision in IGST Act, 2017 to provide for liability to pay GST on the supply of online money gaming by a supplier located outside India to a person in India, for single registration in India for the said supplier through a simplified registration scheme and also for blocking of access by the public to any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier in case of failure to comply with provisions of registration and payment of tax.

The Council also recommended that valuation of supply of online gaming and actionable claims in casinos would be done based on the amount paid or payable to or deposited with the supplier, by or on behalf of the player (excluding the amount entered into games/ bets out of winnings of previous games/ bets) and not on the total value of each bet placed.

The Council recommended that CGST Rules, 2017 would be amended to insert specific provisions for valuation of supply of online gaming and supply of actionable claims in casino accordingly.

To give effect to the above recommendations of the GST Council, the Central Government vide Central Goods and Services Tax (Amendment) Act, 2023 dated August 18, 2023 amended the Central Goods and Services Tax Act, 2017 (**“the CGST Act”**) to levy GST on online gaming,

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casinos and horse racing as per the recommendations of the Goods and Service Tax Council ("GST Council") in its 50th and 51st meetings.

Amendments in the CGST Act through the CGST (Amendment) Act, 2023			
Current Provision	Amended Provision	Effect	Notified from
Section 2 of the CGST Act - Definitions			
After Section 2(80)	<p>After Section 2(80)</p> <p><i>(80A) "online gaming" means offering of a game on the internet or an electronic network and includes online money gaming;</i></p> <p><i>(80B) "online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme,</i></p>	<p>The amendment inserted 2 new clauses namely- 80A and 80B in Section 2 of the CGST Act, providing the definitions of 'online gaming' and 'online money gaming.'</p>	October 1, 2023

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	<i>competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force;</i>		
After Section 2(102)	<p>After Section 2(102)</p> <p><i>(102A) "specified actionable claim" means the actionable claim involved in or by way of—</i></p> <ul style="list-style-type: none"> <i>(i) betting;</i> <i>(ii) casinos;</i> <i>(iii) gambling;</i> <i>(iv) horse racing;</i> <i>(v) lottery; or</i> <i>(vi) online money gaming;</i> 	<p>The amendment inserted a new clause 102A in Section 2 of the CGST Act, which defines the term 'specified actionable claim'.</p> <p>The definition is exhaustive and covers betting, casinos, gambling, horse racing, lottery or online money gaming.</p>	October 1, 2023
Section 2(105) "supplier" in relation to any goods or services or	<p>Section 2(105)</p> <p>"supplier" in relation to any goods or services or both,</p>	<p>The amendment inserted a proviso at the end of the definition of</p>	October 1, 2023

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both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;	<p>shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;</p> <p><i>Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or</i></p>	<p>supplier to cover the following:</p> <ul style="list-style-type: none"> • A person who organizes or arranges directly or indirectly supply of specified actionable claims; including • A person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him 	
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	<i>placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims;</i>	and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.	
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After Section 2(117)	<p>After Section 2(117)</p> <p><i>(117A) "virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961 ;</i></p>	<p>The amendment inserted a new clause (117A) to Section 2 of the CGST Act, which defines virtual digital asset, which shall have the same meaning as provided under Section 2(47A) of the Income Tax Act, 1961, which is reproduced here under:</p> <p><i>“(47A) "virtual digital asset" means-</i></p> <p><i>(a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic</i></p>	October 1, 2023
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		<p><i>means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;</i></p> <p><i>(b) a non-fungible token or any other token of similar</i></p>	
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		<p><i>nature, by whatever name called;</i></p> <p><i>(c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify:</i></p> <p><i>Provided that the Central Government may, by notification in the Official Gazette, exclude any digital asset from the definition of virtual digital asset subject to such conditions as may be specified therein.</i></p>	
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		<p><i>Explanation.-For the purposes of this clause,-</i></p> <p><i>(a) "non-fungible token" means such digital asset as the Central Government may, by notification in the Official Gazette, specify;</i></p> <p><i>(b) the expressions "currency", "foreign currency" and "Indian currency" shall have the same meanings as respectively assigned to them in clauses (h), (m) and (q) of section 2 of the Foreign Exchange Management Act,</i></p>	
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		1999 (42 of 1999).”	
<p align="center">Section 24 of the CGST Act</p> <p align="center">Compulsory registration in certain cases</p>			
<p>Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—</p> <p>(i) persons making any inter-State taxable supply;</p> <p>(ii) casual taxable persons making taxable supply;</p> <p>(iii) persons who are required to pay tax under reverse charge;</p> <p>(iv) person who are required to pay tax</p>	<p>Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,—</p> <p>(i) persons making any inter-State taxable supply;</p> <p>(ii) casual taxable persons making taxable supply;</p> <p>(iii) persons who are required to pay tax under reverse charge;</p> <p>(iv) person who are required to pay tax</p>	<p>The amendment added ‘the person supplying online money gaming from a place outside India to a person in India’ in the list of persons requiring compulsory registration under GST for supplying goods or services or both.</p>	<p>October 1, 2023</p>

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<p>under sub-section (5) of section 9;</p> <p>(v) non-resident taxable persons making taxable supply;</p> <p>(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;</p> <p>(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;</p> <p>(viii) Input Service Distributor, whether or not separately</p>	<p>under sub-section (5) of section 9;</p> <p>(v) non-resident taxable persons making taxable supply;</p> <p>(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;</p> <p>(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;</p> <p>(viii) Input Service Distributor, whether or not separately registered under this Act;</p>		
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<p>registered under this Act;</p> <p>(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;</p> <p>(x) every electronic commerce operator who is required to collect tax at source under section 52;</p> <p>(xi) every person supplying online information and database access or retrieval services from a place outside India to a</p>	<p>(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;</p> <p>(x) every electronic commerce operator who is required to collect tax at source under section 52;</p> <p>(xi) every person supplying online information and database access or retrieval services from a place outside India to a registered person;</p> <p>and</p>		
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<p>person in India, other than a registered person; and</p> <p>(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.</p>	<p><i>(xia) every person supplying online money gaming from a place outside India to a person in India; and</i></p> <p>(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.</p>		
<p align="center">Schedule III of the CGST Act</p> <p align="center">Activities or transactions which shall be treated neither as a supply of goods nor a supply of services</p>			
<p>Paragraph 6</p> <p>Actionable claims, other than lottery, betting and gambling.</p>	<p>Paragraph 6</p> <p>Actionable claims, other than lottery, betting and gambling. <i>specified actionable claims</i></p>	<p>The amendment substituted Paragraph 6 of Schedule III by adding specified actionable claims, encompassing activities like betting, gambling, lottery, casinos,</p>	<p>October 1, 2023</p>

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		horse racing, and online money gaming. This substitution narrows the scope of the actionable claims.	
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The above changes are being made effective from October 1, 2023 vide **Notification No. 48/2023-Central Tax, dated September 29, 2023.**

The stated notification will expand the definition of an online gaming, online money gaming and specified actionable claim to provide a comprehensive description that encompasses activities such as betting, casinos, gambling, horse racing, lottery, or online money gaming.

The effect of these changes on GST ("Goods and Services Tax") is that it brings clarity and specificity to the types of activities that are considered specified actionable claims, ensuring that they are subject to GST and related regulations. It also means that virtual digital assets, which may include cryptocurrencies or other forms of digital assets, are now recognized within the GST framework.

The CBIC vide **Notification No. 49/2023 – Central Tax dated September 29, 2023**, seeks to notify supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos under Section 15(5) of CGST Act i.e. to provide valuation rules for supply of online money gaming, supply of online gaming (excluding online money gaming) and supply of actionable claims in casinos.

The CBIC vide **Notification No. 50/2023 – Central Tax dated September 29, 2023**, seeks to amend the principal **Notification No. 66/2017-Central Tax dated November 15, 2017** to
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exclude the registered person making supply of specified actionable claims as defined in clause (102A) of Section 2 of the CGST Act.

Effective changes in Registration Application, Registration Granted, Valuation, Tax invoices, Form and Manner of returns etc., pertaining to registered person making supply of specified actionable claims:

The CBIC vide **Notification No. 51/2023 – Central Tax, dated September 29, 2023 (“the Notification No. 51/2023”)**, seeks to make amendments (Third Amendment, 2023) to the CGST Rules, 2017 in supersession of **Notification No. 45/2023 dated September 06, 2023**, which are as follow:

Notification No. 51/2023 – Central Tax		
CGST (Third Amendment) Rules, 2023		
Rule	Before the Notification No. 51/2023	After the Notification No. 51/2023
Changes in Application for Registration		
8(1)	<i>(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the</i>	<i>“(1) Every person who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as “the applicant”), except–</i> <i>(i) a non-resident taxable person;</i> <i>(ii) a person required to deduct tax at source under section 51;</i> <i>(iii) a person required to collect tax at source under section 52;</i>

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	<p><i>Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as “the applicant”) shall, before applying for registration, declare his Permanent Account Number, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:</i></p> <p><i>Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.</i></p>	<p><i>(iv) a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 or a person supplying online money gaming from a place outside India to a person in India referred to in section 14A under the Integrated Goods and Services Tax Act, 2017 (13 of 2017),</i></p> <p><i>shall, before applying for registration, declare his Permanent Account Number, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:</i></p> <p><i>Provided that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.”</i></p>
<p>Grant of Registration to a person supplying OIDAR Services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India</p>		

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Rule 14	<p>Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient.-</p> <p><i>(1) Any person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient shall electronically submit an application for registration, duly signed or verified through electronic verification code, in FORM GST REG-10, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.</i></p>	<p>Grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India.-</p> <p><i>(1) Any person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient or any person supplying online money gaming from a place outside India to a person in India shall electronically submit an application for registration, duly signed or verified through electronic verification code, in FORM GST REG-10, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.</i></p>
Value of supply in case of online gaming including online money gaming		
Rule 31B		<p>31B. Value of supply in case of online gaming including online money gaming. –</p> <p><i>Notwithstanding anything contained in this chapter, the value of supply of</i></p>

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		<p><i>online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player:</i></p> <p><i>Provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.</i></p>
Value of supply of actionable claims in case of casino		
Rule 31C		<p><i>31C. Value of supply of actionable claims in case of casino.—</i></p> <p><i>Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –</i></p> <p><i>(i) purchase of the tokens, chips, coins or tickets, by</i></p>

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		<p><i>whatever name called, for use in casino; or</i></p> <p><i>(ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:</i></p> <p><i>Provided that any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.</i></p> <p><i>Explanation.- For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player."</i></p>
Tax Invoices		

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Rule 46	<p><i>(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;</i></p> <p><i>Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the state of the recipient and the same shall be deemed to be the address on record of the recipient</i></p>	<p><i>(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;</i></p> <p><i>Provided that in cases involving supply of online money gaming or in cases where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the state of the recipient and the same shall be deemed to be the address on record of the recipient</i></p>
Form and manner of submission of return by persons providing OIDAR services		
Rule 64	64. Form and manner of submission of return by persons	“64. Form and manner of submission of return by persons providing online

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	<p><i>providing online information and database access or retrieval services.-</i></p> <p><i>Every registered person providing online information and data base access or retrieval services from a place outside India to a 1[non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or to] a registered person shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.</i></p>	<p><i>information and data base access or retrieval services and by persons supplying online money gaming from a place outside India to a person in India.-</i></p> <p><i>Every registered person either providing online money gaming from a place outside India to a person in India, or providing online information and data base access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or to a registered person other than a non-taxable online recipient, shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.”</i></p>
Electronic Cash Ledger		
Rule 87(3), second proviso	<p><i>[Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax</i></p>	<p><i>[Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14, or a person supplying online money gaming from a place outside</i></p>

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	Act, 2017 (13 of 2017) may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.]	India to a person in India as referred to in section 14A of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.]
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GST Rates on Online Gaming, Horse Race, Casinos, etc.:

The CBIC vide **Notification No. 11/2023-Central Tax (Rate) dated September 29, 2023** and **Notification No. 14/2023-Integrated Tax (Rate) dated September 29, 2023**, seeks to amend **Notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017** ("the CGST Goods Rate Notification") and **Notification No. 1/2017-Integrated Tax (Rate) dated June 28, 2017** ("the IGST Goods Rate Notification") for GST rates to be applicable on specified actionable claim by way of betting, casinos, gambling, horse racing, lottery or online gaming to be leviable at 28% (14% CGST + 14% SGST) for Intra-State Supply or IGST @ 28% for Inter-State Supply of same. This notification further omits lottery from entry 228 and actionable claim from entry 229, but, provide specific inclusion and coverage within entry 227A.

Notification No. 11/2023-Central Tax (Rate)		
SL. No.	Before Notification No. 11/2023-Central Tax (Rate)	After Notification No. 11/2023-Central Tax (Rate)
227A.		<i>Specified actionable claim;</i>

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		<p><i>Explanation: “specified actionable claim” as defined in section 2(102A) of the CGST Act, 2017 means the actionable claim involved in or by way of—</i></p> <p><i>(i) betting;</i></p> <p><i>(ii) casinos;</i></p> <p><i>(iii) gambling;</i></p> <p><i>(iv) horse racing;</i></p> <p><i>(v) lottery; or</i></p> <p><i>(vi) online money gaming;”;</i></p>
228	Lottery	Lottery
229	Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club	Actionable claim in the form of chance to win in betting, gambling, or horse racing in race club
(New Clause inserted in Explanation) Clause v		<p><i>(v) The words and expressions used and not defined in this notification, but defined in the Central Goods and Service Tax Act, 2017 (12 of 2017), the Integrated Goods and Services Tax Act, 2017 (13 of 2017) and the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), shall have the same meanings as assigned to them in those Acts.</i></p>

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The CBIC vide **Notification No. 03/2023-Integrated Tax dated September 29, 2023**, seeks to notify the supply of online money gaming as the supply of goods on import upon which, IGST shall be levied and collected under sub-section (1) of Section 5 of the Integrated Goods and Services Tax Act, 2017 ("the IGST Act").

The stated Notification will determine the supply of online money gaming as the supply of goods and IGST will be levied and collected on the import of same under Section 5(1) of the IGST Act.

The CBIC vide **Notification No. 04/2023-Integrated Tax dated September 29, 2023**, seeks to provide simplified registration scheme for overseas supplier of online money gaming. The stated Notification directs to appoint Principal Commissioner of Central Tax, Bengaluru West and all related officer as the officers empowered to grant registration in case of supply of online money gaming provided or agreed to be provided by a person located in non-taxable territory and received by a person in India.

Conclusion:

Effective from October 1, 2023, significant changes have been implemented on taxation of specified actionable claims, which includes betting, casinos, gambling, horse racing, lottery, or online money gaming in the GST structure. GST will now be applied at a rate of 28% on all specified actionable claims viz. horse racing, casinos, online gaming regardless of whether an activity is considered a game of skill or chance.

The Government has taken needful steps through various notifications to levy and regulate the applicability of this 28% GST rate on all specified actionable claims. These measures include:

1. Bringing betting, casinos, gambling, horse racing, lottery, or online money gaming under the scope of taxable supplies.
2. Expanding the definition of virtual digital assets within the GST framework.
3. Formulating procedures for registration of persons engaged in online money gaming, OIDAR services .

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Subsequent changes have also been made to the CGST Rules to ensure that persons providing Online Information and Database Access or Retrieval (OIDAR) services from outside India to non-taxable online recipients or offering online money gaming from outside India to individuals in India are required to register compulsorily.

Additionally, clarity has been provided regarding the valuation of supplies in the domains of online gaming and casinos by introducing Rules 31B and 31C of the CGST Rules. Furthermore, it is now mandated that tax invoices must include the recipient's state name as per the address specified on the book of accounts of the recipient. Recommendations have also been made regarding the form and manner for submitting returns by persons providing OIDAR services.

These changes represent a comprehensive overhaul of the GST system, impacting various sectors and activities, with the aim of enhancing regulation, taxation, and compliance in these areas.

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