



Path Ahead for Online Skill Gaming In India

Unpacking Global Standards
for Regulating and Taxing
Online Skill Gaming



Prologue

Message To The Industry

The Government of India's visionary leadership has catapulted India on its way to building a trillion-dollar digital economy by 2030, and the online skill gaming industry continues to play a critical role in this journey. This USD 3.1 billion industry, which has added over 100,000 jobs to India's economy, is heading towards a robust USD 6 billion valuation by 2028. The gradual global recognition of India's online skill gaming industry and talent has also revealed a renaissance of Indian culture in the digital era. Locally cherished stories, characters, and landscapes now find themselves in the homes of gamers around the world, marking the beginning of yet another era where India's cultural ethos shapes international imaginations. The Government of India's steadfast support for the sector is key to this unfolding success story, underscoring the Hon'ble Prime Minister's multi-pronged commitments to make India a global hub for gaming excellence.

As we move forward, partnerships and knowledge-sharing between the government and the online skill gaming industry will be critical in ensuring that the sector evolves into a global hub for gaming excellence, rooted in the principles of responsible business and consumer safety. The long-term efforts taken by the United States India Strategic Partnership Forum (USISPF) and TMT Legal towards building these cross-sectoral bridges, best evidenced through this report, will help define the contours of how the industry progresses over the next "techade".

Governments and industry bodies across India have rightly recognised the need to make consumer safety a critical component of the online skill gaming industry. It is only when consumer safety becomes the norm that the sector will truly flourish responsibly. I see increased awareness and efforts

by the ecosystem actors - Industry, industry bodies, academic institutions and the Government to address consumer welfare concerns through research and policy level interventions. **One of the most critical concerns regarding consumer welfare is the conflation between the online skill gaming industry and illegal offshore betting and gambling platforms and the conflation between the legitimate online skill gaming industry and games of chance (betting and gambling). Due to this conflation, consumers, absorbing media narratives, continue to mistake illegal offshore gambling and betting platforms with online skill gaming platforms.** This conflation is resulting in a mass majority believing that these illegal betting and gambling platforms are legitimate platforms with adequate consumer protection and enforcement norms as prescribed in the law of the land. This is far from reality and is leaving users vulnerable without any adequate recourse. Despite multiple government initiatives to stymie consumer access to these portals, offshore betting & gambling platforms continue to proliferate in India, not only exposing consumers to harm but are also threatening national security.

This report's recommendations for benchmarking India's regulation, definition, and taxation as per globally accepted best practices to address consumer welfare are insightful, much needed, and offer a way forward for all stakeholders. For example, the current taxation of gaming and gambling under the same 28% GST bracket inadvertently contributes to the chicken and egg scenario of consumers interpreting gambling platforms to be the same as skill gaming portals. **Interestingly, most global regulators prefer to define and tax skill gaming and gambling separately, doing away with this conflation. In the process, they help build consumer awareness of what constitutes a 'safe' skill gaming experience.**

Similarly, global experiences suggest that taxing a skill gaming company on deposits or entry fees paid by users leads to unfavourable consumer welfare outcomes. In India's case, the high taxation rate of 28%, the highest globally, appears to have adversely impacted the online skill gaming industry, limiting FDI, reducing company margins, and dampening job creation. This measure has placed the domestic industry at a great disadvantage since the offshore platforms lure the consumers with predatory marketing of offering "tax-free" experience instead. **Globally, the evidence suggests that countries' short-term revenue gains from high taxes imposed on the deposits are eventually eroded due to this migration of consumers into murkier waters offshore. On the other hand, countries taxing online skill gaming companies on the actual revenue earned by the platforms i.e. platform fees, help the sector grow sustainably and offer economical and safe services to millions of consumers.** Harmonised taxation rates also give young skill gaming companies a chance to build viable and responsible businesses.

Globally, similar to Indian jurisprudence laid down by the Hon'ble Supreme Court of India, the difference between games of skill and games of chance is irrespective of monetisation strategy but is instead dependent on the preponderance of skill. Interestingly, the report also reveals a global tendency to define and differentially tax gaming based on formats even within the skill gaming sector, such as fantasy games in several jurisdictions are considered skill gaming but are governed, taxed and regulated through a separate statute. Doing so recognises the intrinsic differences between gaming formats, providing equal opportunities for different businesses to compete fairly. Similar pathways can be useful for India, where the online skill gaming industry's ability to build businesses and retain consumers has been disproportionately impacted by the flat 28% GST rate on 'online gaming'.

Implementing this quartet of policy measures, along with other enabling regulatory measures, may certainly help build an online skill gaming industry that is not only entertaining, but safe for consumers to engage with. It can drive up India's exports and attract global FDI at a rapid pace. That's not to say that India should undermine its own economic sovereignty by simply emulating measures taken by Western governments. Yet, as the domestic online skill gaming industry crystallises into a global hub for technological excellence, there is no better time than now to at least identify the policy pillars that may help our innovators grow. A house cannot be built without foundations, and I am optimistic that this report will prove informative to both policymakers and the industry on what more can be done to protect Indian gamers, and the interests of the skill gaming platforms they use.



Shri Rohit Kumar Singh
Member of the National Consumer Disputes Redressal Commission (NCDRC),
Former Secretary to the Government of India, Department of Consumer Affairs

Foreword

India went to the polls in 2024, and as predicted Prime Minister Narendra Modi secured a third term. Albeit without a complete majority, Prime Minister Modi now leads a coalition government for the first time during his Prime Ministerial tenure. However, a coalition in this case is continuity in policy, as the core cabinet of policymakers remains the same.

From a policy perspective, I see a continued focus on tapping into newer avenues of growth with vigor and determination. The India story of the 21st century is one of growth and development for all its 1.4 billion people.

Despite the sluggishness in the global macroeconomic outlook, India remains a bright spot, bucking the global economic trend, with a 7-8 percent estimated GDP growth. The COVID-19 pandemic upended supply chains, brought leading economies to a grinding halt, and exacerbated lacunas in our existing policymaking.

For India, it's been a story of continuous structural reforms, including USD 1.7 trillion infrastructure investment till 2030, and an unprecedented digitization story that together undergirds this growth momentum.

For a country that produces engineers by droves, there was a need to build a strong innovation system at home, and this is now evinced in the digitization story. The success of Aadhaar, the third-most affordable mobile data globally, a world-class digital payment ecosystem, Indigenous manufacturing of cheap smartphones, and leveraging Digital Public Infrastructure (DPIs) has unlocked the potential of the Indian economy, particularly the digital economy and hence we can say this is India's "Techade". Building on these successes, India is now home to

the world's third-largest startup ecosystem, with over 1,40,000 startups, employing over 1.5 million people. Tech startups alone stand at a staggering 31,000. The Government of India is doubling down on job creation and investment driven by these startups, as it launches critical interventions such as the National Mission for Artificial Intelligence, India Semiconductor Mission, and National Quantum Mission, among others.

This focus on tech startups opens new avenues of sustained growth and further embellishes India's role in the global economy. Furthermore, the Government's approach is to unlock value in the online gaming industry. Globally, the online gaming market has a market size of USD 300 billion with over 3.3 billion user base. Presently with 600 million users, India accounts for 20% of the user base and constitutes around 17% of global gaming app downloads. However, India merely accounts for 1.1% of this USD 300 billion opportunity given it has a USD 3.1 billion market size. Prime Minister Modi acknowledged the role of the online gaming industry in unlocking a new growth trajectory and creating new sectors of jobs for the next generation. This was epitomized during his clarion call from the ramparts of Red Fort this past Independence Day when he evoked that India should become a leader in producing gaming titles by leveraging its cultural legacy. That is tap into creative arts, digital media, and storytelling with an Indian touch brought to the gaming sphere.

If India increases its market share to 20% by 2034, India is looking at adding nearly USD 60 billion to its economic coffers. By targeting a USD 60 billion opportunity, there is scope to increase the employment generation 20 times, amounting to over 2 million jobs created. Moreover, these jobs will be

opportunities with high productivity and offer better wages for the youth.

The growth of the online gaming industry will also further cement the relationship between the United States and India since almost all of the Foreign Direct Investment (FDI) in the industry since 2017 has come from US-based investors. They are both large markets for online gaming in terms of user base and demand for a variety of gaming titles. The difference is that the US is largely a personal computer and console-based market, whereas India is a mobile-first market. The other critical difference is that the gaming industry in the U.S. derives its revenue from in-app purchases and ad revenues, whereas these models have not been successful in India. The Indian gaming industry has to rely on the microtransaction-led pay-to-play models, which are also gaining traction in other gaming markets globally.

The global competitiveness of any industry hinges on many factors, including the availability of skilled labor, sustainable business models, intellectual property (IP) protection, the ability to fuel and safeguard innovation, macroeconomic stability, and a conducive regulatory regime. Additionally, other crucial factors include the right digital and physical infrastructure, low entry barriers for new firms, safeguarding the interest of the consumer, the ability to export to global markets, and the harmonization between domestic and international business and regulatory standards. The online gaming industry in India has all these ingredients, but one.

As it happens with most sunrise sectors, harmonization with international standards for the definition of online gaming, and the subcategorization of taxation regimes based on game formats constitute a missing link. To plug this gap, we have undertaken this study to identify the global regulatory and taxation norms across major gaming markets, including the definitions fleshed out for online skill gaming, and government approaches to navigating and taxing new-age sectors. The U.S. has witnessed such a churn previously and India should adopt global norms to catch up and harmonize with global standards.

Apart from increasing the global competitiveness of the online gaming sector, such measures will reduce the conflation between online skill games with games of chance, such as betting and gambling. By reducing such conflation, Indian users will be significantly safeguarded against the menace of offshore betting and gambling platforms. In the process, the online gaming industry will be able to unlock FDI, raise its standards, and compete globally.

For example, another key insight from the report was the nature of how tax rates are imposed on online gaming and the valuation for such taxes globally. The study highlights the examples of countries that witnessed a spike in the use of illegal offshore platforms with high taxation, thereby increasing the risk of user harm and losing revenue for the public exchequer. The definition of online skill gaming, the subcategorization of the industry based on formats, and globally competitive tax rates together solve multiple issues—unlocking growth, increasing exports, boosting FDI and job creation, preventing user harm, bolstering innovation, and expanding revenue for the public exchequer.

I congratulate the team at USISPF and TMT Law Practice for initiating and publishing a report that will yield positive results for India at large.



Dr. Mukesh Aghi
President and CEO
US-India Strategic Partnership Forum

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Executive Summary

In the era of post Covid globalization, where India continues to be the driver of the global economy and Indian corporates, and startups are venturing into global markets, it is pertinent to understand where India stands on the regulation of digital markets in the global online gaming sector. The global gaming industry has surpassed the USD 300 billion mark. India's domestic online gaming market alone is expected to increase to USD 6-7 billion by 2028 from USD 3 billion currently¹. This report by the US-India Strategic Partnership Forum (USISPF) and TMT Law Practice deep dives into understanding how globally different jurisdictions classify the online gaming sector, how they regulate various formats and how these formats are taxed. This is key to understanding how India can define, regulate and tax its online gaming market since the sector is still in its nascent stage in India. The report studies and analyzes 12 global gaming markets, the regulatory frameworks and international standards for taxing online gaming, including skill based games, fantasy games, games of chance and i-gaming (wherever applicable).

By drawing parallels and distinctions between global best practices against the Indian scenario, the report aims to equip readers with a holistic understanding of the forces shaping the skill-based online gaming landscape both in India and across the world.

This report explores the classification and taxation of online games of skill and games of chance. It highlights the diverse regulatory approaches taken by 12 jurisdictions, namely, Belgium, Brazil, Canada (Ontario), Colombia, Denmark, Germany, Malta, Netherlands, Romania, United Kingdom, and the United States (New Jersey and Pennsylvania). It examines the regulation and taxation of gambling, skill gaming, fantasy sports and i-Gaming (wherever applicable) in these jurisdictions.

The report finds that globally, games of chance are typically regulated and taxed under gambling laws, while games of skill are often classified separately and tend to attract lower taxes. The report underlines that several countries across the globe distinguish and regulate fantasy sports as a standalone category, often with specific taxation policies.

The nature of fantasy games, which blends elements of skill and strategic decision-making based on real-world data, sets them apart from both, games of traditional skill and games of chance. Fantasy sports, for example, rely heavily on a participant's knowledge of the sport, player statistics, and strategy, distinguishing them from purely chance-based games. Fantasy games have gained traction and legal recognition, particularly with judicial rulings affirming their skill-based nature². The report titled "Gambling or Skill: Taxation Issues Surrounding the Daily Fantasy Sports Industry" by S. Keith Lowe and Benjamin B. Boozer³ discusses how laws and regulations may have been initially developed with traditional, season-long fantasy leagues in mind. However, the growing popularity of daily fantasy sports (DFS), which introduces key differences such as shorter contest durations

and a broader, more dynamic participant base, underscores the need to reexamine existing legal frameworks. These distinctions make it important to consider DFS separately when evaluating laws and regulations, as DFS presents unique regulatory challenges compared to season-long formats.

8 of the 12 jurisdictions, as discussed in this report, also have defined fantasy sports for distinct regulation and taxation. Notably, the tax rates for skill-based games are generally lower than those for games of chance in all the 12 jurisdictions. Within skill based games, fantasy sports are usually taxed higher than other games of skill. Across all nations, skill-based games are taxed on platform commission or service fee, ranging from 2% to 25%. This is similar to India's previous GST regime, which taxed online skill gaming at 18% of service fee, akin to other digital services. A majority of countries also tax fantasy sports and games of chance based on GGR. A notable outlier is Germany, where both games of chance and fantasy sports are taxed on gross gaming value, but at a lower rate of approximately 5%. Additionally, skill-based games do not require any permits, licenses or whitelisting and are largely unlicensed and unregulated. Games of chance, on the other hand, are either illegal or licensed and regulated. Fantasy sports may also require permits from relevant authorities in 9 of the 12 jurisdictions studied, with exceptions being Romania, Brazil, and Germany. The findings highlight the regulatory approaches and tax structures in the global gaming industry, with significant differences depending on whether a game is classified as a game of chance, fantasy sports, or skill-based games.

Equally important, the report concludes that tax on skill-based online games is almost universally levied on the "Platform commission" / Service fee which is equivalent to Gross Gaming Revenue (GGR). The report indicates that even gambling (games of chance - offered online or offline) attracts tax on GGR (a term referred to for taxation for gambling) and not the deposits made by the players⁴. Countries like Brazil and France have transitioned to taxing GGR from GGV to align with international best practices. Meanwhile, India's current taxation regime stands out for its high tax rate, imposing a 28% GST on the total deposits made by players, a model that stands in sharp contrast with global practices.

The report highlights that adopting Service fee i.e. the commission taken by the platform, as the tax base is crucial not only for ensuring fair taxation but also for preventing the proliferation of unregulated, untaxed illegal offshore markets that could undermine both industry viability and government revenue. The report also advocates for a more nuanced approach to taxation in India,

whereby aligning with global best practices could help mitigate the risks of over-taxation or taxing beyond the revenue of the company and support the sustainable growth of the online gaming sector. The report refers to the United Nations Central Product Classification (UNCPC)⁵ system to delineate the distinction between online gaming and online gambling. It underscores that this separation is fundamental as it ensures that online games of skill—such as chess or racing games, where outcomes are primarily determined by the player's skill and most importantly their own active participation and performance, and abilities—are not conflated with games of chance, like lotteries and casino games such as online slots, online roulette etc. Many countries, such as Belgium, Brazil, Canada, Colombia, Germany, and the United States, reflect this distinction in their regulatory frameworks, with games of skill often subject to lenient regulations and a lower tax burden.

Further, the report addresses the issue of conflation of online skill gaming with online gambling and "i-Gaming" in the media, as such conflation poses significant challenges for the growth and survival of the gaming industry in India. Skill-based games, which are distinct from games of chance, are often wrongly categorized alongside gambling or i-Gaming in public discourse. This confusion largely arises from the lack of understanding of the different models of skill-based gaming and their specific monetization strategies.

Globally i-Gaming refers to gambling and adopting its use to colloquially refer to skill-based online games can be massively detrimental to the industry. The conflation hinders the growth of the legitimate skill-based gaming industry, potentially threatening both current and future investments, highlighting the need for clear distinctions between games of skill and chance in India's taxation policies moving forward. This conflation also has made it difficult for regulators to enforce policies to restrict illegally operating offshore betting and gambling companies.

In conclusion, in order to sustain growth in India's online gaming industry and attract continued investment, it is crucial that India aligns its taxation and regulatory frameworks with global best practices. There is an urgent need to distinguish between games of skill and games of chance, and taxing the skill-based online gaming sector on its revenue which is the service fee, also referred to as GGR, in line with global benchmarks.



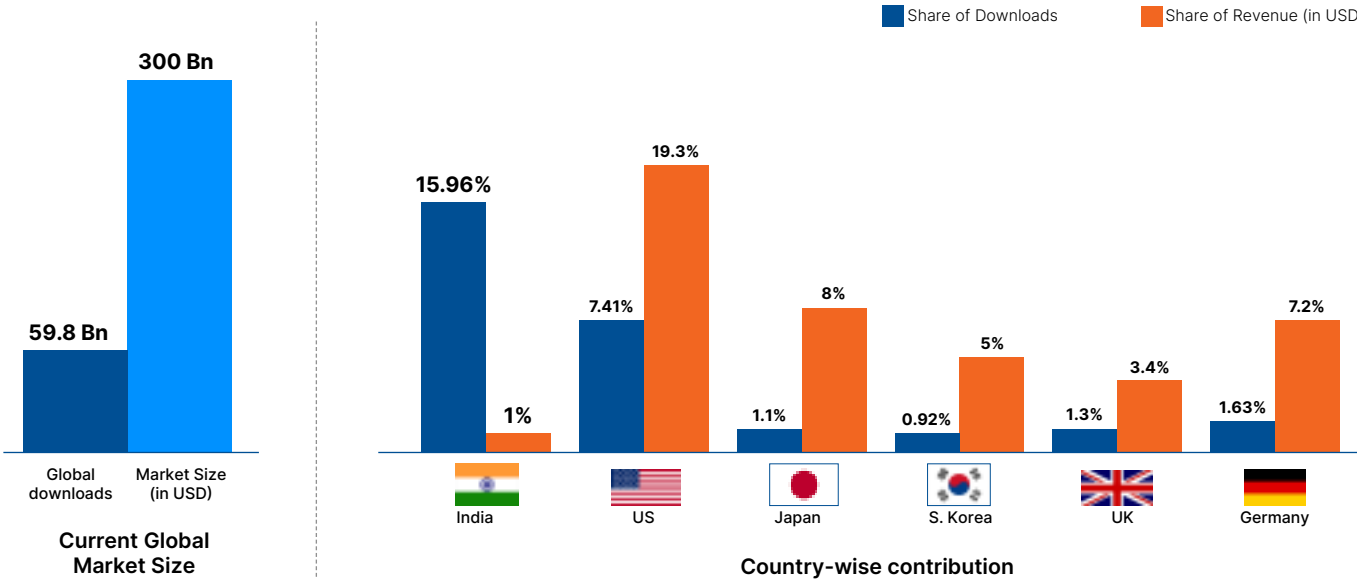
Introduction

Introduction

In today's tech-driven society, the skill-based online gaming⁶ industry stands out as a rapidly evolving innovative segment of the digital economy. In India alone, this market is expected to reach USD 6 billion by 2028⁷. This sector has created over 100,000 jobs in the Indian economy by 2023 and is expected to create an additional 250,000 jobs in the coming years⁸. Given its wide-ranging impact on job creation, innovation in frontier technologies, and content creation and consumption, the industry has become one of the fastest growing sectors across the globe⁹. Globally, the online gaming market has a market size of USD 300 billion with over 3.3 billion user base. India, with over 600 million users, accounts for 20% of the user base and also constitutes around 17% of global gaming app downloads. However, India merely accounts

for 1.1% of this USD 300 billion opportunity. Even if India increases its market share to 20% (in line with its global user base and global app download share) by 2034, we are looking at USD 60 billion opportunity. This is possible considering the US holds 19.3% of the market share with just 7.4% of the app downloads, Japan accounts for 8% of the market share with just 1.1% of downloads, the UK accounts for 3.4% of the market share with just 1.3% downloads, and Germany accounts for 7.2% market share with just 1.6% downloads. Besides, the sector has already created over 100,000 jobs with just USD 3.1 billion market size. By targeting USD 60 billion opportunity, we can also increase the employment generation by 20 times, amounting to over 2 million jobs created.

Exhibit 1: India contributes 20% global gaming downloads, but contributes only 1% of the global revenue



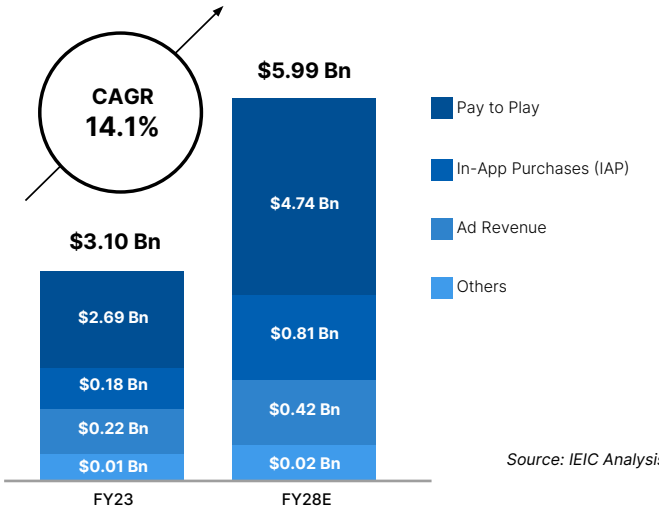
Source: Industry Analysis

Given India's distinctive demographics, spending patterns, and mobile-first consumption habits, Pay-to-Play skill gaming platforms are the primary revenue and growth driver for India's gaming sector, contributing to over 85% of the ecosystem's revenue. **Microtransaction-based models, an indigenous innovation for monetisation, have been instrumental in making skill gaming companies viable in India.** Alternative monetisation models, such as in-app purchases and advertising revenue, yield disproportionately lower returns in India than global averages. For instance, while in-app purchase revenue per download in India is a mere USD 0.02 compared to USD 3.95 in the US and a global average of USD 0.97, the Ads revenue eCPM (effective cost per mille) in the US can reach up to USD 13.32, whereas in India, it stands at just USD 0.80. For this reason, online skill gaming start-ups operating on pay-to-play monetisation models constitute over 85% of the revenue and have attracted around 90% of FDI (~USD 2.5 billion). The rise of the Pay-to-Play sector is congruent with increasing FDI in India's online gaming sector. The FDI in the gaming sector started flowing in around 2017 with the rise of the pay-to-play monetisation segment.

With the growing penetration of smartphone usage, increasing purchasing power, and the growing digital payment ecosystem in India, the skill-based

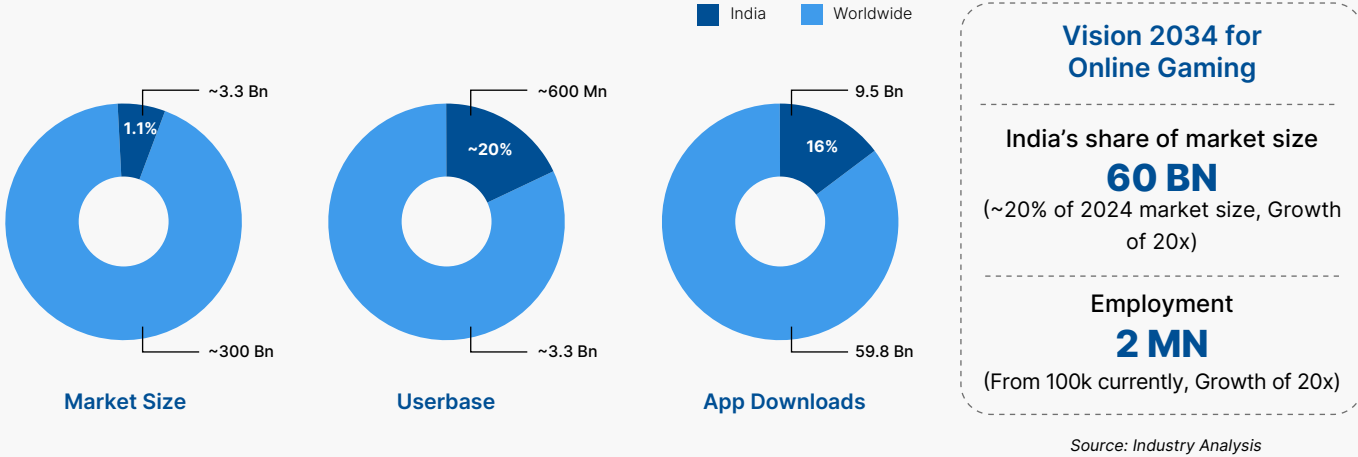
online money gaming landscape has increasingly become a preferred option for entertainment, offering diverse gaming experiences such as Fantasy Sports¹⁰, Card Games¹¹ and Casual Games¹². The industry has deployed varied monetization models to build sustainable businesses, such as service fee¹³, in-app purchase¹⁴, advertisement revenue¹⁵ and free-to-play models that reflect the sector's adaptability to changing consumer

Exhibit 2: Online Gaming Industry Composition by Sources of Revenue



Source: IEIC Analysis

Exhibit 3: India can grow the online gaming sector in India to USD 60 billion by 2034 from USD 3.1 billion currently



Source: Industry Analysis

The Global Gaming Industry is currently valued at **USD 300 Bn**; By 2034, this industry will be valued at USD 490 billion with 5% CAGR during 2024-34E and **will be valued at USD 590 billion with 7% during 2024-34E.**

preferences and technological advancements. While the full potential of this industry is yet to be realized, the industry has shown an exponential growth in the past few decades to become a multi-billion-dollar industry in India¹⁶. The report of the Animation, Video Effects, Gaming and Comics (AVGC) Promotion Task Force also acknowledged the growth potential of the gaming industry¹⁷. In recognition of this potential, the Government of India in April 2023, announced the amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021) to create a regulatory regime for “online games” including real money games. The rules aim to regulate skill-based online games that do not involve wagering on any outcome while leaving the regulation of chance based games (gambling) to the states, as constitutionally, only states can legislate on gambling or games of chance played for real money, whereas games of skill are regulated by the Ministry of Electronics and Information Technology, being the nodal Ministry for regulation of gaming. However, the amendments to the GST law after the decision of the 51st GST Council meeting imposed punitive taxation on skill-based gaming platforms. As per the amendment,

GST on online real money games is now levied at 28% on the “total deposits” paid by playing users, while earlier it was levied at 18% on the GGR^{18,19} i.e. platform fees paid to the platforms prior to the amendment. This change not only increases the tax rate from 18% to 28% but also raises the taxable base by 400%. The new tax regime has not only led to an uncertain taxation regime and a tremendously higher GST burden and also disregards the inherent differences between different game formats which are affected differently by the additional tax burden and require differential regulation and taxation²⁰.

In this context, there is a need to examine the global practices on taxation of online games to understand how online skill-based games are taxed in other jurisdictions and what valuation models are preferred across the world. We will begin with the United Nations’ classification that is mirrored globally for taxation purposes. Subsequently, we will study the 12 jurisdictions in order to understand why the revenue earned by the platforms as service fee, also known as “Platform Commission” is best suited to be the tax valuation base for the sector, and the recommendations.



UN's CPC as the north star for classification

UN's CPC as the north star for classification



The United Nations Central Product Classification ("UN CPC") is an internationally accepted system for classification of all products, which may be transacted locally, or internationally²¹. The UN CPC helps countries affect a consistent product classification structure, based on a set

of internationally agreed concepts, definitions, principles and classification rules²². It helps achieve regulatory convergence and uniformity in countries' naming and classification of products²³.

The classification of various products under the UN CPC depends on the intrinsic nature of the product²⁴. Classification is exhaustive and mutually exclusive²⁵. Meaning, a product will necessarily fit into a specific product category under the UN CPC. And, if a product does not fit into one category, "it must automatically fit into another²⁶."

On-line games and On-line gambling under UN CPC

Like other products, the UN CPC has specific product categories for on-line games. UN CPC classifies offering of games in multiple sub-categories such as outdoor games, video games played on consoles, online games etc.

Exhibit 4: The distinction between Online Gaming and Online Gambling as per CPC

Online Gaming	Online Gambling
<p>Under CPC, Entry 84391 defines online games as: "games that are intended to be played on the Internet such as²⁷:</p> <ul style="list-style-type: none"> • role-playing games (RPGs) • strategy games • action games • card games • children's games <p><i>Note: Payment may be by subscription or pay-per-play. This subclass does not include: - on-line gambling services, cf. 96921."</i></p>	<p>Entry 96921, read with 96929, defines on-line gambling services as^{28,29}:</p> <p><i>"This subclass includes:</i></p> <ul style="list-style-type: none"> • <i>organization and selling services of lotteries, lottos, off-track betting</i> • <i>casino and gambling house services</i> • <i>gambling slot machine services."</i> <p><small>Source: Central Product Classification (CPC), Version 2.1 available here</small></p>

So, even the UN CPC separates online gambling from online gaming. The two represent mutually exclusive categories, with no overlap.

UN CPC Classification - Applicability in India

The scheme of classification of services for the purpose of GST ("GST Classification") is also based on the UN CPC³⁰.

Like the UN CPC, the GST Classification categorized on-line games as a specific product category under code 998439. Similarly, the GST Classification categorizes online gambling as a separate product category under code 999692.

Indian Courts have considered the GST Classification for online gaming, and have affirmed that online games of skill which may be played for real money, are categorized as online games (under code 998439), and not gambling (covered under product code 999692)^{31,32}.

North American Industry Classification System ("NAICS")



The NAICS is a classification system for industries in the North American continent. It classifies different companies on the basis of the goods or services they produce, and provides companies with specific NAICS Codes³³.

The Internal Revenue Service (IRS), the US government agency responsible for collecting federal (central) taxes and enforcing federal (central) tax laws, also uses NAICS codes to divide the earnings by companies as per their commercial activities³⁴.

Even the NAICS Codes make a distinction between skill-games and online gambling. For example, the company, Skillz US INC, which offers skill based games, has a separate NAICS Code, compared to DraftKings, which offers fantasy sports games.

Exhibit 5: Different NAICS code for different format of games

S.No	Name of the Company & Business Description	Primary NAICS Code & Description
1.	<p>Skillz Inc is a technology company that enables users to play skill based games for entry fees³⁵.</p>	<p>511210³⁶</p> <p>This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction³⁷.</p>
2.	<p>DraftKings Inc is a company which offers inter-alia daily fantasy, sportsbook etc³⁸.</p>	<p>713³⁹</p> <p>This comprises of industries involved in the Amusement, Gambling activities⁴⁰.</p>

Conclusion

Similar to the distinction created by various countries mentioned in the Report, the UN CPC and other systems of classifications treat online-gaming and gambling differently and do not equate the same.

Conflation of online gaming with i-Gaming and illegal offshore platforms

In India, the Constitution clearly establishes jurisdiction of the State Government to legislate on betting and gambling. Most of the states have through state legislations adopted the Public Gaming Act, 1867 which prohibits gambling i.e. games of chance while allowing games of skill. Further, the IT Rules 2021, specifically grants recognition to online games of skills by defining them as “permissible online real money games⁴¹” and distinguishing them from gambling activities. Despite the clear definition provided in the rules, “permissible online real money games” or skill-based online games played for real money are often conflated with online gambling or “i-Gaming” in India in the media. The terms “online gambling⁴²” and “i-Gaming⁴³” are particularly used interchangeably to refer to online gaming in the media, a conflation driven by misunderstanding of the skill-based online gaming sector in India. This conflation deviates from global definitions of i-Gaming, which clearly delineate it as a chance-based game or a form of gambling, with no connection to skill-based online games as they are understood in India.

Further, online skill-based gaming in India is not a homogenous sector; it comprises a variety of game formats, such as casual games, card-based games and fantasy sports. These formats rely on different monetization models like platform fee, in-app purchase, advertisement revenue, etc. These game formats and monetization models are not well understood and as a result, they are bucketed together with gambling and i-Gaming in the media.

The conflation hurts the growth prospects of the skill-based online gaming industry as it creates confusion regarding the nature of the games offered by the legitimate skill-based online gaming platforms in India. This conflation has the potential of endangering the existing and future investments in the skill-based online gaming industry in India. It also contradicts the jurisdiction established by the Supreme Court of India and High Courts which have held that merely because money is paid to play a game, that does not make the activity “gambling” or a “game of chance⁴⁴”.

Conflation with i-Gaming

As subsequent sections of this report note, countries are increasingly beginning to formally use the term “i-gaming” to mean and refer to online gambling, or online games of chance. Globally, regulators are more attuned to the colloquial usage of “i-gaming” for online gambling, and are bridging gaps between the colloquial and formal, legal use of the term.

For example, **the State of New Jersey in the United States, considers internet gambling as “internet gaming” or “i-Gaming”**. The State’s Casino Control Act defines “internet gaming” as “the placing of wagers with a casino licensee at a casino located in Atlantic City using a computer network of both federal and non-federal interoperable packet switched data networks through which the casino licensee may offer authorized games to individuals who have established a wagering account with the casino licensee and who are physically present in this State, as authorized by rules established by the division⁴⁵.” Only licensed casino operators may offer i-Gaming services for games such as Online Roulette, Online Slots and other such online games of chance in New Jersey.

Conflation of online gaming with i-Gaming and illegal offshore platforms

Similarly, **the State of Pennsylvania in the U.S., uses the term i-Gaming for internet gambling** and defines i-Gaming as “Any gambling game offered through the use of communications technology that allows a person, utilizing money, checks, electronic checks, electronic transfers of money, credit cards or any other instrumentality to transmit electronic information to assist in the placement of a bet or wager and corresponding information related to the display of the game, game outcomes or other similar information. The term shall not include:

1. A lottery game or Internet instant game as defined in the act of August 26, 1971 (P.L.351, No.91), known as the State Lottery Law.
2. iLottery under Chapter 5 (relating to lottery).
3. A non-gambling game that does not otherwise require a license under the laws of this Commonwealth.
4. A fantasy contest under Chapter 3 (relating to fantasy contests⁴⁶).

So, besides the formal conception of internet gambling as i-Gaming, Pennsylvania also consciously excludes non-gambling games from i-Gaming.

The State of Ontario in Canada, which has the most evolved regulatory regime for online gaming in the country, also regulates remote gambling as i-Gaming. Ontario’s gaming regulator, the Alcohol and Gaming Commission of Ontario (AGCO), defines i-Gaming as “lottery schemes conducted and managed by Ontario’s Lottery Corp or iGaming Ontario that are played or operated through the internet, but does not include OLG lottery products⁴⁷.”

Despite these clear regulatory definitions of i-Gaming as a form of online gambling, in India, of late, there has been a trend towards using the term “i-Gaming” interchangeably with online skill-based gaming in the media.

There have been multiple articles, opinion pieces and reports over the past few years that wrongly use the term “i-Gaming” to refer to the broader online skill-based gaming industry⁴⁸.

Such conflation results in the bucketing of online skill-based gaming with online gambling in popular perceptions of the industry. This consequently may also influence the policymaking process.

The persistent conflation of skill-based online gaming with gambling in the media and under taxation regimes has far-reaching consequences, undermining much-needed government initiatives to promote the online skill-based gaming industry⁴⁹.

The legitimate skill-based gaming platforms face significant financial burdens due to heavy taxation under GST laws via the conflation with gambling, placing them at a competitive disadvantage with offshore gambling platforms. As a result, these unregulated platforms exploit the ambiguity, advertising themselves as “no GST” alternatives to attract users⁵⁰. Despite advisories from the Ministry of Information and Broadcasting and Central Consumer Protection Authority, illegal betting and gambling platforms continue to evade scrutiny, publishing advertisements online and further entrenching their presence in the Indian market. This has detrimental impacts on consumer welfare as these platforms are unregulated. Further, the increasing use of offshore platforms outside of India’s taxation regime also leads to significant revenue losses for the public exchequer⁵¹.

Objective tests to determine the preponderance of skill in games

The issue of conflation of skill-based games with fundamentally distinct activities like gambling underlines the need for adoption of objective

assessment tests for clearly distinguishing skill-based games from chance-based games. While the IT Rules, 2021 define skill-based “permissible

games”, they lack a clear and cogent test to categorically identify games of skill.

Several countries, companies, and academia have devised tests to empirically determine the difference and clearly establish whether a game is a game of skill or game of chance.

The tests developed by academia are mentioned in Annexure 1. The test developed by the regulatory body of the UK is mentioned in Annexure 2. The test developed by industry players like Skillz is mentioned in Annexure 3. In this context, reference can be made to the statistical tools and tests adopted by WinZO^{52,53} to determine the preponderance of skill in the games offered by its

developers. The tests are developed on the basis of peer-reviewed studies by professors across Ivy League Universities (like Stanford University) and leading national Institutes (namely, the Indian Institute of Technology Delhi, Indian Institute of Technology Kanpur, and the Indian Institute of Technology Madras). The results of the test are checked for consistency using the Bayesian Approach⁵⁴. The government and the industry can consider adopting such statistical measures to institute an objective tests to determine preponderance of skill in the games, and thus dispel the conflation of skill gaming with gambling. These tests are mentioned in Annexure 4.

04

Global Benchmarks for Regulating and Taxing Online games: Format Based Categorization is the Norm

This section contains an extensive review of 12 global jurisdictions to understand how they define, regulate, and tax online games of skill, gambling, fantasy sports, and games of chance. This section relies upon country specific regulations to highlight the differentiation and commonalities among different jurisdictions while taxing different gaming formats. This is a critical exercise for the Indian jurisdiction since currently all gaming formats and gambling are taxed in the same manner which has led to existential threat to some gaming formats. For each of the following 12 jurisdictions, we have mentioned the name of the jurisdiction, different definitions for gambling, games of skill, i-Gaming, fantasy sports, and other definitions as mentioned in the local laws and the tax rate and valuation for each of these activities.

Our choice of jurisdictions is guided by our intent to make a representative and informed report. We have chosen jurisdictions from various continents, including South America, North America, and Europe. We have chosen jurisdictions across different spectrums of economic development, including developing countries from the Global South like Brazil and Colombia, and advanced economies like Denmark and Belgium. We have chosen jurisdictions with settled regulatory frameworks, like the U.S. State of Pennsylvania, to countries on the brink of reform, like Brazil, and those with advanced and complex regulatory frameworks, like the Netherlands. On balance, we have attempted to include jurisdictions with relatively mature gaming markets, like Germany and the U.K.



New Jersey



New Jersey requires public approval for allowing each kind of gambling activity through a referendum. The State permits gambling both physically and over the internet, subject to strict licensing requirements. Fantasy sports are broadly treated as games of skill, they are regulated separately and require a permit for operation in the State.



Gambling

Like other jurisdictions mentioned in this Report, New Jersey regulates gambling as a separate class. In fact, the State requires that each specific kind of gambling must be approved through a popular referendum by its residents⁵⁵.

New Jersey defines gambling as *“staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the actor's control or influence, upon an agreement*

*or understanding that he will receive something of value in the event of a certain outcome*⁵⁶.” Contests of chance mean contests or games whose outcome depends materially on chance⁵⁷.

New Jersey allows gambling in both, its physical form or over the internet, subject to strict licensing requirements⁵⁸. Only casinos may offer gambling games physically and if those games have been authorized by regulators⁵⁹.



i-Gaming

New Jersey classifies gambling offered over the internet as Internet Gaming (i-Gaming). The State defines internet gaming as “placing of wagers with a casino licensee at a casino located in Atlantic City using a computer network of both federal and non-federal interoperable packet switched data networks through which the casino licensee may offer authorized games to individuals who have established a wagering account with the casino

licensee and who are physically present in this State, as authorized by rules established by the division⁶⁰”. i-Gaming may only be offered in Atlantic City, not statewide.

The offering of i-Gaming in New Jersey requires a casino license⁶¹. All the equipment including the hardware, software etc must also be in the physical premises of the casinos⁶².



Games of Skill

New Jersey regulators adopt a view that activities which do not have a material element of chance do not qualify as gambling^{63,64}. This is true regardless of whether the activity involves real money or not⁶⁵.

So, unlike gambling, New Jersey law requires no referendum for skill-based games, even if their participants have the ability to win real money in such games⁶⁶.



Fantasy Sports

The regulation of fantasy sports in New Jersey presents an interesting nuance. While the State takes an affirmative position that fantasy sports are games of skill (holding that contests in which the relative skill of the participants predominates to a degree that chance plays no material role in determining the outcome of the activities⁶⁷), it regulates fantasy sports as a separate subset within games of skill, and requires that fantasy games may be offered in New Jersey after obtaining a permit⁶⁸.

New Jersey defines fantasy sports activities as *“any fantasy or simulated activity or contest with an entry fee in which a participant owns or manages an imaginary team and competes against other*

*participants or a target score for a predetermined prize with the outcome reflecting the relative skill of the participants and determined by statistics generated based on performance by actual individuals participating in actual competitions or athletic events, provided that the outcome shall not be based solely on the performance of an individual athlete, or on the score, point spread, or any performance of any single real team or combination of real teams; “fantasy sports activity” shall not include any activity in which no entry fee is paid to the fantasy sports operator or in which a prize is not collected, managed, or awarded by the operator*⁶⁹”.

Taxes

New Jersey taxes online gambling and online games of skill on companies' revenues; not as a percentage of the gross gaming value (which represents the total amounts staked by players).

Taxes on Gambling Operators

Casino operators must pay annual taxes on the gross revenue they generate⁷⁰. Gross revenue means a total of all sums received by a casino or internet gaming licensee less total of all sums paid out as winnings⁷¹.

The tax rate varies depending on whether the games of chance are offered physically in casinos, in which case the rate of annual tax is 8% of the gross revenue, or if the games are offered online, in which case the rate of annual tax is 15% of the gross revenue⁷². New Jersey may also impose additional taxes (alternative tax) based on the gross revenue of the casino/i-Gaming operator⁷³.

Taxes on Fantasy Sports

Fantasy sports operators are also taxed on their gross revenue⁷⁴. Gross revenue for operators also means an amount equal to the total of all entry fees that a fantasy sports operator collects from all participants less total of money prizes paid out to all the participants⁷⁵ multiplied by the State's location percentage. Fantasy operators must pay quarterly taxes at a rate of 10.5% of the gross revenue⁷⁶.

Additionally, the Internal Revenue Service has opined that entry fees paid for participating in daily fantasy sports are taxable wagers and is subject to excise tax at 0.25% of the amount of wager (entry fees paid for participating in daily fantasy sports) if the wager is accepted from a state which authorized daily fantasy sports and at 2% if the wager is accepted from a state which did not authorize daily fantasy sports⁷⁷.

Taxes on Skill Games

New Jersey taxes operators of games of skill at a standard Sales and Use tax ("SUT") rate of 6.625% "on receipt of every retail sale of" tangible property (including computer software), digital goods or services⁷⁸. **So, skill-gaming companies are taxed on their receipts, i.e., the revenue/platform fee they realise from players; and not on deposit.** Here again, regulators are conscious about charging the service provider only on their net receipts from consumers⁷⁹.



Denmark |

Denmark regulates gambling through the Gambling Act ("Danish Act")⁸⁰. The country, like many other examples discussed in this Report, treats online gambling on a separate footing from online skill gaming or games of skill when played for real money. Fantasy sports, likely couched as betting, are taxed differently from skill-based gaming.

Online Gambling

Danish law defines gambling as “lottery, combination games, and betting⁸¹”.

In turn, lottery means “activities in which a participant has a chance of winning a prize and where the probability of winning is solely based on chance⁸².” Combination games mean “activities in which a participant has a chance of winning a prize and where the probability of winning is based on a combination of skill and chance⁸³.” **Betting means “activities in which a participant has a chance of winning a prize and where bets are placed on the outcome of a future event or the occurrence**

Online Games of Skill

Danish law does not expressly define online games of skill. Such games are unlikely to be categorised as lottery, betting or games of chance⁸⁷. In other words, such games form a separate category from online gambling or games that predominantly rely on chance. And unless there are particular features which heighten the element of chance in such games, the Danish Act will normally not apply to games of skill⁸⁸.

Fantasy Sports

Like online skill-based games, Denmark does not expressly define fantasy sports/games. But fantasy sports games have intrinsic features common to betting.

of a particular event in the future⁸⁴.” Denmark also defines a specific form of betting, i.e., “pool betting”, as “bets where all or parts of the winnings depend on the size of the total pool of stakes or the winnings are shared between the winners⁸⁵.”

So, in essence, gambling refers to games or activities in which chance is the sole or, dominant element in determining the probability of winning. Gambling, whether offered online or onshore, requires a gambling licence⁸⁶ from the Danish Gambling Authority.

So, games like chess, quizzes, racing games, and such other casual games for example, in which skill of an actively playing player determines the probability of winning, are excluded from the purview of gambling and are not subject to licensing or other requirements under the Danish Act. Denmark allows games of skill to be offered with or without stakes.

So, the offering of fantasy sports is likely subject to receiving a betting license from the Danish Gambling Authority^{89,90}.

Taxes

Denmark taxes online gambling companies and those offering fantasy sports, independent of their monetisation model, on the Gross Gaming Revenue and not on the deposit or the Gross Gaming Value (total amount pooled by the players).

Taxes on Online Gambling

Online gambling companies are subject to a monthly tax on their GGR, i.e., deposits (plus any commission) minus winnings⁹¹. The monthly tax rate is 28% of the GGR⁹².

Taxes on Fantasy Sports

As fantasy sports have been opined to be subjected to licensing conditions similar to those on the betting companies, hence, an inference can be

made that fantasy sports are likely to be taxed as online gambling.

Taxes on Online Games of Skill

Games of skill form a separate category from gambling (Games of Chance). And, unlike gambling, games of skill do not attract a gaming duty of 28% of the GGR.

Such games are taxed at a standard value added tax (VAT) rate of 25%⁹³ on the consideration skill-gaming companies receive in return for the supply⁹⁴. **In other words, tax is applied on the revenue/ platform fee companies receive from players, and not the total amounts deposited by the players or total amount pooled by the players.**



Romania



Romania regulates gambling as “games of chance”. These games may be offered after securing specific license and authorization from the Romanian gambling regulator. Games of skill when played for real money, while not specifically defined, are specifically excluded from the category of games of chance. **There is no requirement of a license or authorization for games of skill when played for real money.** Romania generally classifies fantasy sports as games of skill.

Gambling

Romania defines gambling, or “games of chance” as an activity having the following cumulative elements: a participation fee, random selection of results on which a game is based, monetary winnings, and a public offering⁹⁵. Romanian law identifies and specifically defines several kinds of games of chance, including lottery games; betting; games of chance characteristic of casinos; slot machine-type games; bingo games played in gaming rooms; bingo games organised via television networks; remote lottery games; remote casino-type games, remote fixed betting; remote mutual betting; remote counterpart betting; remote bingo and keno games; tombola; and temporary games of chance⁹⁶.

Companies offering gambling, i.e., games of chance must secure a license and authorisation from the Romanian gambling regulator, the Romanian National Gambling Office (ONJN) Monitoring Committee⁹⁷. Romania only allows European companies to apply for and obtain an ONJN license⁹⁸. Recent amendments to Romanian law mean that companies based outside Romania and offering gambling in the country must also register a permanent establishment for tax purposes in Romania⁹⁹.

- (iii) an annual contribution of EUR 500,000 per year to social responsibility; and
- (iv) a monthly tax of 2% of the participation fees cashed in every month, a **metric defined as the amount transferred from the players’ bank accounts or similar accounts to their game accounts on the gaming platform**¹⁰⁴.

Taxes on Online Skill Gaming

Online skill gaming or games of skill played for real money are taxed similarly to services provided over internet businesses, at the standard value added tax (VAT) rate of 19% ¹⁰⁵on the companies’ service fee/platform commission.

i-Gaming

Romanian law does not use the term “i-Gaming”. Though, it does mention that remote games of chance or online games of chance which fulfill the essential conditions for games of chance (i.e., participation fee, random results selection, monetary winnings, and public offering), are treated

as such, and require the ONJN’s license¹⁰⁰. Romania prevents unlicensed gambling through internet blacklisting, with the ONJN managing a blacklist of about 1400 internet domain names promoting unlicensed gambling activities in Romania¹⁰¹.

Online Skill Gaming

Romania does not specifically define “games of skill”. However, **Romanian law explicitly clarifies that games which have features traditionally associated with games of skill even when played for real money, are not gambling or games of chance**. So, for example, Romanian law mentions that “games of an entertainment nature, operated

via any kind of machines, apparatus, devices of any kind that do not involve wins based on random elements, but which are intended to test the participant’s strength, intelligence or dexterity” are not games of chance, and do not require ONJN authorisation¹⁰².

Fantasy Sports

As with games of skill, Romania does not specifically define fantasy sports/games. Romanian law mentions that “amusement or sporting games whereby players are required to demonstrate knowledge and skills and which are not based predominantly on chance” are not games of chance requiring ONJN authorisation¹⁰³.

So, fantasy sports/games will generally fall outside the scope of gambling or games of chance in Romania. If such games have variations which heighten the influence of chance, or eliminate the role of knowledge and skills, they will be considered gambling.

Taxes

Romanian tax treatment for games of chance varies significantly from that afforded to games of skill.

Taxes on Gambling

Companies offering online gambling in Romania

must pay the following fees and taxes:

- (i) an annual license fee of EUR 300,000 per year;
- (ii) an annual authorisation tax, being the higher of EUR 400,000 or 21% of the company’s gross gaming revenue (GGR), i.e., income obtained from gambling;



Pennsylvania



Pennsylvania governs gambling under a licensing framework. Gambling can be conducted both in physical locations and online. While the games of skill are not explicitly defined, the Courts have relied on 'predominance test' to differentiate between games of skill and chance similar to the approach taken in India. While fantasy games are broadly treated as games of skill, they are also governed through licenses.



Gambling

Pennsylvania aligns with global standards in treating gambling as a separate and distinct class. The Pennsylvania Code uses gambling to mean "the licensed placement and operation of games of chance"¹⁰⁶. Pennsylvania Courts have held that **there are three elements of gambling (i) consideration; (ii) predominance of chance; (iii) reward**¹⁰⁷.

Pennsylvania allows gambling to be offered physically, on the premises of the license holder, and remotely, through the internet¹⁰⁸. The Pennsylvania Gaming Control Board regulates gambling in the State. Only licensed entities¹⁰⁹ whose gambling games have been authorized by the Board may offer such games in Pennsylvania¹¹⁰.



i-Gaming

Pennsylvania categorized gambling games offered over the internet as i-gaming. An i-game(s) is defined as "Any gambling game offered through the use of communications technology that allows a person, utilizing money, checks, electronic checks, electronic transfers of money, credit cards or any other instrumentality to transmit electronic information to assist in the placement of a bet or wager and corresponding information related to the display of the game, game outcomes or other similar information"¹¹¹.

Additionally, **"a nongambling game that does not otherwise require a license under the laws of this Commonwealth" is not i-Gaming**¹¹². So, regulators make a clear distinction between gambling games which may be offered through the internet (i.e., i-games) and other games generally.

Offering i-games requires an i-Gaming license from the Gaming Control Board¹¹³. All equipment for offering i-Gaming must be located in the premises of the licensed entity¹¹⁴.



Games of Skill

Pennsylvania separates gambling from games of skill on the basis of the involved skill. Pennsylvania's Courts identify games of skill based on the relative amount of chance and skill present in such games¹¹⁵. Courts apply the predominance test to separate games of skill from gambling. And, so, if the element

of skill predominates in a game, it is not considered gambling, even if offered for real money¹¹⁶.

Games of skill are mostly unregulated in Pennsylvania with a few notable exceptions like fantasy.



Fantasy Sports

Pennsylvania defines fantasy activities as "(1) An online fantasy or simulated game or contest with an entry fee and a prize or award in which: (i) The value of all prizes or awards offered to winning participants is established and made known to participants in advance of the contest and the value is not determined by the number of participants or the amount of any fees paid by those participants. (ii) All winning outcomes reflect the relative knowledge and skill of participants and are determined by accumulated statistical results of the performance of individuals, including athletes in the case of sports events. (iii) No winning outcome is

based on the score, point spread or performance of a single actual team or combination of teams or solely on a single performance of an individual athlete or player in a single actual event. (2) The term does not include social fantasy contests"¹¹⁷.

While Pennsylvania considers fantasy games as games of skill (requiring the winning outcome in a fantasy contest to reflect the knowledge and skill of the participant and specifically prohibiting offering any version of fantasy games which does not reflect the knowledge and skill of the participant) offering fantasy contests in the State requires a license¹¹⁸.

Taxes

Pennsylvania taxes gambling as a percentage of companies' revenues; i.e. amount retained by companies net of winnings distributed, not as a percentage of the deposit amount or the Total amount Pooled by players.

Tax on Gambling

Gambling operators must pay taxes on the gross revenue they generate¹¹⁹. Gross revenue is defined as total of all the cash or its equivalent paid as a wager to the operator minus cash or cash equivalent paid to the participants and cost of any other property distributed to the participant¹²⁰.

The precise tax rate applied depends on the kind of gambling games offered. For example, the tax on offering certain kind of slot machines physically in casino is 34%¹²¹, for offering table certain games like baccarat, roulette, black jack etc is 12%,¹²² and for i-Gaming offered through the internet is 14%¹²³.

Tax on Fantasy Sports

Fantasy sports are taxed based adjusted revenues from fantasy contests, as defined under the law, i.e amount retained by companies net of winnings distributed¹²⁴. Companies must pay tax at 15% of adjusted revenue¹²⁵, i.e., the amount equal to the total amount of all entry fees collected from all participants entering the fantasy contest minus prizes or awards paid to participants in the fantasy contest, multiplied by the in-State percentage¹²⁶. Additionally, the Internal Revenue Service, i.e. the revenue service of the United States federal government, has stated that entry fees paid for participating in daily fantasy sports are taxable wagers and is subject to excise tax at 0.25% of the amount of wager (entry fees paid for participating in daily fantasy sports) if the wager is accepted from a state which authorized daily fantasy sports and at 2% if the wager is accepted from a state which did not authorize daily fantasy sports¹²⁷.

Tax on Online Games of Skill

Operators of online games of skill are charged a sales tax at 6%¹²⁸ "on the full purchase price¹²⁹" including on software, mobile applications, in-app purchases, download of games etc. The purchase price includes charge (if and to the extent imposed) for services, delivery costs, installation services, taxes, costs to vendors etc and excludes discounts etc. Sales tax is "collected on every taxable sale¹³⁰". So, in essence, **skill gaming companies are charged on the platform fee they realise from the players**, when a taxable sale occurs, i.e., when players have played and received services from the skill gaming operator.



Belgium |

Belgium largely replicates the international norm of treating gambling or games of chance as a separate category from games of skill. It differentiates between these games on the basis of the involved skill. Fantasy sports are considered games of chance.



Online Gambling

Belgium defines gambling, or games of chance as “Any game or bet, where a stake of any kind, either the loss of that stake by at least one of the players or bettors, or a profit of any kind for at least one of the players, bettors or organizers of the game or bet and where chance is an even incidental element in the course of the game, the designation of the winner or the determination of the winning size¹³¹.” In Belgium, gambling has three necessary elements: a bet; profit or loss; and chance. The term “bet” is defined as a “game of chance where each player makes a stake and that results in gain or loss which is not dependent on the acts of the player but rather

on the occurrence of uncertain events that occur without intervention of the players¹³²”.

Belgium has a licensing regime for gambling. The country’s gaming regulator, the Gaming Commission, grants different types of licenses for the offering of games of chance. Unlicensed gambling (and even unlicensed i-Gaming) is banned, as there is a prohibition on the operation of “a gambling game or a gambling establishment, in any form, at any place, and in any direct or indirect manner, without a license¹³³.”



Online Games of Skill

Belgium does not specifically define games of skill. By implication, games which have skill, and are excluded from the purview of games of chance, are games of skill. This exclusion is narrow. That is because, as we have noted, in Belgium, games of chance include even those games where chance is an incidental or ancillary element. So, even if skill is the predominant element in a game, if it has an element of chance, it will likely be considered

a game of chance, and therefore, regulated. So, games which are typically regarded as games of skill in other jurisdictions, may be considered games of chance in Belgium.

Of course, games which entirely depend on skill without chance influencing the course or outcome, would be considered games of skill. These games are unregulated and may be freely offered.



Fantasy Sports

Belgium does not specifically define fantasy sports. **The Gaming Commission’s guidance suggests that fantasy sports are considered games of chance, i.e., a form of regulated gambling in Belgium.**

The Commission notes that “fantasy sports are a form of sports betting... in particular, whereby the

winner is selected by means of a pre-determined points system, based on a self-composed fictitious team of existing athletes from a particular branch of sport... Due to the random aspect in naming the winner, combined with the legal definition of betting in Belgium, these games should be regarded as bets on sport in the first instance¹³⁴.”

Taxes

Belgium taxes gambling and fantasy sports operators on their Gross Gaming Revenue (GGR). Online skill-based games are taxed at the standard Value Added Tax (VAT) rate are treated akin to services provided over the internet.

Tax on Gambling

Companies offering gambling, i.e., games of chance, are taxed at a rate of 11% of the GGR, i.e., the total stakes less distributed winnings. The tax is levied on a regional basis, i.e., in the Flanders region, the Walloon region, and the Brussels-Capital Territory region¹³⁵. Additionally, if gambling and betting services are classified as electronically supplied services, they are subject to a 21% VAT. If not classified as electronically supplied services, they remain exempt from VAT¹³⁶.

Tax on Fantasy Sports

Fantasy sports, being a sub-set of gambling, are taxed similarly (at 11% of the GGR). If fantasy sports are classified as electronically supplied services, they are subject to additional 21% VAT. If not classified as electronically supplied services, they remain exempt from VAT¹³⁷.

Tax on Online Games of Skill

Online skill-based games which are excluded from games of chance, are taxed at a standard VAT rate of 21%. VAT is charged on the net revenue, i.e, the total stakes less winnings, or on the companies’ platform commission, depending on the operator’s business model¹³⁸.



Netherlands



The Netherlands replicates international practice in treating gambling, or “games of chance”, as a separate class from games of skill. It differentiates between these classes based on the element having dominant influence: chance or skill similar to the approach taken in India. Gambling requires a license from the Netherlands’ gambling regulator, the Netherlands Gambling Authority. Games of skill do not. The classification of fantasy sports may vary, depending on the dominant influence. Generally, fantasy sports offerings may likely be considered gambling, and some may not.

Gambling

The Netherlands defines gambling, or “games of chance” as games in which: (i) players have the opportunity to compete for prizes or premiums, and (ii) the winners are designated through a means over which players are generally unable to exercise a dominant influence¹³⁹. The involvement of stakes is not a defining feature of gambling. Even free-to-play games may be gambling, if their players are able to win prizes and their winners are determined through means over which players have no

influence. Dutch gambling law specifically defines many types of gambling games: small games of chance¹⁴⁰, state lottery¹⁴¹, instant lottery¹⁴², sports betting¹⁴³, totalizer¹⁴⁴, lotto¹⁴⁵, casino games¹⁴⁶, and slot machines¹⁴⁷.

Gambling, or games of chance, may be offered in the Netherlands, under a license from the country’s gambling regulator, the Netherlands Gambling Commission¹⁴⁸.

i-Gaming

While Dutch law omits a reference to the term “i-Gaming”, it recognises that gambling may occur over the internet and even when offered in this form, it is a regulated, licensed activity. Dutch law uses the term “remote gambling” for i-Gaming, and defines “remote gambling” as games of

chance offered “remotely by electronic means of communication and in which without physical contact between the participant and the person who gives that opportunity, space and resources are made available for participation in those games of chance¹⁴⁹.”

Games of Skill

The Netherlands does not specifically define games of skill. Broadly, games whose elements include skill, and which are not categorised as “games of chance”, form a separate category of games, which are unlicensed and generally unregulated under Dutch law.

So, for example, Dutch law mentions that “skill machines” (i.e., machines which are not “slot machines” and therefore, not gambling) include

machines whose games a player is able to influence, using his insight and dexterity¹⁵⁰. Whether a game is one of skill, or chance, depends on the game as a whole. So, individual or isolated components of chance in a game whose results are otherwise predominantly decided by players’ skill, are not games of chance or gambling¹⁵¹. The material test is whether players generally, considering how a game is played in practice, have opportunities to influence the outcome of a game¹⁵².

Fantasy Sports

Fantasy sports offerings are more likely to be considered as a form of sports betting, i.e., bets aimed at guessing or predicting participants’ results in pre-announced sports competitions^{153,154}, or bets on events during a sports match or on the outcome of a sports match¹⁵⁵. The classification of fantasy

sports may vary, depending on the dominant influence being skill or chance.

Taxes

Tax on Gambling

Netherlands generally taxes remote gambling or games of chance offered over the internet, at a tax rate of 29.5% of the Gross Gaming Revenue,

i.e., the total stakes made less winnings offered. Besides, remote gambling operators are subject to a gambling levy of 1.95% on their GGR¹⁵⁶.

Tax on Fantasy Sports

Fantasy sports, if regarded as gambling, are taxed similarly, i.e., a gambling tax of 29.5% of the GGR, and a gambling levy of 1.95% of the GGR, is charged.

Tax on Online Games of Skill

Online skill games when played for real money, being unregulated by Dutch gambling laws, are taxed at the Netherlands’ standard Value Add Tax (VAT) rate of 21%¹⁵⁷, applied to digital services¹⁵⁸. VAT is charged on operators’ platform fee or service charges, i.e., on the amount operators charge their players¹⁵⁹.



Brazil |

Brazil maintains a clear distinction between gambling and games of skills. Gambling, including over the internet, is prohibited, except for a limited form of sports betting. However, reforms are anticipated to move from complete prohibition to a licensing framework under the gambling laws. The regulation of fantasy sports in Brazil depends on the characteristics of the games. While some fantasy sports may qualify as sports betting, requiring a permit, others that meet specific criteria are not classified as sports betting and are thus unregulated.

Gambling

Brazil separates gambling from games of skill, and regulates the two categories differently. In fact, Brazil prohibits gambling¹⁶⁰.

In Brazil “establishing or exploiting games of chance in a public place or accessible to the public, with or without the payment of an entry fee” is punishable¹⁶¹. Games of chance mean games in which “winnings or losing depends exclusively or primarily on luck¹⁶²”. Currently, no license or authorization may be granted for operating a game of chance (gambling¹⁶³). This is true even if the game of chance is offered over the internet¹⁶⁴.

Brazil allows a limited form of sports betting through the recently enacted fixed-odds betting law, upon license from the Ministry of Finance¹⁶⁵. The fixed-odds law defines “bet” as “an act by which a certain amount is placed at risk in the expectation of obtaining a prize¹⁶⁶”. The fixed-odds law defines “fixed odds”

as “a multiplication factor of the bet amount that determines the amount to be received by the bettor, in case of winning, for each unit of national currency bet¹⁶⁷”.

Anticipated Reforms

Brazil is expected to reform its gambling laws. Brazil proposes institutionalizing a licensing regime in place of the present ban on gambling. Brazil's lower house of Parliament has proposed a bill (“Proposed Law”) to allow for the licensing of casinos¹⁶⁸ and games of chance offered through the internet¹⁶⁹. As per the Proposed Law, a game of chance means a “class or type of game in which the outcome is determined exclusively or predominantly by the outcome of the random future event defined in the rule system¹⁷⁰”. Like the current law, the Proposed Law uses the predominance of chance as the main basis for classifying a game as gambling.

Games of Skill

Brazil has recently passed an ordinance (secondary legislation) which specifically excludes games of skill when played with real money from the purview of betting (“Ordinance”) ¹⁷¹. **The Ordinance defines games of skill as “a category of games where the outcome is primarily determined by the mental or motor skills of the participant, such as dexterity, expertise, intelligence, ability, and mastery of knowledge, even though there may be non-prevalent random events.”** This category includes games which fall outside the scope of gambling, i.e., it includes games whose outcome is exclusively or predominantly determined by players’ skills. Games of skill may be freely offered in Brazil, even if offered for real money¹⁷².

Anticipated Reforms

Anticipated reforms will expectedly also maintain the distinction and its basis (i.e., the predominance of chance) between gambling and games of skill. Under the Proposed Law, a game of mental skill¹⁷³ is “a game in which the outcome is determined mostly or mainly by mental abilities of those who participate in them such as dexterity, skill, intelligence, training and mastery of knowledge, even if there are non-prevalent random events¹⁷⁴”. The Proposed Law explicitly mentions that organizing or exploiting games of mental skill for real money is not gambling¹⁷⁵.

Fantasy Sports

The offering of fantasy sports may be a form of sports betting and may, therefore, require a permit; or may be unregulated, and therefore, unlicensed. The regulatory treatment depends on the precise features of the fantasy game.

Brazil's fixed odds law defines fantasy sports as “electronic sports in which disputes take place in a virtual environment, based on the performance of real people, in which (i) virtual teams are formed by a minimum of 2(two) real people, and the performance of these teams depends predominantly on the knowledge, statistical analysis, strategy and skill of fantasy sports players; (ii) pre-established rules apply; (iii) the guaranteed prize value is

independent of the number of participants or the volume collected from the registration fees; and (iv) the results do not derive from the result or the isolated activity of a single person in a real competition¹⁷⁶”. It clarifies that fantasy sports (strictly meeting these criteria) is not sports betting.

However, in some versions of fantasy sports games, prizes offered by the fantasy game operators depends on the number of participants or the volume of fees collected from players. So, an inference may be drawn that the offering of such forms of fantasy sports games may be regarded as sports betting and require a license.

Taxes

Taxes on Gambling

Currently, there is no framework for taxation of gambling operations because gambling is prohibited in Brazil.

If Brazil reforms its gambling laws, as anticipated, then, depending on the games of chance offered, under the Proposed Law, licensees will have to pay (a) a quarterly fixed fee, which may range from 20,000 Brazilian Reais to 600,000 Brazilian Reais per quarter¹⁷⁷; and (b) a tax of 17% on the operators' Gross Gaming Revenue ("GGR"¹⁷⁸). Here, GGR represents the difference between the total bets paid and total prizes paid out¹⁷⁹.

Taxes on Fantasy Sports

Taxation on fantasy games will depend on the format of fantasy offering. If a format of fantasy game does not meet the criteria mentioned in Brazil's fixed odd law, the fantasy operators must

pay tax at a fixed rate of 12% on the GGR¹⁸⁰. If, on the other hand, the format of the fantasy games meets the criteria mentioned in Brazil's fixed odds law, fantasy sports may be taxed similar to games of skill as described below.

It may be noted that previously, Brazil taxed betting operators a percentage of their turnover.

In 2022, Brazil shifted from this metric, and started taxing betting operators on their GGR¹⁸¹. Brazil's Ministry of Economy commented that this move, aligning Brazil with international best practice, "will lead to an increase in revenue", and "will allow regulation of the market and fight against illegal market which does not pay taxes¹⁸²".

Games of Skill

Companies offering games of skill must pay a tax on their GGR¹⁸³. The precise tax rate varies between Brazilian municipalities, and ranges from 2-5% ¹⁸⁴of the GGR.



United Kingdom |

The United Kingdom (UK) regulates gambling or games of chance (terms its statute refers to as 'gaming'), as a separate and distinct category from games of skill. Fantasy sports, generally considered 'pool betting' under UK law, represent a form of regulated gambling.

Gambling

Gambling is highly regulated in the UK. The primary statute governing gambling in the UK is the Gambling Act 2005 (the Act)¹⁸⁵. The Act classifies gambling into three broad categories: “gaming”, “betting”, and “participating in a lottery¹⁸⁶”.

“Gaming” means playing a game of chance for a prize¹⁸⁷. “Game of chance” means a game which involves both an element of skill and chance, or where the element of chance can be eliminated by a superlative skill, or has any element of chance¹⁸⁸. “Betting” means making or accepting a bet on (a) the outcome of a race, competition or other event or process, (b) the likelihood of anything occurring or not occurring, or (c) whether anything is or is not true¹⁸⁹. Betting is “pool betting” if made on terms

that all or part of winnings — (a) shall be determined by reference to the aggregate of stakes paid or agreed to be paid by the persons betting, (b) shall be divided among the winners, or (c) shall or may be something other than money¹⁹⁰. And lottery is a division of prizes based upon a chance event where the participants pay for the chance to win a prize¹⁹¹.

Any activity covered within the scope of gaming, betting and lottery is considered as gambling in the UK. Gambling, whether offered onshore or online, requires a license¹⁹² from the UK Gambling Commission, the dedicated national gambling regulator.

Online Skill Gaming

The UK does not explicitly define online games of skill. But games involving skill which fall outside the definition of “games of chance” are not considered gambling, and form a separate, unregulated category. Although there is no formal de minimis level (of chance) which makes a game one of chance, the UK Gambling Commission gives more guidance on this aspect and takes the position that games having an insignificant element of chance, which is small enough to be disregarded, are not gambling¹⁹³.

The regulator’s guidance suggests that factors which would make a game one of skill include: a suitably skillful players has sufficient time to exercise their skill; the game’s outcome is based on a player’s reactions which are genuinely achievable; a game based on memory gives the player a chance to retain and recall necessary information; a game where players controls operate in a consistent way¹⁹⁴.

Fantasy Sports

The UK does not expressly define fantasy sports/games. Such games are generally considered gambling, because they almost inevitably fall within the contours of “game of chance”, “betting”, or “pool betting”. As a consequence, fantasy sports form a regulated activity under the Act in the UK

and will require a license, as per the Gambling Commission¹⁹⁵. Thus, fantasy sports and casual skill games are treated on a separate footing in the UK, whereby the former requires a license and is a regulated activity and the latter is not.

i-Gaming

The UK does not explicitly define i-Gaming. It does, however, differentiate between remote gambling and non-remote gambling. Remote gambling includes gambling through any form of remote communication (telephone, internet, etc¹⁹⁶.) but not gambling conducted through postal services

(e.g., sale of lottery tickets). Non-remote gambling is generally confined to specific licensed premises, such as betting shops, racecourses, casinos and adult gaming centers. Offering remote gambling requires a remote gambling license from the Gambling Commission in the UK¹⁹⁷.

Taxes

Tax on Gambling

The UK taxes gambling activities on the Gross Gaming Yield (“GGY¹⁹⁸”). The GGY means the total stakes less the prizes paid out to customers¹⁹⁹. Companies offering gambling physically must pay tax at rates ranging between 15-50% of the GGY, depending on the annual revenue generated²⁰⁰. Companies offering gambling remotely must pay tax at a rate of 21% of their annual GGY²⁰¹.

Tax on Fantasy Sports

As mentioned before, the offering of fantasy sports in the UK usually requires a pool betting license²⁰². Pool betting operators must pay a ‘pool-betting duty’ (“PBD”) of 15% on the pool bettors’ profit²⁰³. The pool bettors’ profit means the total amount of stake paid to the operator less the amount of stake paid to the customers as winnings²⁰⁴.

Tax on Online Skill Gaming

In the UK, the supply of games through the internet including games of skill qualifies as a supply of digital services²⁰⁵. These services are taxed at a rate of 20% of the consideration²⁰⁶. The value of consideration is the amount paid by customers reduced by the amount paid out as winnings by the supplier²⁰⁷.



Germany |

Gambling activities in Germany are governed by the Inter-State Treaty on Gambling, which establishes a unified regulatory framework for various forms of gambling across the country. The Treaty outlines key regulatory objectives, including maintaining a state monopoly over lottery operations and permitting the licensing of sports betting, virtual slot games etc. While gambling regulation is primarily subject to the laws of each of the 16 federal states, the Treaty facilitates uniformity by establishing common principles and standards that all states must adhere to in specific areas of gambling law.



Gambling

Like most jurisdictions mentioned in this Report, Germany regulates gambling and games of skill as two mutually exclusive, independent categories.

Germany mainly regulates gambling through the Inter-State Treaty on Gambling (GlüStV). In Germany, gambling games (i.e., games of chance) may be offered under license²⁰⁸. Germany defines gambling, or games of chance, as games involving (i) the payment of a fee, and (ii) the predominance of chance. The GlüStV²⁰⁹ states that **“A game of chance is deemed to exist if a fee is charged for the acquisition of a chance to win and the decision to win depends entirely or predominantly on chance. In any case, the decision to win depends on chance if the uncertain occurrence or outcome of future events is decisive”**²¹⁰.

Besides, the GlüStV mentions that a license may be

granted only for certain limited forms of gambling. Any other forms or games of chance are prohibited. The GlüStV states that “a license for public games of chance on the Internet may only be granted for the sale and brokerage of lotteries, for the organization, brokerage and sale of sports betting and horse betting, and for the organization and sale of online casino games, virtual slot machines and online poker. In addition, the organization and brokering of public games of chance on the Internet is prohibited”²¹¹.

Offering gambling without a license is a criminal offence. The German Criminal Code (StBG) states that “Whoever, without the permission of an authority, publicly organizes or runs a game of chance or provides the means of doing so incurs a penalty”²¹²...



Internet Gambling

Gambling games offered over the internet are treated similarly as their physical counterpart. Germany considers online games as variants

of traditional games offered on the internet²¹³. Like physical gambling, gambling games offered remotely over the internet must be licensed²¹⁴.



Games of Skill

Although Germany does not expressly define games of skill, there is clear legal and judicial recognition that these games form a separate category substantially different from gambling.

German Courts have repeatedly held that gambling is gaming which does not depend on players’ skills, affirming that “the nature of gambling within the meaning of § 284 StGB is that the decision on

winnings and losses according to the terms of the contract does not essentially depend on the skills, knowledge and attention of the players, but solely or mainly on chance”²¹⁵.

So, **Germany categorizes games as games of chance, or those of skill, depending on the element of skill involved; not on players’ ability to play for or win real money.**



Fantasy Games

Germany lacks a statutory definition of fantasy sports games. This category of games is more likely to be regarded as a game of chance. As fantasy sports games do not feature among the **limited forms of games of chance which may receive a license under the GlüStV, these games may not be legally offered in Germany**²¹⁶.

Germany’s gambling regulator, the gambling authority of Germany (“GGL”), has held that the offering of unlicensed Daily Fantasy Sports constituted unauthorised gambling. The GGL explained that a Daily Fantasy Sports game in which

“each player puts together a virtual team of real players from a sports league, who are evaluated according to a catalogue of points based on their actual performance. On this basis, a point ranking of the competing players can then be created, according to which the decision on winning or losing is based” and “it was possible to set up a team for individual match days of different leagues or competitions or for selected matches of individual match days or individual competitions and to participate in each case for a fee” constituted an unauthorised gambling offer which must be discontinued²¹⁷.

There are no specific regulations under German gambling law regarding fantasy sports. Whether a fantasy sports offering is classified as a game of chance or falls outside the scope of gambling regulations must be determined on a case-by-case basis^{218,219}.

A German Court has also ruled that a “Super Manager” game where participants made football teams with current football players, decided the line-ups of teams before match and were awarded points on the basis of performance of the players “had characteristics of a prohibited public games of chance within the meaning of § 3 of GlüStV²²⁰”.

Taxes

Online Gambling

Germany taxes online games of chance at an effective tax rate of 5.03% of the total stake amount²²¹. Although these games are taxed on the amount staked, the tax rate is relatively low, at an effective 5.03%.

Online games of skill

Online games of skill are taxed at the standard Value Added Tax (VAT) rate of 19%²²². Gaming operators must pay VAT on the consideration they receive for supplying their services²²³, i.e., on the platform fee/commission charged to players.



Canada (Ontario)



Gambling activities in Canada are regulated under the Criminal Code, with provinces granted authority to oversee and regulate gaming within their jurisdictions. Ontario has a well-established regulatory framework for both gambling and iGaming. Operators must obtain licenses from the Alcohol and Gaming Commission of Ontario to conduct gambling activities. For online gaming, iGaming Ontario manages the licensing of operators offering internet-based gambling services. Ontario's iGaming regime allows private operators to partner with the government to offer online gambling services.



Gambling

Canada regulates gambling as a separate class compared to games of skill (a relatively narrow category). The country adopts an expansive definition of gambling. As a result, games which may be unregulated in most other jurisdictions because they are predominantly skill-based games, may be construed as gambling in Canada. In this section, we have evaluated the Canadian legal regime as it applies in Ontario province, as it has the most advanced regulatory regime for gaming in the country.

At a federal level, Canada prohibits gambling, making it a punishable offence in its Criminal Code (the “Code”)²²⁴. The Code uses gambling interchangeably with gaming, to generally mean “a game of chance or one that of mixed chance and skill²²⁵”.

For a game to be considered as gambling, it must have three necessary elements i.e., consideration, chance, and an opportunity to win a prize²²⁶. Canadian Courts have clarified that the element of chance means a “systematic resort to chance²²⁷”. Courts affirm that a “systematic resort to chance” contemplates games in which chance forms a systemic element, like in games involving dice or a deal of cards²²⁸.

Although the Code prohibits gambling, it empowers provincial governments to conduct and manage all gaming activity, subject to a licensing regime, as an exception²²⁹. For example, Ontario regulates online gambling through the Alcohol and Gaming Commission of Ontario (AGCO²³⁰) together with iGaming Ontario (iGO²³¹), a subsidiary of the AGCO.

model is protected under an NDA entered into by iGO and prospective operators. After submitting a completed NDA to iGO, prospective operators receive information about tax rates and profit sharing. The iGO earns revenue from offering online games through its network of third-party Gaming Operators.

So, gambling operators are required to deposit their Gross Gaming Revenue (GGR), i.e., the gross amounts, or wagers collected from players less winnings paid to players and less eligible deductions²³⁸ into a separate bank account and then transfer those funds to a dedicated banking account with iGO. The iGO and the gambling operator then share the GGR under the specific terms of their respective operating agreements²³⁹.

Taxes on Fantasy Sports

Fantasy sports, being a form of regulated gambling, are taxed similarly, as a percentage of the GGR.

Taxes on Online Games of Skill

Companies offering pure games of skill must pay the harmonized sales tax (HST), once sales cross the de minimis threshold of CA\$30,000²⁴⁰. **This tax must be paid at a rate of 13% of the taxable sales²⁴¹, i.e., the consideration or platform fee realized by skill-gaming operators.**



Online Skill Gaming

As Canada adopts a rather broad definition of gambling, only a narrow category of games, which are purely games of skill are excluded from the categorization of gambling.

But this excluded category falls outside the scope of gambling regulation, and may be offered freely without a license, even if involving real money²³².



Fantasy Sports

There is no definition of fantasy sports under the Code. The AGCO defines “fantasy sports” as a “pay-to-play sport betting product (fantasy sports contests are considered a type of sport betting for the purpose of these Standards) provided by an Operator wherein consumers can assemble a virtual team composed of real players in a given sport and

compete against other virtual teams based on the performance of those players in real matches²³³.”

Companies offering fantasy sports in Ontario must register as an igaming operator in Ontario and secure a license²³⁴.



i-Gaming

The AGCO defines **i-Gaming as “lottery schemes conducted and managed by Ontario’s Lottery Corp or iGaming Ontario that are played or operated through the internet, but does not include OLG lottery products²³⁵.”** Lottery schemes include all

games of chance and games of mixed skill and chance²³⁶.

In summary, i-Gaming, or remote gambling, may be offered in Ontario, if the i-Gaming operators have received a license from the AGCO²³⁷.

Taxes

Tax on Gambling

Ontario has a novel regime for taxing gambling operations. Under Ontario's framework, iGO is the entity that would make the supply of a gaming service to the players, not the online

gaming operators. This means that private gaming operators registered with iGO would provide their services to iGO, while players would place their bets directly on the online gaming operators' websites. The specific gaming tax rate and revenue share



Malta



Malta categorizes games either as gambling (i.e., games of chance), or as games of skill, depending on the relative influence of chance or skill in determining the game's outcome. Offering gambling requires a license but offering games of skill does not require a license²⁴². However, specific skill-based games may be designated as a "controlled skill game". Unlike other skill-based games which may be freely offered, controlled skill games require a license. At this time, Malta has only categorized fantasy sports as being controlled skill games.



Gambling

Malta defines gambling, or games of chance, as "an activity the outcome of which is determined by chance alone or predominantly by chance and includes but is not limited to activities the outcome of which is determined depending on the occurrence or

outcome of one or more future events²⁴³".

Games of chance which allow players to stake money or to win prizes having monetary value may be offered after obtaining an appropriate license²⁴⁴.



Games of Skill

Malta defines games of skill as "an activity the outcome of which is determined by the use of skill alone or predominantly by the use of skill, but excludes a sport event, unless otherwise established by or under the Act²⁴⁵".

Malta allows games of skill to be offered freely, without license, even if the game "requires a stake to enable participation and offers the possibility of a prize...²⁴⁶".



Fantasy Games

Malta may designate skill-based as controlled skilled games. These are "skill games which requires a stake to enable participation and, or offers the possibility of winning a prize of money or money's worth and which shall be a licensable game²⁴⁷". If a skill-based game is designated as being a controlled skilled game, its offering is subject to license²⁴⁸.

Malta's gaming regulator, the Malta Gaming Authority, has only classified fantasy sports as a 'controlled skill game'. Malta defines fantasy sports as a "contest offered by means of distance communications, wherein players commit a consideration of monetary value, whether in the form of a stake, a periodic subscription or the purchase of in-game items which provide an advantage to the player, to compete against other

players for the possibility to win a prize of money or money's worth. The fantasy sports contest shall be one where the outcome is determined by the accumulation of statistical results of the performance of a number of individuals competing in actual sporting events. Provided that this definition shall exclude the forecast of the score, point spread, or the result of any other future occurrence of one or multiple events, and for the avoidance of doubt, the winning outcome must be determined predominantly through the skill or knowledge of the player. The onus of proving all these factors shall rest with the applicant²⁴⁹."

So, the offering of fantasy sports games is subject to the receipt of a controlled skill game license²⁵⁰.

Taxes

Tax on Gambling

Companies offering gambling in Malta must pay (a) a compliance contribution; (b) gambling tax; and (c) Value Added Tax (VAT).

The compliance contribution payable ranges range between 0.4% to 4% of the gaming revenue²⁵¹, depending on the type of game of chance and the gaming revenue generated. Gaming revenue means (i) if the game of chance is played against the house the aggregate of stakes and wagers received by the operator less the aggregate of winnings paid to the players; or (ii) in cases where games are not played against the house the charge or fees deducted by the gambling operator²⁵². The minimum compliance contribution payable is 15,000 Euros. The maximum compliance contribution payable is 600,000 Euros.

Besides, companies offering gambling must pay a gambling tax of 5% on the gaming revenue²⁵³. The gambling operators are also subject to Value Added Tax (VAT) at 18% of the total consideration paid or payable to the supplier²⁵⁴.

Tax on Fantasy Sports

Companies offering fantasy sports games must pay: (a) a compliance contribution fees; and (b) a gaming tax. The compliance contribution fee depends on the gaming revenue and may range from 0.5% to 2% of the gaming revenue²⁵⁵.

Besides, companies offering fantasy sports games must pay a gaming tax of 5% on the gaming revenue generated²⁵⁶.

Tax on Skilled Games

Providing of skilled games to users through the internet is classified as electronic service for imposition of Value Added Tax ("VAT²⁵⁷"). VAT is calculated at 18%²⁵⁸ on "total value of the consideration paid or payable to the supplier by the purchaser²⁵⁹." So, skill-gaming companies are taxed on the revenue/platform fee they realise from players.



Colombia |

Gambling in Colombia is regulated under Law 643 of 2001, with oversight provided by Coljuegos, a state-owned entity responsible for managing all gambling activities. It also ensures operators' compliance with Colombia's gambling laws and oversees the entire licensing process. Colombia became the first Latin American country to regulate igaming with the Egaming Act in 2016.



Gambling

Colombia treats gambling as a separate category from games of skill. It allows gambling, subject to license²⁶⁰. Colombia has set up a state-owned enterprise, 'Coljuegos', to regulate and authorize gambling²⁶¹.

Colombian law uses the expression “*games of luck and chance*” to refer to gambling. Games of luck and chance mean, “*those in which, according to rules predetermined by the law and regulations, a person, acting as a player, places a bet or pays for the right to participate, to another person acting as an operator, who offers him a prize in exchange, in money or in kind, which he will win if he is*

right, given the results of the game, which is not foreseeable with certainty, because it is determined by luck, chance or coincidence”²⁶².

So, in Colombia, the essential features of gambling are identical to those in most jurisdictions we have evaluated: (i) a monetary stake; (ii) a valuable prize; and (iii) determination of the outcome through luck or chance.

Gambling games which are offered on the internet or by any other form of information technology are referred to as Novel Games²⁶³.



Games of Skill

Colombian gambling law draws an explicit exclusion for games of skill. Its law on games of luck and chance states “*Sports games and games of strength, skill or dexterity are governed by their own rules and by the pertinent police rules*”²⁶⁴.

While there is no specific definition for “*games of skill*”, the terms of the exclusion suggest that these are games whose outcomes are predominantly

determined by players’ skill or dexterity. Consistent with the dominant international practice, Colombia differentiates games of skill from gambling, based on the predominance of skill or chance.

Online games of skill may be offered and played freely, even if played for real money.



Fantasy Games

Colombia lacks a statutory definition of fantasy games. The country’s gambling regulator, Coljuegos, describes fantasy games as “**a game of competition between players, who must form their own team individually. The team is formed by choosing real sportsmen or athletes from any team sport, who play in a championship, tournament, cup, league, a transfer value or purchase value and his real performance in the championship, this value is given by season. Each sportsman or athlete benefits from tournament, cup, league and this value is given by season, cup, league or season in which the player is playing**”²⁶⁵.

Coljuegos takes a serious view of fantasy games, and considers such games as being a regulated and licensed form of betting and hence novel games. Coljuegos’ guidance mentions that in fantasy

games, “*you do not bet on the final result of a team (win, loss, or draw), you bet on the real and individual performance of the sportsmen or athletes chosen in the matches that are part of the Fantasy event*”²⁶⁶. Coljuegos has also observed that “*the type of bet placed for this game is the cross bet, where players compete against each other and the operator acts as an intermediary*”²⁶⁷.

The offering of fantasy games requires an authorization from the Coljuegos²⁶⁸.

Taxes

Tax on Online Gambling

Colombia taxes online gambling on companies’ Gross Gaming Revenue (“GGR”). The GGR means the gambling operator’s gross income less the prizes paid to players²⁶⁹. Companies offering online gambling must pay tax at 15% of their GGR.

Tax on Fantasy Games

Fantasy games are taxed similarly as online gambling. So, companies offering fantasy games must similarly pay a tax of 15% of their GGR.

Online Skill Gaming

Colombia classifies the sale of virtual games as a sale of digital services²⁷⁰. The offering of online skill games may be viewed as the sale of digital services and may attract imposition of a Value Added Tax (VAT), at the standard VAT rate of 19%.²⁷¹

There is some uncertainty regarding the precise positioning of online skill gaming, as it forms a broad, unregulated category.

Table 1: Summary of separate definitions of different formats and their corresponding tax rates

S No	Country	Separate Definition of Gambling or Games of Chance?	Separate Definition of Fantasy Games by law or regulators?	Are Skill-Based Games treated as a separate, standalone category?	Game of Chance		Fantasy Games		Online Skill-Based Games	
					Tax Rate	Tax Base ^A	Tax Rate	Tax Base	Tax Rate	Tax Base
1.	Belgium	YES	YES	YES	11%***	GGR	11%***	GGR	21% (VAT)	Service Fee/ Platform Fee
2.	Brazil	YES	YES	YES	17%*	GGR	12% ^D	GGR	2-5% (Municipal Service Tax)	Service Fee/ Platform Fee
3.	Canada (Ontario)	YES	YES	YES (pure games of skill are)	Confidential**	GGR	Confidential	GGR	13% (HST)	Service Fee/ Platform Fee
4.	Colombia	YES	YES	YES	15%*	GGR	15%*	GGR	19% (VAT)	Service Fee/ Platform Fee
5.	Denmark	YES	NO	YES	28%*	GGR	28% ^C	GGR	25% (VAT)	Service Fee/ Platform Fee
6.	Germany	YES	YES	YES	5.03%*	GGV	5.03% ^B	GGV	19% (VAT)	Service Fee/ Platform Fee
7.	Malta	YES	YES	YES	5%*	GGR	5%*	Charges deducted by the fantasy operator	18% (VAT)	Service Fee/ Platform Fee
8.	Netherlands	YES	NO	YES	29.5%*	GGR	29.5%* ^B	GGR	21% (VAT)	Service Fee/ Platform Fee
9.	Romania	YES	NO	YES	21%*	GGR	Depends on classification (as chance/skill)	-	19% (VAT)	Service Fee/ Platform Fee
10.	United Kingdom	YES	NO	YES	21%*	GGR	15%*	Pool Bettors' Profit	20% (VAT)	Service Fee/ Platform Fee
11.	United States: New Jersey	YES	YES	YES	15%*	GGR	10.50%*	GGR	6.625% (Sales and Use Tax)	Service Fee/ Platform Fee
12.	United States: Pennsylvania	YES	YES	YES	14%*	GGR	15%*	Adjusted GGR	6% (Sales Tax)	Service Fee/ Platform Fee

* Companies may also have to pay additional fees/contributions.

** The precise tax rate is protected from disclosure under specific confidentiality agreements with the iGO.

*** If the game qualifies as an electronically supplied service, it is also subject to VAT at the rate of 21%. Otherwise, it remains exempt from VAT.

A. Taxed on Gross Gaming Revenue, which implies the aggregate of the pooled amount by players minus winning.

C. As fantasy sports have been opined to be subjected to licensing conditions similar to those on the betting companies, hence, an inference can be made that fantasy sports are likely to be taxed as online gambling

B. If regarded as gambling, depending on the dominant influence being skill or chance

D. If the format of fantasy game does not meet the criteria mentioned in Brazil's fixed odd law



Valuation Matters: Revenue is the only basis for taxation





05

Valuation Matters: Revenue is the only basis for taxation

Based on the above analysis, the report finds that the overwhelming international practice is to use the Platform Commission or service fee instead of the total pooled amount or deposit, as the preferred tax base for taxing online gaming.

Here, the term GGR implies the aggregate of the amounts pooled by players less the winnings paid back to them. The term GGV implies the aggregate of the amounts pooled by players or total amount of money paid by the players to partake in a game.. A conversation on which of these two metrics represents the preferred tax base must be based on a nuanced understanding of online gaming.

Exhibit 6: GGR versus GGV - Factors at Play

-  Differences in Taxing Physical Goods and Digital Services
-  User Confusion about Legal Onshore Sites and Illegal Offshore Websites
-  Channeling of Consumers, growth of the industry, and considerations for public exchequer
-  Evidence from International Research

Relevant Considerations in Taxing Gaming²⁷²

1. Differences in Taxing Physical Goods and Digital Services

There is a difference in the impact tax on physical goods may have in comparison with taxes on digital services. Generally, the former (tax on goods) is more likely to meet its intended consequences because of the difficulty for a user to procure untaxed versions of the goods. However, with the latter (tax on digital services), and more particularly, with online gaming, a black market in which gaming is untaxed and therefore more attractive to the user is much easier, quicker and less complicated to achieve²⁷³.

India's evolving experience is informative in this respect. Notwithstanding the format, regulated and taxed online skill gaming sector, a vast number of illegal gaming websites may be easily accessed in India²⁷⁴. These websites do not charge GST, may risk gambling addiction, user harm, and an underground market, and ultimately a loss of revenue for the government.²⁷⁵

2. Channeling of Consumers, growth of the industry, and considerations for public exchequer

Several global studies posit that the tax rate for online gaming must draw an appropriate balance between (a) government revenue and (b) the channeling rate, i.e. the total proportion of users who use onshore legal gaming sites²⁷⁶. This is because increase in tax rates drives users to offshore markets and ultimately erodes any increase in tax revenue over-time²⁷⁷. In other words, **increasing the tax-rate yields higher revenue for each unit sold in the near term, but also a decrease in sold units as goods become more expensive. At a certain tax-rate maximum tax revenue is reached – at that point, the tax-rate cannot increase further without a decline in sales resulting in overall lower tax revenues**²⁷⁸.

In addition to the channeling rate, the public

exchequer needs to weigh the long term growth of the sector as against the optimal tax rate and valuation. If the tax rate and valuation are pegged at a rate that does not compromise the growth of the industry, then the public exchequer is positioned to gain more by virtue of growing market size of the industry and with it, the growth in absolute tax collection. The jobs and innovation spurred by this industry will also yield better tax revenue from other sectors. For instance, the growth in the IT/ITes sector has led to innovation in the manufacturing industry and incomes of highly skilled professionals and the tax revenue from manufacturing industry and direct income tax has also grown exponentially owing to the growth in the IT/ITes sector.

3. User Confusion about Legal Onshore Sites and Illegal Offshore Websites

A recent Swedish study from 2020 found that users considered onshore legal and offshore illegal gambling sites as close substitutes²⁷⁹ and that there was a high degree of availability, similarity and attractiveness between legal and illegal online gambling sites²⁸⁰. Illegal offshore entities gained easy market access²⁸¹, and were able to offer

lucrative bonus schemes to lure users²⁸². This reality of user confusion places formal, regulated entities at a competitive disadvantage in comparison to illegal offshore websites, even in India²⁸³. In these cases, taxation becomes an important lever to ensure that the consumers stay away from illegal offshore platforms.

4. Evidence from International Research

A 2016 Danish study²⁸⁴, which analyzed tax practices across jurisdictions, concluded that jurisdictions with lowest rate at GGR for gambling also have a considerably higher total tax revenue on a per capita basis²⁸⁵. It concluded that the tax revenue depended on a combination of factors, including the tax rate, the channeling rate, and gambling volume²⁸⁶. The study reports that above tax rates of about 20% on the GGR, any increase in the tax rate does not lead to a significant increase in the tax revenue, because of the decrease in the channeling rate²⁸⁷.

Similarly, a **2020 Danish study**²⁸⁸ found that an **increase in tax rate from 20% of the GGR to 28% of the GGR would result in doubling the percentage of users who utilize illegal offshore gambling sites**²⁸⁹, and any immediate increase in tax revenue

would ultimately be eroded by lower market growth because of the increased use of offshore gambling websites²⁹⁰.

A German study reviewing the impact of tax on the GGV (the metric currently employed to tax online gambling i.e. games of chance in the country), concluded that “taxation of online gambling can only be effective through a gross gaming revenue tax”²⁹¹. It concluded that in the context of some games, the impact of taxing on the GGV may be up to 33 times higher if tax is calculated on the GGV instead of the GGR²⁹².

If the companies offering these games absorbed the impact of the tax, a tax at 15% of the stakes would be equivalent to a GGR of 500% on the operator²⁹³. A tax on the stakes drove users to illegal offshore sites²⁹⁴.

GGR: The Internationally Accepted Tax Base

As this Report demonstrates, countries overwhelmingly use the GGR as the tax base for taxing online gaming.

Denmark:



The Danish gaming regulator, Spillemyndighden (“DGA”), concludes that GGR “is used as the most robust expression of the economic value of gambling²⁹⁵”. **The DGA also comments that it uses GGR in its assessment “which is common practice in the industry (also internationally)”²⁹⁶ and using turnover figures or GGV can be misleading**²⁹⁷. As per the DGA, “GGR is the most accurate value for how much players have lost to the operators. For operators, GGR is a measure of ‘sales’ and not ‘profit’”. DGA mentions that GGV is not a robust figure as it gives an “oversized picture²⁹⁸”.

Brazil:



Brazil has reformed its tax practices, shifting from its earlier stance of assessing tax on GGV, to now assessing the tax on the GGR, since 2021²⁹⁹. As per the official release of the Ministry of Economy, “new legislation will enable Brazil to align with the best international practices **and lead to an increase in revenue for the public coffers** by unlocking a promising market for the country”. **The release also mentioned that taxing on deposits was “far from the best international practices”³⁰⁰. Brazil believes that the shift from GGV to GGR “will allow the regulation of the market and the fight against the illegal market, which does not pay taxes”³⁰¹.**

France:



France shifted from taxing operators on pooled amount to platform fee in 2020³⁰². The country’s prior practice of taxing on the pooled amount meant that the channeling rate of French users was an abysmal 53%,³⁰³ as opposed to other jurisdictions like the UK and Denmark which had a channeling rate of over 90% and 80% respectively³⁰⁴.

According to the French Senate, due to the imposition of tax on the pooled amount, gaming operators were “taxed on sums which they do not receive³⁰⁵”. The Senate also concluded that “the tax on stakes is too burdensome, and prevents the balanced development of this market.”

Conclusion

The international experience shows an overwhelming preference for use of service fee as a tax base for online gaming and GGR for gambling. The service fee/GGR presents a more rational economic tax base, and a balanced and relatively sustainable basis to tax online gaming.

Tax on the GGV/ deposits instead of service fee, imposes an extremely high burden on the gaming operators, driving users away from legitimate businesses towards illegal sites³⁰⁶. This reduces the market growth rate³⁰⁷ and is harmful for both (a) the users who do not get legal protections available to them in the country and (b) government, which loses revenue.

06

Conclusion and Recommendations

Exhibit 7: Aligning regulation and taxation of online gaming in India with global benchmarks



Regulation and taxation should reflect industry constitution and the contribution of various formats



Defining formats is the best bet to fight the menace of conflation



Use platform fee for tax valuation for skill based games



Use format and not monetization for subcategorization

As noted, the concerns related to the over taxation of the skill-based online gaming industry, as well as its conflation with gambling, have the potential to significantly dent its contributions to India's digital economy and job creation. Based on the above mentioned global benchmarking, the report makes the following recommendations.

1.Regulation and taxation should reflect industry constitution and the contribution of various formats

It is paramount that India's taxation regime recognise the differences between the sub-sectors of India's online skill-based gaming industry. A fair taxation policy taking into account these sub-sectors' business models, current revenue margins, and growth trajectories will help ensure an equal playing field for all companies involved, unlocking new levels of growth for the sector at large in the long-term.

For instance, the sub-sectors of skill-based gaming (casual games, card-based games and fantasy sports) in India differ in their business profile, user motivation, market size and revenue contribution to the industry. The revenue of the fantasy sports market in India reached USD 0.8 billion in FY22 and is expected to reach USD 3.05 billion by FY27³⁰⁸. Its user base is also expected to expand from 180 million users in 2023 to 500 million in 2027³⁰⁹.

Casual games have a user base of 600 million but they largely deploy microtransaction based pay to play monetization and is fundamentally very different from fantasy sports. The fundamental difference between the two lies in number of players participating (casual games have 2-6 players, fantasy has participants in thousands and lakhs), active participation or game play of the players (casual games have active participation throughout the duration of the game whereas in fantasy, the active participation ceases once the contest starts), duration of the game play (casual games last for 2-5 mins whereas fantasy lasts for 8-10 hours), and involvement of the platform (platform doesn't guarantee the prize pool in casual games but in fantasy offers guaranteed prize pool and may even participate in the contest).

Conclusion and Recommendations

In India, the current regulation does not distinguish between different categories of online games of skill even for the purpose of taxation. All types of games whether fantasy, casual or card based games are treated the same. However, there is a case for treating non-fantasy sports as a separate category under regulation and taxation laws as is the trend in several other countries. The new GST regime, while it affects all categories of online games, its adverse impact is particularly more pronounced in case of casual gaming as the users playing for a small prize pool in casual gaming end up losing money irrespective of whether they win or lose the game. It indicates that different types of games may require different taxation or regulations. **As this report has observed, not every jurisdiction treats fantasy sports strictly as a game of skill or chance. Thus, there may be a need to have a separate regulatory regime for this category.** This separation is reflective of the different formats of these games which differ in terms of the duration of average

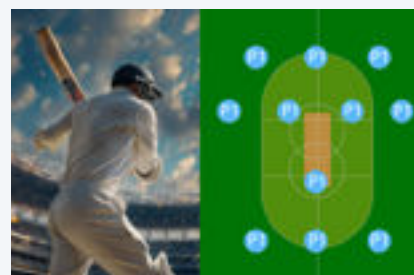
game play, probability to win among participating players, number of participating players, among others.

For the purpose of taxation, fantasy is usually regulated separately (often requiring a license or a permit to operate such games) and taxed distinctly from other online games of skill. In some countries, these are considered a subset of gambling while in others a "controlled skill game" requiring a permit or license. **Taxation rates for fantasy sports vary, ranging from 10-18% on GGR, as opposed to skill-based games which attract a VAT or Sales Tax in most cases.** India should consider aligning with the global practice in this regard to create distinct regulations and tax policies for different formats including fantasy sports. All other online skill-based games could be regulated separately allowing them to contribute more to the overall revenues of the gaming industry.

To achieve distinct regulation, the following definitions could be added to the Central GST Act which currently defines online gaming and online money gaming as broad categories³¹⁰:

Fantasy Sports:

A game played for real money where each player puts together a virtual team of real players from a sports league, who are evaluated according to a list of points based on their actual performance. A ranking of the competing players is then created, according to which the decision on winning or losing is based.



Games of Skill:

A game including, but not limited to, pay-to-play, whose outcome is predominantly determined by the participant's skill through active gameplay, such as knowledge, training, expertise, and experience, including where the skill relates to the manner in which the moves are made, whether through the deployment of physical or mental skill and acumen.

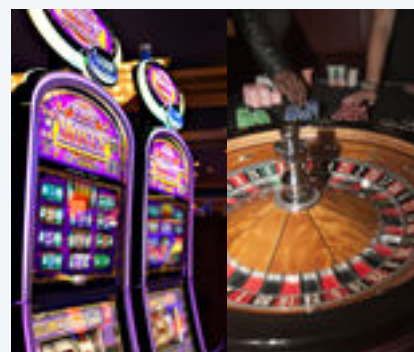


Games of Chance:

Games of chance are games wherein chance predominantly determines the outcome. Games of chance mean and include online betting and gambling and other games which involve wagering or betting on games of chance but do not include staking anything of value on games of skill.

As per UN CPC, online gambling services include³¹¹:

1. Organization and selling services of lotteries, lottos, off-track betting;
2. Casino and gambling house services;
3. Gambling slot machine services.



2.Align with global benchmarks - use platform fee for tax valuation for skill based games

Multiple studies and reports have shown that GGR should be the preferred basis of taxation of gaming and gambling services as taxing on the "total deposits" or "gross gaming value" can make the industry and businesses unsustainable³¹². Even for the state exchequer, levying the tax on GGR ensures that the tax collection is higher overall in the long-term³¹³. In a regime where tax is levied on deposits or GGV, the businesses become unviable and shut down resulting in losses to the exchequer. Several regulators across the world have acknowledged³¹⁴ this and migrated to GGR based tax from GGV or deposits based tax³¹⁵. Brazil and France are some notable examples of this change in tax valuation from GGV to GGR.

To maintain parity with its global peers and to ensure a conducive environment for the gaming industry, there is a need for reviewing the method of valuation of GST on online gaming in India. **Skill based online games should attract an indirect tax only on the platform fee or the GGR as is the global practice.** The skill-based gaming platforms earn revenues only from the platform fee charged as the player deposits are returned to the winners at the end of the game play. In this context, levying a tax on the total deposits is not only unfair but also not legally tenable. It is a settled legal principle that the measure of tax has to have a nexus with the levy of such tax³¹⁶. Levying a tax on the deposits made by the players does not pass the "test of nexus" and unnecessarily imposes a very high burden on the skill-based gaming platforms adversely affecting their economic sustainability. The decrease in profit

margins as a result of the high taxation rate on total deposits affects the growth and business prospects of online skill-based gaming companies³¹⁷.

Given that 28% (the current rate of tax levied on online skill-based gaming) is one of the highest taxation rates globally, there is also a need for revising the rate of taxation downwards. This revision should account for the channeling rate (i.e. the total proportion of users who use onshore legal gaming sites), along with the tax collection from the sector, while deciding the tax rate to be levied on online skill based games.

Further, it is often the jurisdictions that levy the lowest rates of GGR-based tax on gaming that have a considerably higher total tax revenue on a per capita basis³¹⁸. Even in India, the highest contribution to the GST collections is attributed to the 18% tax slab which contributes around 65% to the total collections³¹⁹. Therefore, the rate of taxation should be kept lower than 28% and ideally at 18%.

As discussed earlier, heavy taxation levied on "total deposits" or GGV results in unintended proliferation of illegal offshore platforms³²⁰. As the cost for Indian users goes up due to heavy taxation, there is a flight of users towards illegal platforms that are not subject to the taxation³²¹. This inadvertently makes the business of legitimate Indian online skill-based gaming operators unsustainable as they lose out on their users.

3.Defining formats is the best bet to fight the menace of conflation

The report has discussed how conflation is a considerably bigger menace than the public discourse currently admits. The issue of national security, industry growth, stunting of domestic legitimate industry, job and FDI erosion, misplaced stigma attached to the industry, and severe harm caused to consumer interests need to be carefully evaluated. The issue of conflation exists:

1. between games of skill and gambling,
2. games of skill and problematic use of igaming in the Indian context to refer to online skill based games,
3. online skill based games and illegal offshore betting and gambling platforms.

By explicitly defining games of chance and games of skill in the parent regulation or under the GST law, the issue of conflation can also be addressed.

This definition addresses the issue of online skill-based gaming being referred to as "betting", "gambling" or "i-Gaming" in the popular media blurring the line between two distinct categories of gaming. This is even more problematic in a country like India where "gambling" or "betting" is otherwise prohibited under the central level laws (as well as state level legislations) and seen by the general public as a "sin activity³²²". Adoption of a clear and consistent test for differentiating games of skill and games of chance is the need of the hour. As

discussed in the report, we have discussed tests developed by academia, regulators, industry players like Skillz and WinZO on what constitutes a Game of

Skill and Game of Chance and can be considered by the government (See Annexure 1).

4.Align to global benchmarks - use format and not monetization for subcategorization

The GST Amendment on online gaming put the sector at a disadvantage as it treated online skill based games at par with betting and gambling. The rationale was 1) if online skill based games are played for real money, they should be treated at par with betting and gambling³²³; 2) ease of monitoring the flow of money is easier if done at the deposit level³²⁴ and not at the GGR level. Both these takeaways stand in stark contrast to global benchmarks. First, if all major gaming jurisdictions are able to monitor GGR / Platform fees for the sector, India, with its advanced digital payment ecosystem should be able to monitor the flow of money at the platform level. Second, in all the major jurisdictions, the subcategorization is based on formats and not based on monetization methods.

As discussed in Chapter 2, **the subcategorization globally treats gambling separately from games of skill. In many cases, fantasy is defined separately.** Even the UN's CPC treats online gaming and online gambling separately. Such a definition is the foundation for regulation and taxation purposes. These global benchmarks and UN's CPC define gambling / Game of Chance separately from Games of Skill and in some cases even Fantasy Sports because the intrinsic nature of these formats is very different, which implies that the externalities, business models, profit margins, role in economy and society at large and use of skill is also different. This is why Games of Chance or gambling are regulated through a license-based regime, with tax levied from 11-30% on GGR. Most countries adopt GGR-based taxation for gambling. In contrast, Games of Skill are treated as a standalone category, often with light-touch or no regulation,

and attract general VAT or sales tax applicable to online services. These games are mostly taxed on the "Platform Fee". In limited cases where the tax is levied on "total deposits", the rate of taxation is nominal to ensure that the industry is not unduly burdened. France has even shifted from GGV-based taxation to GGR-based taxation to align with international best practices³²⁵. In India, in the case of K.R. Lakshmanan v. State of Tamil Nadu (1996) 2 SCC 226, the Hon'ble Supreme Court held that games of skill, i.e. games requiring preponderance of skill, continue to be games of skill even if played for money. Similarly, in the case of Manakadu Elainger Nala Sports, Narpani Mandram v State of Tamil Nadu AIR 2005 MADRAS 214, the Hon'ble Madras High Court ruled that games such as chess and carrom, even when involving payment of consideration, did not amount to gambling as the games were predominantly games of skill rather than chance. As such, they were classified as games of skill and exempted under the Public Gambling Act, 1867. The Supreme Court in K.R. Lakshmanan v. State of Tamil Nadu (1996) 2 SCC 226 has made it amply clear that the term 'betting and gambling' cannot be artificially bifurcated to carve out an exception by stating that 'games of skill' played with monetary stakes can also partake in the character of betting. Section 2(17) of the CGST Act recognises wagering contracts as included in the term business, but that in itself would not mean that lottery, betting and gambling are the same as games of skill.

Therefore, India should distinguish between games of skill and games of chance based on preponderance of skill instead of monetisation.

Annexures

Annexure 1: Tests devised by Academia

1. Thomas J. Miles, Steven Levitt & Andrew M. Rosenfield, "Is Texas Hold 'Em A Game Of Chance? A Legal and Economic Analysis," 101 Georgetown Law Journal 581 (2013)³²⁶.
The authors propose that tests to distinguish between games of skill v. games of chance can be based on the following four questions:

1. Do players have different expected payoffs when playing the game?
2. Do there exist predetermined observable characteristics about a player that help one to predict payoffs across players?
3. Do actions that a player takes in the game have statistically significant impacts on the payoffs that are achieved?
4. Are player returns correlated over time, implying persistence in skill?

If the answer to all four questions is "no," then the authors conclude that the game under consideration is a game of chance.

2. Getty, Daniel, Hao Li, Masayuki Yano, Charles Gao, and A. E. Hosoi. "Luck and the Law: Quantifying Chance in Fantasy Sports and Other Contests." SIAM Review 60, no. 4 (January 2018): 869–887³²⁷.

The authors in this study analyze data from daily fantasy competitions played on FanDuel during the 2013 and 2014 seasons and propose a new metric to quantify the relative roles of skill and chance in games and other activities. This metric is applied to FanDuel data and to simulated seasons that are generated using Monte Carlo methods; results from real and simulated data are compared to an analytic approximation which estimates the impact of skill in contests in which players participate in a large number of games. They then apply this metric to professional sports, fantasy sports, cyclocross racing, coin flipping, and mutual fund data to determine the relative placement of all of these activities on a skill-luck spectrum. The study builds upon the framework provided by Thomas J. Miles, Steven Levitt & Andrew M. Rosenfield, "Is Texas Hold 'Em A Game Of Chance? A Legal and Economic Analysis," 101 Georgetown Law Journal 581 (2013) and also lists out recommendations for game developers to reduce chance in game design for fantasy sports. The recommendations are as follows:

1. Tournaments that are divided up into classes of different skill levels (e.g., having beginners play in a separate pool) are likely to have a larger element of luck than those in which everyone plays in the same pool.
 2. The second game parameter that games designers may choose to adjust is the number of contests per player. Calculating the overall win probability in a best of seven series given the win probability of an individual game is a common exercise assigned in elementary probability courses and it is well known that the role of skill is amplified through multiple contests. In the words of Levitt, Miles, and Rosenfield, "Even tiny differences in skill manifest themselves in near certain victory if the time horizon is long enough". Hence, perhaps the simplest way to increase the role of skill in a contest is to increase the number of games per player in the competition.
 3. To increase the role of skill in a fantasy competition, game designers could either add random noise to their pricing algorithms or increase points awarded for less-frequent, larger-variance events such that "perfect pricing" is inherently more difficult.
3. Vishal Misra, Devavrat Shah, and Sudarsan V. S. Ranganathan, "Is It Luck or Skill: Establishing Role of Skill in Mutual Fund Management and Fantasy Sports"³²⁸

In this work, the authors present a data-driven test that helps address the question of differentiating between games of skill and chance. In particular, the failure of the test leads to the conclusion that the outcomes are based on the predominance of skill, and not based on luck. The proposed test is based

on a sound statistical hypothesis of chance that the authors introduce. It is robust against all sorts of biases that might be present in the data. We apply the test to data obtained from two fantasy sports platforms: Dream11 for Cricket and FanDuel for Basketball. In both cases, the authors conclude that there is overwhelming evidence that the outcomes are driven by the predominance of skill. Indeed, evidence of "survivor bias" can be found in such a dataset suggesting the importance of a robust statistical approach presented in this work.

4. Peter Duersch, Marco Lambrecht, Joerg Oechssler, Measuring skill and chance in games³²⁹.

The question that the authors seek to answer whether a game predominantly depends on skill or chance has important legal and regulatory implications. In this paper, we suggest a new empirical criterion for distinguishing games of skill from games of chance: All players are ranked according to a "best-fit" Elo algorithm. The wider the distribution of player ratings are in a game, the more important is the role of skill. The authors provide a new benchmark ("50%-chess") that allows to decide whether games predominantly (more than 50%) depend on chance, as this criterion is often used by courts.

Annexure 2: Tests considered by Regulatory Bodies

UK Gambling Commission³³⁰:

The UK Gambling Commission considers the following to decide whether a game is a game of chance. A game in which the result can be influenced by chance is a game of chance for the purposes of the Gambling Act 2005. It does not matter for these purposes whether the element of chance is greater than the element of skill. Nor does it matter whether the element of chance can be eliminated by great skill.

1. A suitably skilful player does not have enough time to exercise their skill;
2. An outcome based on player's reaction is not genuinely achievable;
3. A game based on memory does not give the player the opportunity for all necessary information to be retained and recalled;
4. A game where the player controls operate inconsistently, for e.g. pressure sensitive button does not give the same output for the same applied pressure in each go on that machine (May be more relevant for slot machines).

Malta Gaming Authority³³¹:

The "Gaming Act" is the primary legislation regulating all forms of gaming in Malta. The Maltese law only regulates Real Money Gaming (RMG). Within RMG, it creates a distinction between games of skill and chance. A skill-based game is regulated under the Gaming Act only if the MGA determines it to be a "controlled skill game". The considerations which the Authority shall take into consideration in determining whether a game is a skill game or a controlled skill game in terms of regulation 7 and 8 of these regulations shall include the following:

1. the presence of random draws and their effect on the outcome;
2. whether the game is played for money and, or prizes with a monetary value;
3. whether participation in a game involves any form of monetary commitment, or commitment of a monetary value;
4. the possibility of any negative social impact of the game;
5. whether the activity is closely associated with games of chance and, or gambling;
6. the duration of each event, competition or match;
7. whether, on the face of it, a skilled player is able to win more than an unskilled player;
8. whether a player's chance of winning is significantly increased by experience in playing the game;
9. whether skill can be acquired through training, experience, reading literature or other educational material;
10. whether a rule-set or format that is used further nullifies the effect of any element of chance;
11. whether the game is played against other human players, or otherwise;
12. the level of interaction between the players, the level of interaction between the operator and the players, and the level of intervention by the operator during the event, competition or match; and
13. the complexity of the game, including the amount of player choices and their potential effect on the outcome, and the strategies involved.

Annexure 3: Tests Devised by Companies

Skillz³³²:

Skillz has developed an advanced statistical model to evaluate whether a game is a game of skill. The model was granted a U.S. patent. To further remove randomness from games, Skillz had developed a randomness replacement engine which could help "skillify" games that have some degree of chance embedded in them. The criteria for assessing is as follows:

1. Is skill the determining factor in the outcome of the game?
2. Are tiebreakers handled based on skill?
3. Does the game's format allow a skilled player to have a consistent advantage over a non-skilled competitor?
4. Is the game free of important decisions that can be made only by guessing?
5. Are there defined rules without predetermined odds of success?
6. Are random events removed as much as possible?

Annexure 4: Test on Game of Skill versus Game of Chance developed by WinZO

WinZO commissioned a mathematical and statistical framework, developed and peer-reviewed by professors across Ivy League universities and leading national and international Institutes (such as Stanford, IIT Delhi, IIT Kanpur, IIT Madras). The empirical tests in this study were carefully chosen based on an extensive literature review backed by WinZO's domain expertise, access to data from different games, and many other determining parameters. The study provided the following set of tests – a combination of which prove that a game involves a preponderance of skill:

Test 1: Do players have different expected payoffs when playing the game?

In a game of chance, the anticipated payout for all participants is equivalent. However, if the observed frequency of successful outcomes deviates significantly across distinct user subsets, we may reasonably infer that factors beyond pure chance have contributed to the contest's outcome. As such, this test serves as a potent gauge of skill within the game, provided that we can demonstrate a significant divergence in expected payoffs across specific populations. ANOVA test with the null hypothesis that the average payoff is the same across all the groups is used for the statistical sufficiency of this test.

Test 2: Do there exist predetermined observable characteristics about a player that help one to predict payoffs across players?

In games of chance, predetermined player characteristics should not have any predictive value on the game's outcome. Hence, if we observe a statistically significant correlation between players with a particular trait and their success rate compared to other players, we can infer that skill has played a pivotal role in determining the outcome rather than mere chance. In the analysis, players' payoff rates were calculated in games after categorizing them in buckets based on a pre-determined characteristic. Correlation coefficients were then derived between them, which if positive and are significant suggests that the games are a game of skill.

Test 3: Are player returns correlated over time, implying persistence in skill?

To address the question of persistence, the hypothesis was that skill is an intrinsic quality of a player and does not change significantly over the course of the history of the game. If this is the case it is expected to observe a distribution of underlying skill across the playing population in which the payoffs of each individual player in the first half set of games is correlated with that player's payoffs in the second half. To determine whether this is consistent for players, the payoffs were plotted for the first half set of games versus the payoffs for the second half for each player. A F-test was then performed to prove that the variance of the two populations are not equal, thus implying skill.

Test 4: Do actions that a player takes in the game have statistically significant impacts on the payoffs achieved?

If skill is part of a game, then evidence of the role of skill should manifest itself in the choices that players make. This test assesses whether the actions that a player takes in a game have a statistically significant impact on the payoffs they receive. Monte Carlo Simulations would be run by creating such bots of varying difficulties as per the game logic and the payoff percentages of the bots are computed by competing these bots among themselves / against real humans in a free-play environment. The difference between the payoff rates among the bots is proven then with statistical significance between these bots thereby proving that the actions that a player takes in the game have a statistically significant impact on the payoffs that are achieved, proving the hypothesis.

Test 5: Can we achieve "Intentionally losing with high accuracy" in the game?

In pure games of chance, intentional 'bad play' cannot cause a player to lose, or lose faster. In games of skill, on the other hand, it is possible for a player to play badly, whether intentionally or not, and lose more. Monte Carlo Simulations are then run by creating such intentionally losing bots as described above and the

payoff percentages of the bots are computed by comparing their scores against historical scores and the payoff rates are then compared against expert level/best strategy players. The payoff rates of intentionally losing players are then benchmarked against expert players and were found to be significantly different.

Test 6: Does players' performance improve with experience?

In pure games of chance, players' performance is independent of experience, and not expected to improve with time. In games of skill, players improve their performance with practice. This also quantifies the amount of skill required in each game through the R* metric, which can be used as an indicator for the degree of skill present in the game on a scale of 0 to 1. This indicator can be further used to benchmark these games against widely accepted variants of games of skill.

Test 7: Bayesian approach

As a final consistency check, we analyze the data from a Bayesian perspective. First, we associate with any given competition a random variable which characterizes the probability that the competition is a game of luck or a game of skill, with a sample space {Luck, Skill}. The goal is to infer the probability that the competition is a game of luck (or skill) based on observed data.

References

1 India Gaming Market Report (Interactive Entertainment & Innovation Council-WinZO Games, 2024)

2 Varun Gumber v. Union Territory of Chandigarh and Ors. SLP(C) No. 26642 of 2017

3 Lowe, S. K., & Boozer, B. B., Jr. (n.d.). Gambling or Skill: Taxation Issues Surrounding the Daily Fantasy Sports Industry.

4 We use the term aggregate of the pooled amount by players less the winnings paid back to them. We use the term GGV to mean the aggregate of the pooled amount by players or total amount of money paid by the players to partake in a game

5 The UNCPD code is a system used to categorize and classify products and services globally. It helps countries and businesses ensure consistency and clarity in international trade, by providing a standardized way to identify different types of goods and services across various industries.

6 Games where the outcome is predominantly dependent upon the presence of the player's skills, knowledge, training, etc. in playing the game with less/minimal dependence on chance factor.

7 India Gaming Market Report 2024

8 India Gaming Market Report 2024

9 <https://www.ijsr.net/archive/v10i5/SR21520124120.pdf>

10 Games based on this format generally bring together a large number of players who play to win a big prize money. All the players contribute towards the prize money by making a payment for entering the tournament.

11 These games can be played among a small group of players (2-6 on a virtual table). These can be played as part of a tournament (involving multiple tables with 2-10 players) or as individual games. People play these games partly for entertainment and partly in the hope of earning some extra money. These games are similar to casual games in most other aspects.

12 This model includes games where a relatively smaller number of players, often in small social groups of 2-6 players, get together to play short-duration games for small stakes. These are quick games that mostly last for less than 2 minutes for a small amount of money.

13 It is a monetisation model for online games where the online gaming platform charges a fixed commission or fee called platform fee or entry fee (which is usually around 10-20% of the money deposited), instead of monetising through in-app purchases or subscriptions.

14 This monetization model allows game studios to offer their games for free while generating income through the sale of virtual goods, services, and enhancements within the game itself.

15 Also known as the in-game advertising (IGA) model, it involves integrating different kinds of ads right into the gameplay. These ads are made not to bug you while you're playing and usually just fit right into the game world. These in-game ads can show up in various ways, like banners, videos, or full-screen ads.

16 https://www.bdo.in/getmedia/6cb4cf90-052e-4ce4-ad52-76d71cec7347/The-Online-Gaming-Industry-in-India_BDO-India-2022.pdf.aspx?ext=.pdf

17 https://mib.gov.in/sites/default/files/Annexure%20C_Draft%20National%20Policy%20for%20growth%20of%20AVGC-XR%20sector%20in%20India.pdf

18 Online gambling companies are subject to a monthly tax on their Gross Gaming Revenue ("GGR"), i.e., the total amount staked by the players minus their winnings.

19 [https://www.pib.gov.in/PressReleasePage.aspx?PRID=1945208#:~:text=The%20Council%20also%20recommended%20that,bets\)%20and%20not%20on%20the](https://www.pib.gov.in/PressReleasePage.aspx?PRID=1945208#:~:text=The%20Council%20also%20recommended%20that,bets)%20and%20not%20on%20the)

20 EY - USISPF Impact of New GST Law on Skill Based Online Games. (Pg.17-18)

21 Paragraph 4, Chapter I, Overview, Central Product Classification (CPC), Version 2.1 [available here](#)

22 Chapter I, Overview, Central Product Classification (CPC), Version 2.1 [available here](#)

23 Paragraph 21, Chapter II, Central Product Classification (CPC), Version 2.1 [available here](#)

24 Paragraph 27, Chapter II, Central Product Classification (CPC), Version 2.1 [available here](#)

25 Paragraph 27, Chapter II, Central Product Classification (CPC), Version 2.1 [available here](#)

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31 Gurdeep Singh Sachar v. Union of India ((2019) 75 GST 258 (Bombay))

32 There is a stay operating on the Gurdeep Singh Sachar judgment vide Supreme Court order dated 6 March 2020 passed in SLP (criminal) Diary No. 42282 of 2019

33 North American Industry Classification System, available here

34 https://www.irs.gov/pub/irs-soi/18pf_business_codes.pdf

35 https://www.sec.gov/Archives/edgar/data/1801661/000110465921016167/tm211844-1_s1.htm

36 Skillz Information (rocketreach.co)

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37 [North American Industry Classification System \(NAICS\) U.S. Census Bureau](#)

38 [DraftKings | Daily Fantasy Sports](#)

39 DraftKings Inc. Information ([rocketreach.co](#))

40 [North American Industry Classification System \(NAICS\) U.S. Census Bureau](#)

41 'Permissible online real money game' means an online real money game verified by an online gaming self-regulatory body under rule 4A

42 Online gambling includes games of chance (like casino games such as slots, roulette, etc.) played for real money on virtual platforms. It is defined differently in different jurisdictions but some common elements of these definitions include: a) monetary stake, b) chance based outcome and c) monetary reward.

43 Generally, gambling offered over the internet is referred to as Internet Gaming or i-gaming. This term is legally defined in a few jurisdictions across the world including New Jersey, Pennsylvania and Ontario.

44 State of Andhra Pradesh v. K. Satyanarayana 1968 AIR 825; K.R. Lakshmanan v. State of Tamil Nadu, (1996) 2 SCC 226

45 § 5:12-28-1, Casino Control Act; [available here](#)

46 Title 4, Amusements Part II, Chapter 11, § 1103

47 <https://www.agco.ca/en/responsibilities-and-resources/definitions-1>

48 For example, see the following: <https://www.storyboard18.com/special-coverage/indias-igaming-taxed-to-extinction-or-a-catalyst-for-change-36150.htm>; <https://www.news9live.com/technology/esports-igaming-career-opportunities-india-2534968>; <https://www.mykhe1.com/more-sports/how-can-the-new-government-create-a-conducive-environment-for-i-gaming-industry-in-india-286771.html>

49 Through the establishment of Animation, Visual Effects, Gaming, and Comic (AVGC) Promotion Task Force, the designation of the Ministry of Electronics and Information Technology (MeitY) as the nodal ministry for online gaming under the Allocation of Business Rules and the enactment of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023.

50 https://www.business-standard.com/industry/news/global-gaming-firms-running-no-gst-ads-to-lure-indians-to-their-platforms-123072700113_1.html

51 <https://mib.gov.in/sites/default/files/06.04.2023%20Advisory%20on%20Betting%20Advertisements.pdf>

52 <https://www.winzogames.com/careers/newsroom/methodology-for-determination-onboarding-games-of-skill-on-winzo>

53 <https://www.moneycontrol.com/news/technology/winzo-partners-with-iits-other-varsities-to-develop-model-that-can-determine-games-of-skill-12021871.html>

54 A Bayesian approach is a conditional probability or a probabilistic construct that allows new information to be combined with existing information: it assumes, and continuously updates, changes in the probability distribution of parameters or data.

55 Section VII, 2, New Jersey State Constitution 1947, accessible at New Jersey Constitution | NJ Legislature ([state.nj.us](#))

56 [NJ Rev Stat § 2C:37-1\(b\) \(2023\)](#)

57 [NJ Rev Stat § 2C:37-1\(a\) \(2023\)](#)

58 [5:12-1, Casino Control Act](#)

59 [§ 5:12-5](#), Casino Control Act & [Section 2C:37-1 to Section 2C:37-9](#), New Jersey Code of Criminal Justice

60 [§ 5:12-28.1, Casino Control Act](#)

61 [§ 5:12-95.21, Casino Control Act](#)

62 Article 6C, 5:12-95.17(k) & § 5:12-95.22, [Casino Control Act](#)

63 Chapter 231, § 5:20-1, Fantasy-Sports-Law.pdf ([njconsumeraffairs.gov](#))

64 New Jersey also allows Casino Operators to offer some games of skill on the floor of the Casinos. Please see the definition here and an article here

65 Chapter 231, § 5:20-1, Fantasy-Sports-Law.pdf ([njconsumeraffairs.gov](#))

66 Fantasy-Sports-Law.pdf ([njconsumeraffairs.gov](#))

67 Fantasy-Sports-Law.pdf ([njconsumeraffairs.gov](#))

68 [Chapter 231, § 5:20-2\(b\)](#)

69 [N.J. Stat. § 5:20-2\(a\)](#)

70 [Article 11, § 5:12-144\(a\), Casino Control Act](#)

71 [Article 1, § 5:12-24, Casino Control Act](#)

72 [Article 6C, § 5:12-95.19, Casino Control Act](#)

73 [Article 11, § 5:12-144\(a\)](#) & [Article 6C § 5:12-95.19](#), Casino Control Act

74 13:45A-36.11, New Jersey Administrative Code, Title 13, law and Public Safety, [Chapter 45A](#), Subchapter 36 accessible at Chapter-45A-Subchapter-36-Fantasy-Sports-Operators.pdf ([njconsumeraffairs.gov](#))

75 Chapter-45A-Subchapter-36-Fantasy-Sports-Operators.pdf ([njconsumeraffairs.gov](#))

76 13:45A-36.11, New Jersey Administrative Code, Title 13, law and Public Safety, Chapter 45A, Subchapter 36 accessible at Chapter-45A-Subchapter-36-Fantasy-Sports-Operators.pdf ([njconsumeraffairs.gov](#))

77 Page 10, Memorandum, Office of Chief Counsel, Internal Revenue Service, can be accessed here

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81 Section 5(i), [Danish Act](#)

82 Section 5(ii), [Danish Act](#)

83 Section 5(iii), [Danish Act](#)

84 Section 5(iv), [Danish Act](#)

85 Section 5(v), [Danish Act](#)

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87 ICLG - Gambling Laws and Regulations – Denmark, published November 11, 2023 ([see here](#))

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90 [Please see here](#)

91 Section 1, Denmark Gaming Tax Act, 2010 (see: <https://www.retsinformation.dk/eli/ta/2016/337>) and Gambling Market Glossary (see: https://www.spillemyndigheden.dk/uploads/2023-08/Gambling%20market%20glossary_0.pdf)

92 1 Section 4(1), Amendment to the Denmark Gaming Tax Act <https://www.retsinformation.dk/eli/ta/2020/2226>

93 As per the VAT Directive 2006/112/EC - Articles 132 & 135 (Gambling activities) https://taxation-customs.ec.europa.eu/system/files/2018-02/moss_2018_dk_en.pdf

94 Article 96-97 of the Council Directive 2006/112/EC ([available here](#))

95 [Article 3\(1\)](#), Romanian Gambling Ordinance.

96 [Article 10\(1\)](#), Romanian Gambling Ordinance.

97 [Article 1\(2\)](#), Romanian Gambling Ordinance.

98 [Article 6\(1\)](#), Romanian Gambling Ordinance.

99 see A general introduction to gambling law in Romania, [available here](#).

100 [Article 1\(3\)](#), Romanian Gambling Ordinance.

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107 [para 452, 298 A.3d 447 \(Pa. Cmmw. Ct. 2023\)](#)

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109 Title 58, Recreation, § 463a, Title 4, Amusements Part II, Chapter 11, § 1102, & 1103

110 Title 4, Amusements Part II, Chapter 11, § 1103

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112 Title 4, Amusements Part II, Chapter 11, § 1103

113 Title 4, Amusements Part II, Chapter 13B, § 13B12

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115 [306 A.3d 432 \(Pa. Cmmw. Ct. 2023\)](#) & 298 A.3d 447 (Pa. Cmmw. Ct. 2023)

116 [306 A.3d 432 \(Pa. Cmmw. Ct. 2023\)](#) & 298 A.3d 447 (Pa. Cmmw. Ct. 2023)

117 [Title 4, Chapter 3, § 30](#)

118 [Title 4, Chapter 3, § 321\(a\)](#)

119 [§ 1403 \(b\), §13B52, § 13A62, Title 4, Amusements](#)

120 Title 4, Amusements Part II, Chapter 11, § 1103

121 [§ 1403\(b\), Amusements Part II, Title 4](#)

122 [§ 13A62, Amusements Part II, Title 4](#)

123 [§ 13B52, Amusements Part II, Title 4](#)

124 [§ 331 read § 302, Amusements, Party II, Chapter 3](#)

125 [§ 331 Amusements, Party II, Chapter 3](#)

126 “In-State Percentage” means “For each fantasy contest, the percentage, rounded to the nearest tenth of a percent, equal to the total entry fees collected from all in-State participants divided by the total entry fees collected from all participants in the fantasy contest.” § 302, Amusements, Party II, Chapter 3

127 Page 10, Memorandum, Office of Chief Counsel, Internal Revenue Service, can be [accessed here](#)

128 Release of Pennsylvania revenue commission [available here](#)

129 61 PA Code, § 33.2 [available here](#)

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166 Article 2(i), Bill of Law No. 3,626/2023; [available here](#)

167 Article 2(ii), Bill of Law No. 3,626/2023; [available here](#)

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169 [Article 66](#), FEDERAL SENATE BILL NO. 2234 OF 2022 (n° 442/1991), in the Chamber of Deputies

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