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THE INTEGRATED GOODS AND SERVICES TAX (AMENDMENT) ACT, 2023

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This amendment Act focuses on online gaming exclusions, specific provisions for the supply of goods, and other actionable claims.

The bill aims to clarify aspects related to taxability within online gaming, Casinos, Horse Racing, and other sectors, enhancing the existing regulations and providing further alignment with modern requirements. This seeks to make certain amendments in the IGST Act, 2017 to give effect to the recommendations made by the GST Council regarding taxability of online gaming.

The proposed amendments are given hereunder:

- **Taxability on online money gaming, casinos and horse racing for offshore entities**

1. Amendment in section 2(17) (Online information and database access or retrieval services)

Sub-clause (vii) of clause (17) is proposed to be amended to exclude online money gaming as defined in section 2(80) of the CGST Act, 2017, from the scope of online information and database access or retrieval services. Section 14 of the Act deals with Non Resident OIDAR Supplier and their registration in the GST Law is provided. Similar section has been enacted for Online gaming. Refer Sl. No. 2 below

2. Insertion of new section 14A: Special provision for specified actionable claims supplied by a person located outside the taxable territory. Section 14A (which is similar to Section 14 for OIDAR Suppliers) is introduced to regulate the supply of online money gaming by overseas suppliers, including the need for single registration under the Simplified Registration Scheme.

A new section 14A is proposed to be inserted to provide as under:

(i) A supplier of online money gaming located in a non-taxable territory shall be liable to pay IGST on the supply of online gaming by him to a person in taxable territory.

(ii) Such supplier shall obtain a single registration under the Simplified Registration Scheme as referred to in section 14(2).

(iii) If any person located in the taxable territory is representing such supplier for any purpose in the taxable territory, then such person shall get registered and pay the IGST on behalf of the supplier. If the supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, then he shall appoint a person in the taxable territory for the purpose of paying IGST and such person shall be liable for payment of such tax.

(iv) Failure to comply with above provisions by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.

- **Proposal to shift customs-based levy to inter-state IGST levy for notified import of goods:**

Amendment in section 5 (Levy and collection)

The amendment of section 5 and other clauses enables the Government to notify certain goods for different tax treatments.

Section 5 is proposed to be amended to provide that the IGST on goods other than the goods as may be notified by the Government on the recommendations of the Council imported in to India shall be levied and collected in accordance with the provisions of section 3 of the Custom Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Thus, in case of import of such notified goods IGST shall not be levied in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 read with section 12 of the Customs Act, 1962 but shall be levied and collected as inter-State supply as per the provisions of section 5(1).

This is a great shift and only after notification of any goods – the impact of the same can be analysed.

- **Proposal to prescribe place of supply of goods where supply is made to unregistered person**

Amendment in section 10 (Place of supply of goods other than supply of goods imported into or exported from India) - The addition of specific clauses in section 10 sets clear rules about the place of supply when goods are made to non-registered persons.

A new clause (ca) is proposed to be inserted in section 10(1) to provide that where the supply of goods is made **to an unregistered person**, the place of supply shall be the **location of the said person as recorded in the invoice** and the **location of the supplier where the address of the said person is not recorded in the invoice**.

Further, the explanation to the clause clarifies that recording of the name of State of the said person in the invoice shall be deemed to be recording of the address of the said person.

This clause is proposed to be introduced to address the situations where goods are purchased over-the-counter in one State and subsequently carried to another State by the recipient. In these cases, certain suppliers were imposing CGST and SGST instead of IGST. Further, there were instances where several tax authorities were issuing directions to charge CGST and SGST instead of IGST in such a situation. Therefore, if the invoice now contains the address (Even the name of the State) as different state then, the POS would be the different state and consequently IGST would be applicable.