

GST LEVY ON FANTASY SPORTS IN INDIA

WHITE PAPER

Prepared By:

Shalu Misra and Anuj Saxena
Advocates, TIOL Knowledge Foundation
TIOL House, Plot No 490, Udyog Vihar Phase V
Gurugram, India – 122016

Contents

1. Introduction	3
2. Online Fantasy Sports – An Explainer	5
2.1. Technological Platforms	5
2.2. Creation of Teams	5
2.3. Use of Skill	5
2.4. Cash Flow	6
3. Economic Potential of Online Fantasy Sports	8
3.1. Burgeoning Economic Growth of the Fantasy Sports Industry	8
3.2. How Online Fantasy Sports is Amplifying Growth in the Sports Sector	8
4. Taxation Landscape for Online Fantasy Sports	11
4.1. Rate of GST Currently Levied	11
4.2. Actionable Claims in Online Fantasy Sports	12
4.3. Need for Distinction and Clarity in Taxation Practices for Games of Skill & Games of Chance	13
5. Recommendations and Way Forward	16
Appendix A: Judicial Pronouncements on Regulating Online Fantasy Sports	19
Appendix B: International Practices	23
I. United Kingdom	23
II. USA	23

1. Introduction

Before the advent and rapid adoption of technology, sports and gaming activities were limited to being played in real-life settings. Now, with India’s consumer digital economy poised to grow from USD 85 bn in 2020 to USD 800 bn in 2030, coupled with the widespread permeation of affordable and accessible broadband and mobile data, millions of Indians – across ages – are embracing the internet and smart-phones¹. Against this backdrop, sports and gaming activities, too, are undergoing a digital transformation, as a result of which India’s online mobile gaming market is experiencing exponential growth. Part of this trend can be attributed to India’s younger, more educated population logging online with more disposable incomes - both of which are expected to fuel discretionary spending.

According to a report published by FICCI-EY², India’s online gaming industry is estimated to be worth INR 18,700 Cr by 2022. Gross revenues from online fantasy sports platforms (Fantasy SportsP) alone stood at approximately INR 2,400 Cr in FY20 and grew to INR 4,700 Cr in FY21. According to a PwC report, the online fantasy sports sector is expected to be worth USD 3.7 billion by 2024, with the potential to contribute GST revenue of INR 3,000 Cr to INR 3,500 Cr over the next five years.³ The Indian market has witnessed a 700% increase in the number of fantasy sports operators in the past decade, and a 2500% growth in the number of fantasy sports users – clocking to

around 13 crore Indian users today. This is a testament to the potential of online fantasy sports as a veritable sunrise industry which is fast transforming India’s



¹[India's consumer digital economy to grow 10x to \\$800 bn by 2030: Redseer | Business Standard News \(business-standard.com\)](https://www.business-standard.com)

² FICCI-EY Report on India’s Media & Entertainment Sector Reboots 2020 ‘Playing by New Rules’ (March 2021)

³ PWC-IFSG Federation of Sports Gaming Report on Taxation of Online Fantasy Sports Gaming Market in India (May 2019)

digital and sports economy. The figure alongside presents a snapshot of the Indian Online Fantasy Sports (Fantasy Sports) industry.

The list of platforms offering Fantasy Sports is on the rise as demand continues to grow. India is home to more than 150 operators, with some of the prominent ones being Dream11, MyTeam11, Paytm First Games, Mobile Premier League (MPL), My11Circle, Fanfight, Khelo Fantasy Live, Fanfight, Sportasy, FSL11- Fantasy Sports League, among others.

The extant regulatory framework for online gaming and fantasy sports is neither clear nor uniform in its application across India. There is currently no dedicated legislation that governs fantasy sports. Operators have to deal with the archaic Public Gambling Act, 1867 and its various renditions which have been adopted by states. The recent Supreme Court verdict has upheld the judgments of various high courts and has reaffirmed that Fantasy Sports is a game of skill and does not amount to gambling/ betting/ wagering. The recent Madras High Court judgement also clarifies that online games of skill cannot be prohibited under gambling or betting laws. Such laws neither envisaged nor accounted for digital and online formats of skill gaming and, therefore, lack the context of fantasy sports – making them unsuitable for regulating the sector. In December 2020, NITI Aayog, the Indian Government's policy think-tank published a discussion paper with draft guiding principles for the online fantasy sports⁴. Notably, NITI Aayog recommended a self-regulatory model of governance, rather than top-down regulatory control.

Considering the exponential growth of fantasy sports and the potential benefits to India's digital economy, providing tax certainty to the industry and also arriving at an optimal tax rate is critical for attracting investments, FDI and also ensuring growth of tax revenue for the government. Therefore, this White Paper details the opportunities and risks present to the sector and outlines recommendations to appropriately tax fantasy sports to ensure the sector's sustained growth and contribution to India's burgeoning digital and sports economy.

⁴NITI Aayog Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India (December 2020)

2. Online Fantasy Sports – An Explainer

2.1. Technological Platforms

Fantasy sports are typically offered on web-based technology platforms by various operators. It is noteworthy that most of the users participate in online contests for free, while only a small fraction of users opt for ‘pay-to-participate’ contests. As per data collected by the Federation of Indian Fantasy Sports⁵, India’s self-regulatory body for fantasy sports, about 80% of all users participate in free contests and only about 20% choose to participate in ‘pay-to-participate’ contests.

2.2. Creation of Teams

To participate in online fantasy sports, users of these platforms have to create their own virtual sports teams by selecting real-life players who are scheduled to play in an upcoming officially sanctioned real-life sports match. For instance, if a match is scheduled between India and England on a particular day, the operator will allow users to create a team of 11 players from amongst the real-life playing squad of the two teams. After forming their virtual/fantasy team and having assigned each player his/her role, the user then earns points based on the actual performances of his team’s real-life counterparts during the match. By virtue of being based on statistics generated from officially sanctioned sporting events, fantasy sports share a symbiotic relationship with real-life sports. Users cannot make any changes to their teams after a match commences.

2.3. Use of Skill

Users compete against other users’ teams based on statistics generated by the on-field players’ real-life performances. It is important to note that users are required to analyze the players’ past and present performances, statistics as well as data while forming their virtual/fantasy team, which correspondingly results in being awarded with points based on specific statistical criteria and predetermined points system. Therefore, to out-perform the competition, users have to exercise considerable amounts of skill, knowledge, and judgement while creating their fantasy teams. Ultimately, users who have more knowledge of how teams

⁵ Federation of Indian Fantasy Sports – report

and players have historically performed / are likely to perform, are aware of pitch and match conditions, and can compute other contingencies among other things, have a higher probability of scoring more points for their fantasy sports team. According to studies conducted by IIM-Bangalore⁶ and professors from MIT and Columbia University⁷, research has shown that skilled users who have more knowledge and conduct research about a real-life sporting event, have a higher probability of scoring more points for their fantasy sports team.





2.4. Cash Flow

In the case of 'pay-to-participate' contests, users are required to pay money using accredited banking channels or payment gateways after going through a KYC process, in full compliance with all the applicable laws in India. The entire sum is received online, notably with no cash transactions involved, and is held by an independent trustee/custodian in an ESCROW account maintained in a banking institution. Upon payment of the *Contest Entry Amount* (CEA), the user enters a 'pay-to-participate' contest. During this phase, the independent trustee holding the CEA retains approximately 80-82% as a *Prize Pool* and transfers the remaining 18-20 % to the operator as platform fee providing the online fantasy sports services. The amount so received by the operator constitutes consideration for providing the technology platform to the user. Such consideration received by the operators is generally referred to as the Platform Fee or *Gross Gaming Revenue* (GGR). This is not inclusive of GST; some operators absorb the GST while others may levy GST on the users over and above the GGR.

Upon completion of the contest, the predetermined winnings based on rankings are the user's virtual account. At the time of withdrawal of winnings, an applicable TDS is deducted, and net winnings is credited to users' bank account after a thorough KYC process. The cash flow cycle is explained in the figure below.

⁶<https://indianexpress.com/article/technology/tech-news-technology/fantasy-sport-dream-11-iimb-cartesian-study-6165065/>

⁷<https://www.hindustantimes.com/other-sports/fantasy-sports-team-selection-requires-higher-skill-than-mutual-fund-management-study/story-u9zr0ljUT85HZuqLSORFul.html>

	USER	INDEPENDENT CUSTODIAN	OFS PLATFORM
Step 1  Transferring Money	Transfers money using online banking channels	100% amount received by an independent trust/custodian ESCROW account (Trust is generally a bank)	The Online Fantasy Sports platform has no right/title over this amount
Step 2  Participates in Paid Contest	Participates in Paid Contest by paying a 'Contest Entry Amount(CEA)'	Retains 80-82% of the CEA as 'Prize Pool' and transfers 'Platforms Fees'(generally 18-20%) to the Operator	Receives 18-20% of CEA as platform fees which is the gross consideration for providing technology platform*
Step 3  Declaring Results	Wins Contest	Winnings credited to the user's account held by the Trustee	
Step 4  Transferring Winnings	Withdraws winning amount into the bank account	Withdrawals transferred to user's individual bank account (after deducting applicable TDS)	

**Note: Gross Gaming Revenue(GGR) may or may not be inclusive of GST. Some OFSG operators absorb GST element, while other levy GST on users*

3. Economic Potential of Online Fantasy Sports

3.1. Burgeoning Economic Growth of the Fantasy Sports Industry

India is the world's largest Fantasy Sports market with around 13 crore Indian users, beating the USA's 50-year-old status as the world leader. India is also home to the world's largest Fantasy Sports operator and more than 150 operators providing online fantasy sports. According to the NITI Aayog draft guidelines on regulating the Fantasy Sports industry, with the significant growth of this sector in recent years, it has tremendous potential to continue attracting foreign investment, increase innovation, and generate employment in India. With rapidly surging demand, a large market of sports fans and complementing pool of software development talent in India is on the cusp of becoming a global hub for this sunrise industry⁸.

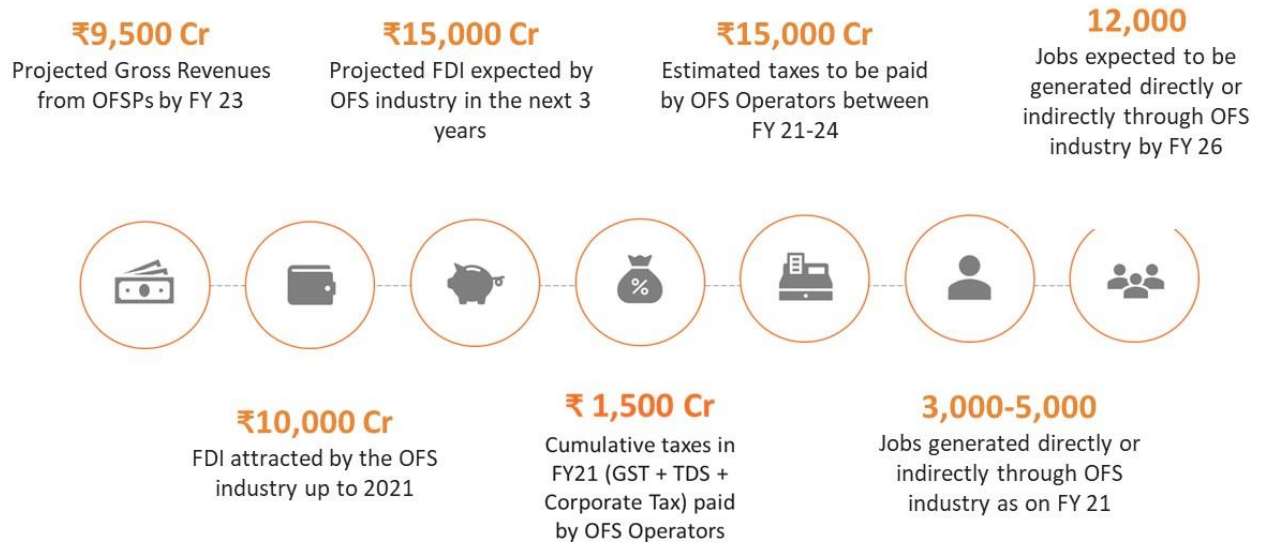
According to data compiled by the Federation of Indian Fantasy Sports, the Fantasy Sports industry has generated INR 4,700 Cr in revenue in FY21 which is projected to grow to INR 9,500 Cr by FY23. In terms of investment potential, the Fantasy Sports industry has already attracted INR 3,500 Cr in FDI as of FY21, with another INR 10,000 Cr in investments projected over the next few years. Fantasy Sports operators have so far paid INR 1,500 Cr in taxes for FY21 (GST + TDS + Corporate Tax), which is estimated to amount to INR 15,000 Cr between FY20 – FY24. A PwC report published in 2019 estimated the GST component contributed in the next five years to be approximately INR 3,000 – 3,500 Cr. In terms of employment, the Fantasy Sports sector has already generated 3,000 – 3,400 jobs directly and indirectly and is projected to contribute 12,000 additional jobs to India's labor market in the next 2-3 years. Key figures indicating the economic potential of the Fantasy Sports industry is presented in figure 3.

3.2. How Online Fantasy Sports is Amplifying Growth in the Sports Sector

According to a White Paper published by Indiatech, mainstream sports like cricket continue to dominate the Indian sports landscape. However, a new generation of sports enthusiasts

⁸NITI Aayog Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India (December 2020)

are developing interest in other sporting activities, including hockey, kabaddi football, basketball, and volleyball, among others.



Source: Federation for Indian Fantasy Sports

This growing interest in other sports can be attributed partly to Fantasy Sports, which has resulted in bringing together many large brands, sporting teams, advertisers, and sporting stars. With the significant increase in Fantasy Sports and its employment generating potential in the sports sector and allied services, the Fantasy Sports industry has contributed to existing businesses including online sports scoring platforms, online sports content aggregators, sports merchandising and e-commerce, online sports streaming, travel and sports experience, online coaching and sports turf management, among others⁹. Several large sporting brands are looking towards Fantasy Sports as a medium to market and promote their products and services across an array of sports.

Additionally, as the market has grown, users have started watching new sports because of their interest and inclination towards fantasy sports. According to a Kantar and FIFS survey, 59% of Fantasy Sports users have started watching new sports because of participating on Fantasy SportsPs while 48% of users now watch almost every sport, irrespective of team or country. Fantasy Sports operators offer fantasy leagues across a variety of sports like football,

⁹Indiatech White Paper on Online Fantasy Sports ‘Adding Value to the Indian Sporting Ecosystem’ (September 2020)

hockey, kabaddi, baseball, volleyball so that diverse interests of sports fans are catered to. Therefore, in addition to catering to those interested in mainstream sports like cricket, Fantasy Sports has led to an increased awareness and acceptance towards other indigenous sports such as kabaddi. This is expected to have a snowball effect and reflect in the growth of real-life sporting activities beyond mainstream sports, which will ultimately result in the growth of the Indian sports sector.

4. Taxation Landscape for Online Fantasy Sports

4.1. Rate of GST Currently Levied

With respect to the issue as to whether online fantasy sports would be covered under the scope of Online Information Database Access and Retrieval Service, it is seen that these services are provided through the medium of internet and are received by the recipient online without having any physical interface with the supplier of such services. The services included here are: (i) advertising on the internet; (ii) providing cloud services; (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet; (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network; (v) online supplies of digital content (movies, television shows, music and the like); (vi) digital data storage; and (vii) online gaming.

However, it worthwhile to note that the online gaming mentioned here simply involves the downloading of games from the internet and does not include any element of interaction with the players, which is a mainstay of online fantasy sports.¹⁰

Currently, online fantasy sports and game operators pay GST at a rate of 18% under Chapter Heading 998439. This tax rate is levied on the Platform Fee or GGR amount received by the operators as service fees towards usage of their platform. The scheme of classification of services as given in the Annexure to Notification Number 11/2017-CT(R) dated 28.06.2017 has been adopted from the Central Product Classification Scheme and as per the Central Product Classification of goods and services, online games have been classified under sub-heading 84391 of Heading 8439 pertaining to *Other Online Content*. On this basis, all the online games will be covered by the sub-heading 998439, pertaining to *Other Online Content Nowhere Else Classified* and accordingly Serial Number 22 of the rate notifications would attract 18% GST.

¹⁰https://www.cbic.gov.in/resources//htdocs-cbec/gst/51_GST_Flyer_Chapter42.pdf

Determining the rate of tax to be levied upon online gaming is the statutory prerogative of the GST Council. To this end, on May 24, 2021, the GST Council constituted a Group of Ministers (GoM) to examine the issue of valuation of services provided by Casinos, Racecourses and Online Gaming portals and determine the taxability of certain transactions with reference to the current legal provisions and order of Courts on related matters. Under the Terms of Reference, the GoM is expected to provide clarity and remove any scope for misinterpretation.

4.2. Actionable Claims in Online Fantasy Sports

As is observed from the aforementioned section on the cash cycle of the money pooled in by the users of online fantasy sports, the receipt of a percentage of such amount by the operator providing the platform as platform fee and the transfer of the remainder of prize pool into the accounts of winning users, the question arises as to whether or not any of these amounts would qualify as actionable claims.

In this regard, the High Court of Bombay in ***Gurdeep Singh Sachar Vs Union of India*** reported as **2019-TIOL-2687-HC-MUM-GST¹¹** has held that the amount pooled in the ESCROW account, qualifies as actionable claim, considering that such amount is to be distributed amongst the winning participating members as per the outcome of a game. The relevant portion of the judgment is extracted –

“...13. In the instant case, admittedly, there is no dispute that the amounts pooled in the ESCROW account is an 'actionable claim', as the same is to be distributed amongst the winning participating members as per the outcome of a game. But, as held hereinabove since the activities of the respondent No.3 do not amount to lottery, betting and gambling, the said actionable claim would fall under Entry 6 of the Schedule III under Section 7(2) of CGST Act. Therefore, this activity or transaction pertaining to such actionable claim can neither be considered as supply of goods nor supply of services and is thus clearly exempted from levy of any GST...”.

¹¹<https://taxindiaonline.com/RC2/caseLawDet.php?QoPmnXyZ=MTU0NTM0>

The Court further observed that the transaction relating to actionable claim qua the amounts of participants pooled in ESCROW arrangement, for which only acknowledgement is given, does not qualify as supply of goods or supply of services. Hence the Court held the same to be outside the purview of *consideration* and consequently no GST was to be levied on such amount. The relevant paragraph is extracted –

“...15. Since the CGST Act itself do not allow the imposition of Tax on such 'actionable claim' in relation to the Online Fantasy Sports Gaming of the respondent No.3, it being other than lottery, betting and gambling, the said Rule 31A(3) of CGST Rules 2018 cannot be read in such a manner so as to override the parent CGST Act...”;

The Court further emphasized that Rule 31A of the CGST Rules 2017 was inapplicable to online sports and games, since the actionable claims therein were amongst the actionable claims as per Schedule III, which are not considered to be supply of goods or supply of service. The Court also pointed out that the actionable claim as per Rule 31A was limited to activities which involved a game of chance, such as betting, gambling or lottery.

4.3. Need for Distinction and Clarity in Taxation Practices for Games of Skill and Games of Chance

It is therefore important to clarify that online fantasy sports have been classified as games of skill. The legality of such a business models have been questioned and Courts have held that a fantasy sport is predominantly a *game of skill* and not a *game of chance* and hence does not qualify as gambling/betting. On July 30, 2021, the Hon’ble Supreme Court dismissed an appeal against a Rajasthan High Court decision, which held that online fantasy sport platform, Dream11, involves skill and is, therefore, not gambling¹². The bench noted that the question of online fantasy sports being predominantly a game of skill was *non res integra* i.e., is decided and settled (Refer to Appendix A for judicial pronouncements on the same).

¹²[Dream 11' Fantasy Sports Game Is Not Gambling: Supreme Court Upholds Rajasthan HC Judgment Dismissing PIL Seeking Its Ban \(livelaw.in\)](https://www.livelaw.in/blogs/dream-11-fantasy-sports-game-is-not-gambling-supreme-court-upholds-rajasthan-hc-judgment-dismissing-pil-seeking-its-ban)

Additionally, IIM-B, MIT and Columbia have mathematically proven that the online fantasy sports format legally recognized by the Indian Courts is a game of skill¹³. In fact, in the MIT and Columbia study, it has been noted that team selection on online fantasy sports requires demonstration of a higher degree of skill than required to manage a mutual fund portfolio¹⁴.

To understand the concept of skill versus chance, one must first understand the term *betting*. According to the Oxford dictionary, 'betting' is "the action of gambling money on the outcome of a race, game, or other unpredictable events." Results and winnings on online fantasy sports platforms are in no way dependent on the *outcome* of a real sports match/event. Instead, the fantasy team earns points based on the real-life sportspersons' actual performances. Moreover, users must exercise their knowledge about a sport and create a team based on statistics and information in order to be successful.

At times, games of skill and chance appear to have some overlapping attributes. Most games across the spectrum – real-life or virtual - will have elements of both skill and chance. Whether it is considered a game of skill or game of chance will depend on which element is the dominant factor in determining the outcome of the game. Skill can include any of the following¹⁵ -

- a) A learned or developed ability.
- b) Strategy, or tactic.
- c) Physical coordination or strength.
- d) Technical Expertise.
- e) Knowledge and means of accomplishing a task.

Therefore, while online games of skill are skill predominant they also contain an element of chance. However, chance is not the dominant factor in determining the outcome of the game. This is the universal truth for any sports or game – whether real-life or virtual. For instance, if there was no element of chance in a football match, there would be no uncertainty. However, the element of skill becomes the dominant factor in determining who has the better chance

¹³[Fantasy sports are skill dominant, finds IIMB-Cartesian study | Technology News, The Indian Express](#)

¹⁴[Is It Luck or Skill: Establishing Role of Skill in Mutual Fund Management and Fantasy Sports \(mit.edu\)](#)

¹⁵<https://taxindiaonline.com/RC2/caseLawDet.php?QoPmnXyZ=MTU0NTM0>

of winning, as demonstrated by a game of skill. This was echoed in the Madras High Court's order, which recently struck down the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021¹⁶. In its order, the bench referred to a previous Madras High Court judgement in ***Dr. K.R. Lakshmanan v. State of Tamil Nadu***, wherein it was held that a game of skill may necessarily involve an element of chance, but the success therein would depend "principally upon the superior knowledge, training, attention, experience, and adroitness of the player." The judgement also noted that the "wide-ranging" blanket ban imposed on online games involving real money by the legislation did not pass the least intrusive test and, thereby, violated Article 19 (1) (g) of the Constitution that grants citizens the right to practice any profession or business activity.

Therefore, it becomes crucial to create a different valuation schema for online fantasy sports as it is not a game of chance and does not have a claim on the Prize Pool contributed by users for participating in paid contests. To this end, this White Paper offers the following recommendations to the GoM and a way forward to enable the Fantasy Sports industry to continue contributing to the growth of India's digital and sports economy.

¹⁶[Rummy & Poker Are Games of Skills' : Madras High Court While Striking Down Online Gaming Ban \(livelaw.in\)](https://www.livelaw.in/articles/16111)

5. Recommendations and Way Forward

The GST Council's Group of Ministers is empowered to look into appropriate valuation and taxability of certain transactions of online sports and gaming activities, including online fantasy sports. They are expected to submit their final recommendations to the GST Council once all discussions are concluded.

Global Practices define 'Contest Entry Amount' as 'Stakes' and 'Platform Fees' as Gross Gaming Revenue (GGR). Globally, GST is applicable only on GGR, which is calculated by deducting the Prize Pool from the Stakes.

As per a report compiled by the Internet & Mobile Association of India (IAMAI)¹⁷, some State Tax Authorities raise the question whether GST should be applicable on the entire Contest Entry Amount, which includes users' contribution to Prize Pool. The Fantasy Sports industry has also sought clarification from the GST Council on the applicability of tax. The industry pays 18% GST on Platform Fee or GGR collected (consideration amount against the supply of services by the online fantasy sports operators which is the subject matter of levy of tax under the GST Law). The report further mentions that in other nations, the levy of VAT or GST is confined to the net earnings (GGR) of the platform owners (Refer to Appendix B for international practices).

GST on Gross Gaming Revenue would be consistent with global practices. For instance, in the United Kingdom, the current rate of tax is 15% on the Gross Gaming Revenue; therefore, it is estimated that 95% of the user base is engaged through regulated platforms/channels. When the rate of tax is higher, like in Greece - where tax on wagering is 35% on the Gross Gaming Revenue - it is estimated that only 72% of players use the regulated platforms. When a tax is imposed on turnover (similar to GST on face value being imposed in India) players are less likely to use regulated platforms. For example, in Poland - with the rate of tax being 12% on the turnover (one of the highest but still less than 50% of the tax rate of India) - it is estimated that only 40% of players use regulated platforms.¹⁸

¹⁷<https://cms.iamai.in/Content/ResearchPapers/c1048d26-0dd6-4b81-87d3-25a3fad96e5a.pdf>

¹⁸<https://www.ukibc.com/bringing-gst-in-the-indian-gaming-sector-in-line-with-global-practices/>

The IAMAI report recommends that the amounts contributed by players towards the Prize Pool should qualify as actionable claim. The IAMAI asserts that taxing the entire amount is unwarranted, unjust and beyond the provisions of Rule 31A (3) of the CGST Rules 2017. The report further suggests that the taxation of Gross Gaming Revenue should be in line with the interests of the Government as well as the online fantasy sport operating platforms as this would put India at par with prevalent practices in numerous other countries like the United Kingdom, USA, Sweden, Spain, etc.

This White Paper analyzes various aspects of online fantasy sports, with a primary focus on GST taxation, based on numerous judicial rulings, surveys, and studies. Additionally, it takes into consideration the views and opinion of key subject matter experts, who attended a recent webinar organized by TIOL titled ***GST – Enabling India’s Digital Economy***¹⁹. The attendees included L. Badri Narayana of Lakshmikumaran& Sridharan, a law firm specializing in taxation, DilipChenoy, Secretary General FICCI and Pratik Jain, Partner of PwC LLP. It was the view of the expert panelists that the Government ought to adopt a forward-looking approach while taxing online fantasy sports.

Based on the presented facts, this White Paper offers the following recommendations regarding taxing online fantasy sports operators:

1. That GST be levied only on the Platform Fee/GGR which is received by the operators as consideration for offering their platforms for online fantasy sports and games and not on the Prize Pool/CEA amount contributed by users to participate in the online fantasy sports and games, as per current practice.
2. That the GoM recommends to the GST council to remove any ambiguity for misinterpretation of applicable tax rate for the industry to further avoid unproductive litigation and uncertainty which is affecting FDI, investments and growth of the industry. To this end, a separate line item or HSN code may be introduced, if deemed necessary for

¹⁹<https://www.youtube.com/watch?v=8qWolV6pmXA>

the online fantasy sports industry.

3. That the various nuances of online fantasy gaming are understood by policymakers, especially the members comprising the Group of Ministers, as well as State Ministers, before proceeding to impose taxes thereon. These nuances range from how Fantasy Sports platforms operate, what are the cash flows, what is the nature of engagement – whether it is a game of skill or chance
4. That no changes are brought to the existing taxation structure for the online fantasy sports industry as taxing operators too heavily would have the unintended consequences of adversely impacting the growth rate of this industry, shaking investor confidence in this sunshine industry, and reducing revenue inflows for the government.
5. That online fantasy sports should not be equated with betting or gambling as has been held by various High Courts and, most recently, by the Hon'ble Supreme Court of India – which settled that online fantasy sports is a game of skill.

Fantasy sports and online gaming have been on the front-end of innovation and investment in the last few years. Therefore, it is imperative for regulators to take stock of the potential these sectors hold while ensuring their revenues are taxed based on a valuation model that distinguishes between games of skill and games of chance. Therefore, obtaining clarity on these distinctions and therein the valuation models is of the utmost importance to maintain steady flow of investments and revenue. To this end, it is recommended that no changes are made to the current taxation regime for online fantasy sports and that the GoM utilize this opportunity to lend further clarity to the applicable tax rate for the industry.

The group of ministers (GoM) may consider recommending GST council to include 'Fantasy Sports' under **HSN heading 998439** to avoid any future confusion with regard to valuation or rate.

Appendix A: Judicial Pronouncements on Regulating Online Fantasy Sports

The terms *game of skill* and *game of chance* have been deliberated upon by the High Courts and by the Supreme Court of India across a multitude of judgments.

The term 'mere skill' was interpreted by the Supreme Court in ***The State of Bombay Vs. R.M.D Chamarbaugwala***²⁰ as 'games which are predominantly skill based' and has laid down that a substantial amount of exercise of skill is required for a game to be not classified as gambling. A competition to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill. Therefore, a competition success which does not depend on a substantial degree of 'exercise of skill' amounts to gambling. The judicial view with respect to classifying a game as a game of skill or a game of chance has been very strict.

However, it is also possible that games that are legally offered through virtual medium may or may not satisfy the test of *skill versus chance*. Fantasy sports possess an element of skill that predominantly affects the outcome of the games and, as such, is not a gambling activity and are thus classified as games of skill. This facet was examined by the Punjab and Haryana High Court in ***Shri Varun Gumber v Union Territory of Chandigarh and Ors*** which was also upheld by the Supreme Court wherein the Court observed that a person, while participating in a tournament was required to -

- a) Use considerable skill, judgment, and discretion while drafting his fantasy sports team.
- b) Assess the relative worth all the players available for the draft and evaluate the worth of a player against other players.
- c) Abide by the rules while evaluating a player's statistics as well as the strengths and weaknesses of such players.

²⁰<https://indiankanoon.org/doc/212098/>

d) Ensure that the draft did not contain a significant number of players from a single real-world team, and.

e) Evaluate and take into consideration other crucial factors with respect to the game, pitch, and condition of players.

In another important verdict on this issue, the online gaming platform *Dream11* became the subject matter of deliberation. The Bombay High Court in ***Gurdeep Singh Sachar Vs. Union of India 2019-TIOL-2687-HC-MUM-GST*** relied on the observations made by the Punjab and Haryana Court in the Varun Gumber case²¹. A Criminal Public Interest Litigation was filed before the High Court of Bombay wherein it was contended that, Dream 11 was carrying out gambling/betting/wagering in the guise of ‘online fantasy sports gaming’ in violation of applicable laws; and evading taxes by levying inadequate goods and service tax on such offerings. The Court observed that, unlike betting, winning or losing in fantasy sports was not dependent on any team winning or losing in the real world. The Court further held that the amounts deposited by players would qualify as actionable claims outside the purview of Rule 31A of the CGST Rules, which covered betting, gambling, lottery and horse racing only. It was also observed that the pooled in money did not qualify as consideration and that activity pertaining to such transaction involved the providing of an acknowledgment of receipt of the contributed amount. Hence the Court held that such activity did not constitute supply of goods or supply of service and therefore was outside the purview of GST. The High Court also upheld the classification of online sports and games under the GST HSN heading 998439 and held that the GST was correctly payable @ 18% on the Platform Fee retained by the platform offering the game.

The Hon’ble High Court of Rajasthan in the case of ***Chandresh Sankhla v. The State of Rajasthan*** held that in view of the orders already passed by the Hon’ble High Court of Punjab & Haryana and the High Court of Bombay, the issue relating to allegations of gambling/betting against Dream11 platform is no more *res integra*.

²¹<https://taxindiaonline.com/RC2/caseLawDet.php?QoPmnXyZ=MTU0NTM0>

Further, the High Court of Rajasthan in ***Ravindra Singh Chaudhary Vs. Union of India &ors*** had observed that the skill of the participant determines the result of the game having predominant influence on the outcome of the fantasy game²². Whether any particular team in the real-world match wins or loses, is also immaterial as the selection of virtual team by the participant involves choosing players from both the teams playing in the real world. It is also clear that offering Dream11's format of fantasy sports involves substantial skills and is therefore a legitimate business activity not amounting to wagering and entitled to protection under Article 19(1)(g) of the Constitution. The Court also observed that the users are not gambling on the outcome of any game, since it is immaterial if any particular team in the real-world match wins or loses as it is wholly dependent on performance of each player in the team . Considering these factors and the presence of industry regulators that place checks and balances on operators, the Court arrived at an independent view that fantasy sports is a game of skill.

Most notably, recently, the High Court of Rajasthan in the case Fantasy Sports ***aahilNilwaya v. The State of Rajasthan*** held that offering of online fantasy sports offered in accordance with Charter of Federation of Indian Fantasy Sports is a legitimate business activity entitled to protection under Article 19(1)(g) of the Constitution of India and any action taken by government in prohibiting such activity would be opposed to Article 14 and Article 19(1)(g) of the Constitution of India.

On August 3, 2021, the Madras High Court struck down part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 which imposed a ban on playing of games such as rummy and poker on cyberspace with stakes. Section 11 of the impugned legislation also banned games of 'mere skill' if such games were played for wager, bet, money or other stakes – thereby including online fantasy sports within its ambit. The petitioners contended that the impugned legislation – by prohibiting even games of skill where any prize or stake was involved – was violative of Article 19(1)(g) of the Constitution, which secures the right to practice any profession or to carry out any occupation, trade or business. In its judgment, the

²²<https://indiankanoon.org/doc/175923288/#:~:text=Union%20of%20India%20%26%20Ors.%2C,of%20this%20Court%20in%20D.B.>

bench relied on the Madras High Court’s previous judgment in ***Dr. K.R. Lakshmanan Vs. State of Tamil Nadu*** wherein it was held that a game of skill may necessarily involve an element of chance, but the success therein would depend “principally upon the superior knowledge, training, attention, experience, and adroitness of the player. Further, it held that in a game of skill, the exercise of skill can overpower the chance element involved in that activity such that the better skilled would prevail more often than not.

The Hon’ble Supreme Court of India on July 30, 2021, dismissed a Special Leave Petition that alleged that Dream11’s format of fantasy sports amounts to gambling, wagering, and betting – therefore not making it a game of skill. In its judgment, the bench noted that the matter of whether online fantasy sports is a game of skill is *non res integra*– and is, therefore, settled. In doing so, the Court reaffirmed the judgments passed by the Punjab & Haryana High Court, the Bombay High Court, and upheld the judgment passed by the Rajasthan High Court, where the legality of online fantasy sports as a ‘game of skill’ and not gambling was sustained.

Therefore, from a collective reading of the aforementioned judgments, it is evident that the legality of online fantasy sports is a settled matter. Several leading academic institutions, including Indian Institute of Management, Bangalore (IIM-B), have conducted empirical studies²³ to affirm that **fantasy sports are games of skill**. Researchers at Massachusetts Institute of Technology (MIT) and Columbia University contrasted data gathered from fantasy cricket and basketball platforms against data collected from the stock market and concluded that fantasy sports participants demonstrate a higher degree of skill than mutual fund managers who manage stock portfolios²⁴.

²³<https://indianexpress.com/article/technology/tech-news-technology/fantasy-sport-dream-11-iimb-cartesian-study-6165065/>

²⁴https://devavrat.mit.edu/wp-content/uploads/2020/08/report_skill.pdf

Appendix B: International Practices

To evaluate the efficiency and effectiveness of the tax laws pertaining to online fantasy sports and games in India, it is essential to compare the experiences of other countries in regulating taxes in the Fantasy Sports industry. Comparing the experience of other countries in regulating their online markets is a useful tool in evaluating the effectiveness of regulations in India.

However, it should be noted that there are several other variables affecting the performance of gaming markets aside from regulatory changes and tax. The effects of these other factors such as the macroeconomic environment, shifting customer demographics and attitudes, among others, cannot always be reliably stripped out in evaluating the impact of regulatory change.

I. United Kingdom

The UK's market has experienced an annual GGR growth of 80% since 2002-2008, the reason being a change in the gaming tax system in October 2001 from a 6.75% on stakes to 15% on GGR. Thereby, the market in the UK is one of the most open online gaming markets across Europe. High growth rate since 2001 indicated an effective online regulation process that opened the market and stimulated a high level of absorption, which would minimize the size of the unregulated market.

II. USA

Fantasy sports are legal under a federal law exemption whereby fantasy sports are considered a game of skill. Fantasy sports are taxed differently in different states; however, fantasy sports are taxed uniformly on GGR, only the tax rate varies. There is no federal tax on fantasy sports.

The tax aspects pertaining to online fantasy sports and games adopted by various other countries have been summarized as tabulated below –

Country	Tax Base	Tax Rate
UK	GGR	15%
Australia	GGR	10%
Germany	GGR	19%
Czech Republic	GGR	6-20%
Belgium	GGR	11-15%
Italy	GGR	20%
Slovakia	GGR	27%
Estonia	GGR	5%
Spain	GGR	25%
Greece	GGR	30%
Denmark	GGR	20%
France	GGR	37%
Sweden	GGR	18%
Portugal	Stake	25%
Alderney	GGR	GBP 35k to 500 k / year
Isle of Man	GGR	GBP 35 k/year + 1.5% on GGR
US: Pennsylvania	GGR	16%
US: New Jersey	GGR	7.9%
US : Nevada	GGR	6.75%
US- Illinois	GGR	23.5%
US: Mississippi	GGR	11.30%
US: Louisiana	GGR	21.70%
US: Colorado	GGR	13.20%
US: Missouri	GGR	27.20%
US: Iowa	GGR	16.20%
US: South Dakota	GGR	8.80%

Country	Tax Base	Tax Rate
Malaysia	GGR	8%
Ireland	Stake	1%
Romania	Stake	1.5 % to 5%
Poland	Stake	12%
