**Subject: Recommendation for the Honourable Members of GST Council regarding the valuation of online gaming under GST laws.**

1. **The Bombay Chamber of Commerce and Industry** is one of the oldest and most reputed chambers in the country with an illustrious history of 186 years. The Chamber has played a significant role in supporting the development of industries in Mumbai over the last several decades. The Chamber serves as an effective vehicle of communication between the regulatory bodies, the corporate, and the society. Over the past few years, the Chamber has moved to facilitate trade and industry in playing a larger role of **“Corporate as a Citizen”**.
2. At the outset, we are extremely thankful to the Hon’ble Finance Minister, the GST Council, and the Group of Ministers (GoM) on Casinos, Race Courses, and Online Gaming for **deliberating and re-examining the issue of rate and valuation mechanism of GST on online gaming to keep the industry viable.**

**Background**

1. Currently, Online Gaming sector in India is recognized as the fastest growing sector, with current enterprise valuation at ~Rs 1,50,000 crores and over 48 crore gamers (total gaming universe; ~16% of worldwide). The sector has received a fillip through recent policy decisions such as formation of **AVGC Task Force** in this year’s union budget, **allowing 100% FDI,** and creation of the **Inter-Ministerial Task Force (IMTF) to regulate online skill-based gaming**, etc.
2. The online skill gaming industry contributes **INR 2,200 crores annually in indirect taxes alone** and is expected to contribute **over INR 6,000 crores annually by 2025**. The industry currently is paying GST at the rate of **18% on the platform fee or Gross Gaming Revenue (GGR),** whereinthe platform fee or the GGR is about 10-20% of the total Contest Entry Amount (CEA).
3. The Honourable Group of Ministers (GoM) on 47th GST Council on the issue of Casinos, Race Courses, and Online Gaming had recommended a rate of 28% on the Gross Gaming Revenue while clarifying rate and valuation of tax for online gaming services, as it is the most prevalent practice internationally. **However, the matter was referred back to GoM to reevaluate and resubmit its report for consideration to the next GST Council meeting.**
4. As per the media reports, the GoM has submitted its report for the upcoming 48th GST Council meeting which is scheduled for 17th December 2022. Media reports suggest that GoM has suggested a tax rate of 28%; however, there is no clarity on the valuation mechanism for levying such rate of tax.
5. **Globally, the practice is to pay GST on the GGR or the platform fee**. Some countries that are in line with this practice are the UK, Belgium, Denmark, etc. In fact, the Fitment Committee had recommended in 2019 that GST should only be paid on the GGR.

**GST is to be levied only on consideration**

1. Under GST laws, GST can only be levied on the amount charged as consideration for supply. The term ‘consideration’ embodies the principle of contractual reciprocity and there must be a direct link between the consideration charged and the reciprocal supply. The consideration for the services undertaken by the operators has always been understood to mean the platform fee or GGR only. Accordingly at present, GST is paid at the rate of 18% on such value.
2. Contest Entry Amount (CEA) or the player deposits (which may be withdrawn and remain unused) are not the consideration received by the operator.
3. An increase of GST from 18% to 28% on GGR would amount to a 55% increase in the tax rate and will slow down the growth of this industry. However, the industry may still be able to absorb this cost.

**GST impact on the Indian economy**

1. The industry and the users will be hit badly if 28% is charged on the CEA or the deposits. In such a situation, the industry will have no option but to pass on the burden to the users. The user, who is already required to pay full income tax on the gross winnings will be unable to bear such a large increase in cost and will be incentivized to shift to **black market operators or illegal offshore gambling sites** to avoid the increase in playing costs and reduction in winning pool. **Hence, it is imperative that the value of supply (despite the proposed increase in the GST rate to 28%) should be the GGR and not the CEA.**
2. Legitimate online skill gaming industry would be rendered unviable, and this **vacuum is likely to be occupied by illegal offshore gambling sites**, that **do not pay any taxes**, are often **fly-by-night operators**, and leave **users unprotected and vulnerable**.
3. If the users move towards these markets, then most of the companies in the online gaming industry will not be able to remain viable. As a consequence, **we estimate that thousands of jobs will be lost and hundreds of millions of dollars in value created by Indian entrepreneurs destroyed. This will result in substantial tax loss to the government.**
4. Further, this will also **nip the budding investor confidence in an industry that has attracted USD 2.1 billion over the past few years** and be counter-productive to the measures that are being taken by the government.

**Prayer**

We humbly request you to:

* **Keep the tax base as Gross Gaming Revenue (GGR or platform fees)** with the proposed GST rate of 28%; further, rules could be clarified that GGR should be declared as value of supply for the purpose of GST, in line with the international practice
* Define online skill-gaming platform fees/online skill-gaming operators under GST legislation to remove the ambiguity through inclusion of a separate service code for online skill-gaming operators
* The above proposition shall enable to ensure:
	+ Significant growth in GST revenue to the exchequer; 55% increase in GST which may lead to increase in overall projected cumulative GST collections.
	+ The viability of the online skill gaming industry along with further investments to sustain its phenomenal growth.
	+ Adequate protection for the existing 20+ crore Indian gamers (which are expected to increase to 40 crores by 2025) by enabling platforms to absorb additional tax burden without passing it on to Indian consumers.
	+ Prevent leakage of tax revenues due to transfer of business from legitimate platforms to illegitimate offshore and gray market operators (nil revenue to exchequer from direct and indirect tax) due to exponential increase of over 1100% in GST as proposed by GoM.