

# Budget

2020

2021

2022

2023

2024



## Tax play in gaming!



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The M&E industry has redefined itself in recent times fuelled by growth of digital infrastructure, digital media adoption and digital assets. The M&E companies too adopted to the opportunity to reinvent themselves with opening up of platforms facilitating buy and sell of digital assets, gamification on e-commerce apps etc.

M&E sector in India is expected to grow at a CAGR of 13% to reach INR 2.3 trillion in 2024. This impressive growth factors various opportunities for the Indian media businesses with an aim to make a healthy contribution towards India's US\$ 5 trillion economy aspiration.

Given the above, the M&E industry, which is still recovering from the effect of the Covid-19 pandemic, had high expectations from the Union Budget in terms of having "infrastructure" status, reduction in GST rates on live entertainment and theatre tickets and incentives and exemptions to reduce cost of doing business. However, there has been no expected relief and the M&E industry has been left wanting again in the Union Budget.

The Government has proposed to provide clarity on the withholding tax on winnings from online games which is certain to impact the online gaming industry.

# How does the budget impact Media & Entertainment sector?

- ▶ Specific section introduced to provide for taxability at 30% on “net winnings” from online games. A specific WHT provision has also been introduced.
- ▶ Scope of GST on digital services provided by overseas service providers to unregistered persons in India expanded.
- ▶ Focus made on development of tourism in journey to India@100 including selection and development of 50 destinations as complete package, development of theme-based tourist circuits. Sector specific skilling and entrepreneurship development to be dovetailed to achieve objectives of “Dekho Apna Desh” initiative.

## Key Amendments

- ▶ **Changes to WHT provisions on winnings from lottery or crossword puzzle or card game or any other game**
  - ▶ The de-minimis threshold for winnings of INR 10,000 from lottery or crossword puzzle or card game and other games is proposed to be amended to INR 10,000 per financial year.
  - ▶ It is also proposed to specifically include “gambling or betting of any form or nature whatsoever” as part of the WHT provision.
  - ▶ A separate WHT provision for winnings from “online games” introduced.
- ▶ **Taxability and WHT on winnings from online games**
  - ▶ Given rising users of online games, a separate section is proposed to be introduced for taxation of winnings from online games, providing for taxation at 30% on the “net winnings”.
  - ▶ New WHT section introduced requiring “person responsible for paying” to undertake withholding at 30% on “net winnings” from online games. Withholding to be undertaken at the end of financial year or at the time of withdrawal, if any, during the financial year.
  - ▶ “Net winnings” to be computed in the manner to be prescribed.
  - ▶ No de-minimus threshold for WHT on such “net winnings”.
  - ▶ The above WHT provision to apply from 1 July 2023.
- ▶ **Proposal to extend the period of incorporation for start-ups to 1 April 2024**
  - ▶ Section 80-IAC provides for 100% deduction on profits and gains generated by an eligible start-up for three consecutive assessment years out of ten years beginning from the year of incorporation.
  - ▶ Currently, the conditions for qualifying as eligible start-up inter-alia provide that such start-ups should be incorporated before 1 April 2023.
  - ▶ In order to further boost the start-up eco-system in India and to provide them with competitive advantage, the period of incorporation for the purpose of qualifying as eligible start-ups is proposed to be extended from 1 April 2023 to 1 April 2024 i.e., to include start-ups incorporated before 1 April 2024.

## Highlights

**10**  
years



*Carry forward and set-off of business loss*



**Withholding on net winnings from online games**



*Start-up tax benefits*

31 ..... 31  
March → March  
2023 ..... 2024

- ▶ **Rationalization of carry-forward and set-off of losses relief available to start-ups**
  - ▶ Section 79 restricts carry-forward and set-off of losses in case of closely held companies in the event of change in shareholding and beneficial ownership beyond 51%.
  - ▶ However, a relaxation is available in case of start-ups which provides that business losses can be carried forward and set off on satisfaction of either of the following conditions:
    - ▶ Continuity of 51% beneficial shareholding or voting power
    - ▶ Continuity of 100% of original shareholders
  - ▶ The above relaxation is currently available only for losses for the first seven years from the year of incorporation.
  - ▶ However, in order to align with the profit linked deduction which is available to start-up for three years out a window of the first ten years of incorporation, the relaxation with respect to carry-forward and set-off of losses is also proposed to be increased from a period of seven years to ten years.
- ▶ **Amendment to the definition of “cost of acquisition” of intangible assets in certain cases**
  - ▶ Currently due to lack of specific prescription around cost of acquisition of certain assets for which no consideration is paid on acquisition, there has been litigation with respect to computation of capital gains arising in such cases.
  - ▶ In order to put to rest such controversies in future, it is proposed to define the “cost of improvement” or “cost of acquisition” of a capital asset being any intangible asset or any other right as “Nil”. This will result into entire sale consideration to be subject to capital gain tax on transfer of such intangible asset and/ or other rights.
- ▶ **WHT on benefit or perquisite and consequences for non-compliance with WHT on benefit or perquisite and transfer of virtual digital assets**
  - ▶ Currently, there was ambiguity on WHT at 10% on benefits or perquisites provided in cash.
  - ▶ CBDT Circular 12/ 2022 dated 16 June 2022 had clarified that WHT is applicable even on cash benefits or perquisites. The provision under the law has now also been amended to clarify that WHT is applicable to benefit or perquisite in cash or in kind or partly in cash and partly in kind.
  - ▶ Additionally, non-compliance with WHT on benefit or perquisite and on transfer of virtual digital assets will now carry specific penal and prosecution implications.
- ▶ **Bringing non-resident investors within the ambit of section 56(2)(viib) to eliminate possibility of tax avoidance**
  - ▶ Consideration received by closely held companies from non-resident investors for issue of shares in excess of fair market value now chargeable to tax (akin to resident investors).
- ▶ **Valuation of inventory for assessment**
  - ▶ While conducting the assessment proceedings, the Assessing Officer has been given the power to ask for valuation report of inventory by a cost accountant. It will be relevant to examine such valuation report can also be asked in respect of valuation of content and media inventory.
- ▶ **Expansion of scope of levy of B2C digital services provided by a person located in non-taxable territory**
  - ▶ Scope of levy of GST on B2C digital services expanded to exclude the condition of supply being essentially automated and involving minimal human intervention.
  - ▶ Now, automation/ minimal human intervention no longer a criteria to determine taxation of digital supplies from overseas platforms. This is likely to reduce the ambiguity on determination of level of human intervention required to determine taxability and expand the ambit and coverage of the levy.

## Highlights



Expansion of scope of  
GST on B2C digital  
services

- ▶ Earlier, B2C digital services provided by a person located in non-taxable territory to non-taxable online recipient for other than commerce, industry or any other profession was liable to GST. Now, the condition of purpose of such services has been done away with i.e. all B2C digital services by foreign service providers, now liable to tax irrespective of purpose for use.

- ▶ **Allowing person registered under composition scheme to supply goods through E-commerce operators**

- ▶ Removes restriction on registered person engaged in supplying goods through e-commerce operators from opting to pay GST under the composition scheme
- ▶ Hence, composition dealer would be permitted to make intra-state supply of goods through E-Com Operator from specified date.

- ▶ **Penal implication for E-commerce operators**

- ▶ Penal implication on e-commerce operators amounting to INR 10,000 or amount of tax involved, whichever is higher in following cases where e-commerce operator:
  - ▶ Allows supply of goods / services by unregistered persons other than notified persons
  - ▶ Allow inter-state supply of goods or services by a person who is not eligible to make such supplies
  - ▶ Fails to furnish correct details in the TCS return of any outward supplies effected through it by person exempted from obtaining registration

- ▶ **Relevant Custom Exemptions**

Exemption on import of following goods made available upto 31 March 2028

- ▶ Cups, trophies to be awarded to winning teams in international tournament /world cup to be held in India
- ▶ Specified sports goods imported by National Sports Federation or by a Sports person of outstanding eminence for training

Exemption on import of following goods made available upto 31 March 2024 to be taken up for review in the current year

- ▶ Television equipment, cameras and other equipment for taking films, imported by a foreign film unit or television team
- ▶ Photographic, filming, sound recording and radio equipment, raw films, video tapes and sound recording tapes of foreign origin if imported into India after having been exported therefrom

- ▶ **Other Updates**

- ▶ Amendment proposed to disallow ITC on goods / services used for CSR activities as obligated under Section 135 of Companies Act, 2013
- ▶ Amendment proposed to not allow filing of following returns after the expiry of a period of three years from the due date:

GSTR-1, GSTR-3B, GSTR-9, GSTR-9C, GSTR-8

## Impact analysis

After two tumultuous years on account of Covid-19 pandemic which severely impacted the M&E industry, the industry picked up pace. However, the growth continued to be stunted. The industry had high expectations that it will find more focus from the Government to provide policy and tax support to fuel the growth of the industry. The wait to get “infrastructure” status for the M&E industry, which has been long due, continues.

The proposal to introduce a specific provision for taxability and WHT on winnings from “online games” is a significant one. The online gaming industry has been subject to high-stake disputes with the Indian income-tax authorities on WHT on winnings with respect to applicability of INR 10,000 threshold (per game vs in aggregate) and the quantum of winnings on which WHT should be undertaken.

Further, within the industry as well, different positions on WHT were adopted. The proposal to remove the threshold of INR 10,000 for winnings and to provide that WHT will apply on “net winnings”, is expected to bring the dispute to rest. It remains to be seen how disputes relating to past years will be dealt with. The WHT proposal could impact the liquidity within the online gaming ecosystem and therefore, the online gaming companies will need to assess the impact of the proposal on their businesses. The calculation of ‘net winnings’ will be prescribed, and it is recommended that the Government consults all the stakeholders in the industry before prescribing the manner of calculation of ‘net winnings’.

Further, no changes have been made on taxation of virtual digital assets and Equalisation Levy provisions.

No proposals have been made with respect to OECD/ BEPS Pillar One and Pillar Two in the domestic tax law.

The ambiguity around GST rate and valuation of services related to online gaming for the purpose of GST continues and with the WHT proposal, the online gaming industry hopes to have clarity from the GST Council/ Group of Ministers soon. The expansion of scope on the GST levy would impact several businesses having customer base in India and could increase the cost of their services to Indian customers.

## Glossary

**CAGR** - Compound Annual Growth Rate

**CBDT** - Central Board of Direct Taxes

**GST** - Goods and Services Tax

**M&E** - Media and Entertainment

**WHT** - Withholding Tax



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