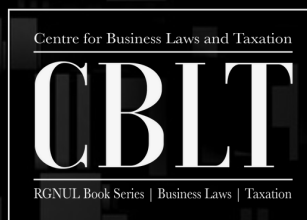




AUGUST 2022 || ISSUE 1



## CENTRE FOR BUSINESS LAWS AND TAXATION

# The Communiqué

Taxation

Finance

Insolvency &  
Bankruptcy

IPR

Capital  
Markets

Competition

Real Estate

## HIGHLIGHTS

- NEWS: INTERNATIONAL & DOMESTIC
- EDITORIAL COLOUMN
- FROM THE FACULTY'S DESK

## ABOUT RGNUL



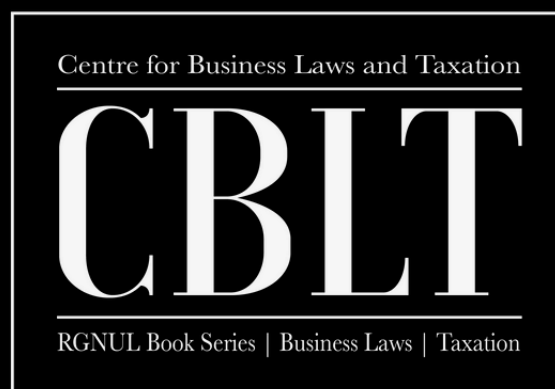
The Rajiv Gandhi National University of Law (RGNUL), Punjab, was established by the State Legislature of Punjab by passing the Rajiv Gandhi National University of Law, Punjab Act, 2006 (Punjab Act No. 12 of 2006). The Act incorporated a University of Law of national stature in Punjab, to fulfill the need for a Centre of Excellence in legal education in the modern era of globalization and liberalization.

In 2015, RGNUL became the first and the only NLU to have been accredited by the National Assessment and Accreditation Council (NAAC) with an 'A' grade. In 2018, RGNUL was amongst the four NLUs to have been granted an autonomous status by the University Grants Commission and has been ranked among the top law schools in India in the National Institutional Ranking Framework (NIRF), by the Union Ministry of Human Resource Development, Government of India.

## ABOUT CBLT

CBLT has been established with a view to promote interdisciplinary research on Business Laws and Taxation. The Centre aims to engage in diverse activities including, but not limited to, organizing Webinars, Conferences, Workshops, and Moot Court Competitions; initiating credit and non-credit Courses; publishing Newsletters and Blog Series; engaging in meaningful research on business laws and taxation etc. The Centre would also indulge formulating policies in prescriptive sense and providing internships to various students of law in the field of research and development. For this purpose, the Centre aims to collaborate with other stakeholders and institutions for a continuous growth in the field of business laws and taxation

The Centre aims to encourage multi-disciplinary study in the field of Business Law including, but not limited to, General Corporate Governance, Banking Law, Company Law, Securities Law, Intellectual Property Laws, Taxation Law, Insolvency and Bankruptcy Laws, Competitions Laws, Mergers and Acquisitions and Dispute Resolution. The Centre aims to establish an effective venue for discussion and dialogue on contemporary issues in Business law and Taxation to generate awareness.



# PREFACE

The Centre for Business Laws and Taxation (CBLT) has been established with a view to promote advanced studies and research in Business Laws and Taxation. Various Business laws have gained increasing importance in the present day globalised world viz., Company Law, Investment Laws, Securities Laws, Taxation, Insolvency and Bankruptcy, Competition Law, Mergers and Acquisitions, Corporate Governance, to say the least. One of the prime objectives of the centre is to institutionalise interdisciplinary research and advanced studies in business laws and to provide a learning platform to students aspiring to become corporate professionals. To achieve its goals, the Centre is engaging with industry, alumni and academia to provide aspiring corporate professionals inputs on practical nuances of business laws.

Aspiring corporate law professionals are required to be updated with the latest information and practical nuances in the field. Further, dissemination of information and knowledge is an essential aspect of research. Keeping this in view, CBLT has initiated a newsletter to keep the readers abreast with the latest developments in the field of business law.

We, the faculty coordinators of CBLT, congratulate the entire team of students led by Ms. Avishikta Chattopadhyay and Yashvi Jain for their tireless efforts in compiling and designing the first newsletter of the Centre. We wish them great success.

**Dr. Manoj Sharma**

**Faculty Co-ordinator, Centre for Business Laws and Taxation, RGNUL**



# NEWSLETTER

August, 2022 / Issue 1

## 1. PROPOSED CHANGES TO HONG KONG'S OFFSHORE REGIME FOR PASSIVE INCOME

The Hong Kong SAR government recently proposed a refined foreign source income exemption regime in order to address EU concerns about Hong Kong's offshore regime for passive income. Subject to the completion of the legislative process, the changes will take effect from January 1 2023 with no grandfathering arrangement and apply to multinational enterprise groups only.



## 2. METRO CASH & CARRY DIRECTED TO APPEAR BEFORE NCLT IN UNPAID DUES CASE

The case has been filed by Delhi-based logistics service providers NWCC Supply Chain Solutions Private Limited and North West Carrying Company LLP, who assert that the international wholesale company has not cleared unpaid invoices totalling Rs. 1.3 crore and Rs. 1.9 crore. Dusseldorf-headquartered METRO operates 678 wholesale markets in 34 international locations and had gross sales of \$25 billion in 2019-20 as per the corporate's website. It entered the Indian market in 2003.

### **3. SOUTH KOREA ANNOUNCES 2022 TAX REFORM PROPOSALS INCLUDING SEVERAL SIGNIFICANT CHANGES.**



On 21 July 2022, Korea's Ministry of Economy and Finance announced the 2022 tax reform proposals (the 2022 Proposals).

The proposal highlighted several significant potential changes such as:  
The introduction of the financial investment income tax would be deferred from its current expected start date of 1 January 2023 to 1 January 2025. The introduction of the tax on virtual assets will be deferred from its current expected start date of 1 January 2023 to 1 January 2025.

Termination of five-year application period limitation for special taxation of foreign workers from 1 January 2023. It is still unclear whether these proposals will become law, but these should still be closely monitored by taxpayers to ensure they are adequately prepared in the event they are legislated.

## 4. US BANKS USING PERSONAL DEVICES TO COMMUNICATE WITH CLIENTS



The US Securities and Exchange Commission (SEC) has imposed heavy fines on US giant banks for using unapproved apps like WhatsApp to communicate with clients. Banks are compelled by regulators to keep a record of employees' business-related communications to help tackle fraud, insider trading, market manipulation, and other forms of misconduct.

The 'WhatsApp' crackdown on banks is happening to ensure no bank circumvents the regulations imposed on them for fair conduct. Using unauthorized devices is limiting transparency and there is an imminent threat of disclosing confidential matters in public.

## **5. HDFC SUBMITS A MERGER REQUEST TO THE NCLT FOR HDFC INVESTMENTS, HDFC HOLDINGS, AND HDFC BANK.**



The National Company Law Tribunal (NCLT) has received an application from HDFC Investments Limited and HDFC Holdings Limited to merge with HDFC Bank. According to HDFC Ltd. This is a component of the proposed merger between its parent, mortgage lender HDFC Bank, the largest private sector bank in the nation by balance sheet.

## **6. THE COMPETITION (AMENDMENT) BILL, 2022 TABLED BEFORE THE INDIAN PARLIAMENT**

The Competition (Amendment) Bill, 2022 will update the existing framework for addressing anti-competitive agreements, abuse of dominance and mergers and amalgamations (M&A). The Competition Act, 2002, and the Competition Commission of India (CCI) as the primary market watchdog, have been in place for two decades and while relatively 'modern', needed updates to keep pace with the realities of the day.

A photograph of the Karnataka High Court building, a large red structure with multiple columns and a central archway. The text is overlaid on this image.

## **7. CONSTRUCTION OF ROADS TO NO LONGER ATTRACT GST POST- KARNATAKA HIGH COURT'S DECISION**

With effect from July 18, 2022, the GST rate for road development was increased from 12% to 18%. However, in accordance to a recent High Court decision, taxpayers will be spared from this increase for construction of roads. The only contention herein lies in the question of whether taxpayers who submitted their bids before July 18, 2022, should seek a change in the contract price after the HC's decision to not impose GST on construction activities as the Government is unlikely to provide any indemnity in this regard. Nonetheless, an ample amount of relief is provided to future bidders by this verdict.

A close-up photograph of three wooden blocks with the letters 'G', 'S', and 'T' in a dark red font, stacked on top of a stack of silver coins.

## **8. CHANGES PROPOSED ON HOUSE RENT IN 47TH GST COUNCIL MEET**

After the 47th GST Council Meeting, a GST-registered tenant will be liable to pay the tax under the Reverse Charge Mechanism (RCM). Rent or lease payments made by corporations or private individuals on residential premises were exempted from GST earlier. However, now companies will be required to pay 18% GST on the rent they pay for homes which are rented out to employees to use as guest homes or dwellings. For businesses that provide free housing for employees, this will result in higher expenditures for the workers.

## 9. DUBAI'S VIRTUAL REGULATOR ISSUES NEW CRYPTO MARKETING RULES



Dubai's Virtual Asset Regulatory Authority (VARA) is the world's only independent regulator for virtual assets that is tasked to provide a progressive framework that can enable borderless economic opportunity, without compromising market security, across the global virtual assets industry. VARA announced regulatory guidelines on marketing, advertising and promotions of virtual assets across the emirate.

The guidelines cover all forms of outreach, communications and advertising, including publication of information, awareness building, customer engagement, and/or investor solicitation, it said in a statement. The rules cover all virtual asset-related communications by any entity leveraging Dubai-based media sites, search platforms, and online or off-line publishing channels that explicitly target customers within the Dubai market. The guidelines also require all Dubai licensed virtual asset service providers, including advertising platforms, to ensure factual accuracy, explicitly demonstrate any promotional intent, and in no way mislead on the guaranteed nature of their returns.

## 10. META JOINS AMAZON, WALMART IN BID FOR INDIAN ECOMMERCE MARKET



Meta has joined forces with Indian eCommerce company JioMart to give customers the chance to buy groceries within Meta's WhatsApp chat. "Business messaging is an area with real momentum and chat-based experiences like this will be the go-to way people and businesses communicate in the years to come," Meta Founder and CEO Mark Zuckerberg said in the release.

India has been an important front in the eCommerce war between Amazon and Walmart. The country has 1.4 billion people, with internet penetration steadily growing at 47% (it had been in the low single digits 15 years ago). Amazon said earlier this year it wanted to build a logistics division in-house through its purchase of a 51% stake in Ecom Express, an Indian end-to-end logistics solutions firm, to speed eCommerce deliveries in the country.

Walmart, which operates the Indian eCommerce site Flipkart, announced in April that it would give Indian manufacturers and trading companies an increased ability to expand around the world as cross-border sellers on Walmart Marketplace.

## CONSTITUTIONAL ARCHITECTURE OF GOODS AND SERVICE TAX (GST) COUNCIL

*Dr. Manoj Sharma*

*Associate Professor of Law, RGNUL, Patiala*

The Goods and Service Tax (GST) Council was constituted in 2016 under Article 279A of the Constitution of India to shape indirect tax structure of the country. The GST Council is a Constitutional body chaired by the Union Finance Minister and having representation of all the States and Union territories having legislature. The GST Council is required to make recommendations to the Union and States regarding various matters enumerated in Article 279A of the constitution concerning indirect taxes. For the purpose of making recommendations, the Council is empowered to take decisions by special majority of 3/4th of the members present and voting wherein the weighted value of the Union's vote is 1/3rd of the total value of values and the balance 2/3rd is shared by all the States and the Union Territories having legislature. However, for a good period of more than three years since its establishment in 2016, decisions were taken by consensus. Voting was resorted to for the first time for resolving the contentious issue of tax on lotteries at the fag end of 2019. So far in its 47 meetings held till date, GST Council has been able to resolve all contentious issues with consensus except with one exception.

The Union, State representatives and representatives of the Union Territories with legislature, deliberate, in the spirit of cooperative federalism, on various issues concerning indirect taxes and make recommendations to the Union and States. The question, however, whether the recommendations of the GST Council are binding on the Union and States has perplexed legal researchers more so because the Union of India has been claiming that the recommendations are binding on the Union and States.

The Supreme Court of India while dealing with the matter of levy of GST on the transport of imported goods by Indian shipping lines also discussed the constitutional architecture of the GST. The three judge bench of the Hon'ble Supreme Court of India



in *Union of India v. Mohit Minerals Pvt. Ltd* (judgement dated 19th May 2022) held that the recommendations of the GST Council are not binding on the Union and States. The Court opined that the Article 279A providing for GST Council, its composition and functions etc., does not start with non-obstante clause and Article 246A conferring legislative competence on the Union and States to levy GST does not subject Article 246A to Article 279A. The constitutional architecture of GST, therefore, does not contemplate that the recommendations of GST Council are binding in nature. As per the Constitutional scheme contained in Articles 246A, 269A and 279A, the Parliament and State Legislatures have been conferred concurrent powers to levy GST on intra-state transactions whereas Union is conferred exclusive jurisdiction to levy GST on inter-state transactions. There is no provision for removal of repugnancy in GST matters unlike Article 254. Keeping in view, the Constitutional architecture, the apex court held that the recommendations of the GST Council are recommendatory in nature and are not binding. The Court held that the recommendations of the Council are the result of a collaborative dialogue between Union and States and States inter se.

It is true that the existing constitutional architecture can-not be construed to mean that the recommendations of the GST Council are binding on the Union and States yet the recommendations made in 47 meetings of the GST Council have so far been accepted and implemented by the Union and States. The decision of the Apex Court, therefore, can have many ramifications. For example, given the fact that there is unequal representation in the GST Council, the States may enact contrary laws given the fact that the recommendations of the GST Council are recommendatory and not binding. This might lead to inconsistencies and the entire idea of having ‘one nation one tax’ may collapse.

## GAMBLING ON THE FUTURE OF GAMING SERVICE PROVIDERS: GST ON ONLINE GAMING IN INDIA.

*Pratham Malhotra,*

*Third year student at Rajiv Gandhi National University of Law.*

After the creation of the internet, few could have imagined the fact that the traditional sports and gaming industry is going to be completely transformed. During the last several decades, the online gaming industry has managed to grow exponentially, with India becoming one of the biggest markets for online games. According to a report titled “Beyond the tipping point: A primer on Online casual gaming in India” by KPMG, the online gaming industry is likely to grow to INR 169 billion by 2025, from INR 60 billion in 2021. Thanks to the Covid-19 pandemic and rapid digitalization, almost every smartphone in India has at least one online game installed on it. However, the industry is set to face a challenge, which if it loses, will shake it to its core.

### **The problematic proposals of the Group of Ministers**

The GST Council of India recently constituted a Group of Ministers (GoM) to evaluate the GST structure of the online gaming industry in India, and propose appropriate changes. According to media reports, the GoM has proposed two major changes:

- a) Levy of 28% GST on the face value/ wager amount pooled in by the players, which includes Gross Gaming Revenue (GGR) charged by the platform;
- b) Placing skill-based online games and games of chance on an equal footing, thereby, charging them under the highest tax slab. In this regard, it is pertinent to note that ordinarily, games of skill are taxed at 18% of the GGR.

GGR is equal to the platform fee charged by the gaming service provider and is the actual consideration received by it for its online services. On the other hand, as per Rule 31A(3) of the CGST Rules 2017, games of chance, i.e., gambling games are taxed at 28% of the entire face value of the bet or the amount paid into the totalizator. As mentioned before, the GoM aims to eliminate the difference between games of skill and games of chance and wishes to tax them at the rate of 28% of the entire face value instead of 18% of the GGR.



## Bracing for the impact

A recent report titled, “GST on Online skill-based gaming” jointly released by ASSOCHAM and EY, gives an in-depth analysis of the entire issue and highlights the fact that the proposed change by GoM will not only increase the GST paid by the platform service provider by 10 to 20 times but also increase the amount paid by players from three to four times. As per media reports, the final decision shall be taken in early September 2022 and if the GST Council decides to go ahead with the GoM’s proposal, there will be adverse consequences for the gaming industry. Experts say that this change will require gaming platforms to pay GST on money that they are not earning. Therefore, many platforms will be shut down after incurring huge losses.

Furthermore, the change will go against the previous jurisprudence of the Supreme Court and High Courts regarding the differentiation between skill and chance-based games. The Supreme Court in *State of Andhra Pradesh v. K. Satyanarayana* AIR 1968 SC 825 and *Dr K.R. Lakshmanan v. State of Tamil Nadu* AIR 1996 SC 1153, has clarified that even though there is an element of chance in games like rummy and horse racing, they are not to be regarded as games of chance as the dominant factor determining the result of the game is a skill. Considering all the factors mentioned above, it will not be wrong to say that the fate of the online gaming industry rests upon the decision of the GST council. While the council ponders over the decision, platform service providers must prepare themselves for an unfavourable future.

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