

Did you gamble during Diwali? Here's how winnings are taxed



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When you think Diwali, lights, sweets and crackers are not all that constitutes the widely celebrated festival. In some parts of the country, playing cards with friends and family also make up a big part of the celebrations that starts almost a week in advance. However, [gambling](#), even when played as part of festivities, draws tax. Gambling's legal status in India is hazy.

What the law says

Gambling and betting are state subjects in India and what actually determines legality of such games is whether they qualify as a game of skill or a game of chance.

Fantasy sports, a type of online game where players assemble virtual teams that consists of proxies of real players of a sport to compete on the basis of past performance of players in real-life sporting events, have been in murky waters over categorization.

However, through several high court judgments, fantasy sports have been getting growing support to be recognized as game of skill. "A recent discussion paper by Niti Aayog categorically calls out online fantasy sports as a game of skill with a view to regulate the same," said Vaibhav Kakkar, partner (expert in gaming law), Saraf & Partners.

He explained that most states have broadly regulated betting and gambling under the Public Gambling Act, 1867.

"Under the majority of state gambling laws, games of 'skill or mere skill' as opposed to those involving 'chance' have been exempted from the purview of their applicability. However, certain states like Assam and Odisha don't give this exemption, whereas Karnataka, Andhra Pradesh and Telangana have prohibited any games of skill played for stakes, including online and in Sikkim and Nagaland, licence is required," he added.

There is no specific list of card or fantasy games categorized under the two segments and as such the categorization has historically been done through judicial decisions, Kakkar added.

For instance, the Gujarat high court has categorically held that poker is a game of chance, while West Bengal gambling legislations specifically exclude poker from gambling. "Recently, the Kerala high court struck down the amendment to a government notification issued under Section 14A of the Kerala Gaming Act, 1960, aiming to ban online rummy in the state," said Neha Malhotra, director, Nangia Andersen LLP.

The most disputed game is poker. Meyyappan Nagappan, leader, digital tax, Nishith Desai Associates, said poker is not downright illegal in India and falls under a complex regulatory regime.

Taxation on gambling

Under Section 115B of the Income Tax Act, winnings from card or other such games is taxable at 30%. Any such gambling proceeds are taxed under the 'income from other sources' head.

"The I-T law does not differentiate between income from fantasy games and poker. Any income by way of winnings from a card game or 'other game of any sort' is taxable at a flat rate of 30% plus applicable surcharge and cess, without accounting for any deductions or even the basic exemption limit," said Malhotra.

"The law specifically prohibits deduction of any expenditure or allowance against such winnings and taxpayers cannot carry forward and offset losses," said Lokesh Shah, partner (tax law expert), Saraf & Partners. If the total winning amount exceeds ₹10,000, TDS of 30% needs to be deducted by the distributor of the winning proceeds.

Most of the online gaming platforms deduct applicable TDS before crediting the prize money in the player's bank account. However, if the platform fails to do so or in cases of games played offline, the onus of reporting the winning income and paying due taxes on it is on the taxpayer.

Sometimes, a prize from gambling could be transferred in kind and in such cases market value of the prize is taxed.