

3. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

- 3.2 Origin:** Commission
References: Articles 73, 135(1)(i) and 401
Subject: VAT 2015: VAT treatment of online gambling services
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with account also taken of discussions during the 105th meeting:

- 5.2 Origin:** Commission
References: Article 73 of the VAT Directive
Article 7 of the VAT Implementing Regulation
Subject: VAT 2015: VAT treatment of online gambling services (follow-up)
(Document taxud.c.1(2015)4459580 – Working paper No 882)

1. The VAT Committee **unanimously** confirms that, in line with point (4)(e) of Annex I of the VAT Implementing Regulation, online gambling which is automated shall be covered by Article 58 of the VAT Directive when provided to a non-taxable person. The VAT Committee **unanimously** agrees that other gambling services, including betting, provided to a non-taxable person shall also be regarded as covered by Article 58 of the VAT Directive if they fulfil the conditions from the definition of electronically supplied services provided for in Article 7(1) of the VAT Implementing Regulation.
2. The VAT Committee is of the **almost unanimous** view that services supplied by operators of games of chance where players compete against each other for a prize fund shall be considered to be gambling services.
3. The VAT Committee **almost unanimously** agrees that, provided that the principle of fiscal neutrality is respected, Article 135(1)(i) of the VAT Directive shall allow Member States to decide which gambling activities are exempted from VAT and which are taxed and to lay down the requirements which have to be met by gambling companies in order to be allowed to perform those activities in the relevant Member State.
4. The VAT Committee **almost unanimously** agrees that the services supplied by a taxable person acting in his own name but on behalf of a gambling company, covered by Article 28 of the VAT Directive, shall be exempted when such services consist of a gambling service exempted under Article 135(1)(i) of the VAT Directive.

5. The VAT Committee **unanimously** agrees that, in line with Article 401 of the VAT Directive, Member States may apply a special national tax both on games of chance that are exempted from VAT and on games that are VAT-taxed, provided that that tax cannot be characterised as a turnover tax, and insofar as all other conditions laid down in the said Article 401 are fulfilled.
6. The VAT Committee **almost unanimously** agrees that in gambling activities where the players compete against each other for a prize fund, and the gambling operator only receives as remuneration for his services a commission or fee from the players, the taxable amount shall be determined by the total amount of the commission or fees received by the operator and not by the total amount of the stakes placed by the players.
7. The VAT Committee is of the **almost unanimous** view that where the gambling company is obliged by legal or statutory provisions, or by any other obligation that can be enforced in the Member State where the transaction is taxable, to return to the players as winnings a certain amount of the total sum received from them, the amounts paid out as winnings must be deducted from the total sum received from the players in order to determine the consideration obtained by the gambling company from its players which, pursuant to Article 73 of the VAT Directive, constitutes the taxable amount of the gambling services supplied.
8. The VAT Committee is of the **almost unanimous** view that where the gambling company is not obliged by legal or statutory provisions, or by any other obligation that can be enforced in the Member State where the transaction is taxable, to return to the players as winnings a certain amount of the total sum received from them, the total sum received from the players shall constitute the consideration obtained by the gambling company from its players for the gambling services supplied pursuant to Article 73 of the VAT Directive, with no deduction of winnings permitted.
9. The VAT Committee is of the **almost unanimous** view that bonuses and credits given for free to players shall be seen as discounts not to be included in the taxable amount of the supply according to point (b) of the first paragraph of Article 79 of the VAT Directive.