

Legal Analysis: Dutch Slots Tax Victory

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Tax lawyers at Bird & Bird analyse the “breakthrough” court victory that found the Dutch gambling tax violated slot machine owners’ human rights.

Last month the Amsterdam appeals court ruled in favour of the slot industry that the Netherlands’ gambling tax is in part contrary to the European Convention on Human Rights.

The judgment was a big victory for the Dutch slot machine association (VAN) in its fight against the 29 percent gambling tax.

“There’s a bit of light at the end of the tunnel now. The most pressing thing is damages, but also there’s an opening to talk with the minister of finance about changing the law,” said VAN president Annette Kok.

The Dutch government is yet to appeal, but if it does, a final judgment could be reached in a year’s time.

Arnoud Knijnenburg and Rosalie Reinders, Tax Advisers at Bird & Bird LLP’s Dutch office, have given the following analysis of the case:

Judgment

In an elaborate verdict the Amsterdam appeals court decided there were reports available that showed the negative financial impact for the slot machine industry and considered that the government was aware of this when they introduced the tax on games of chance.

Although it was considered that in general there was a fair balance between the means used and the goal of the taxation (this regards the consideration between the individual’s rights and the state’s public interest), an individual and excessive burden was created for slot machine owners by not taking into consideration the negative impact for the businesses.

In this respect, the legislator had exceeded its wide margin of appreciation. As a result tax on games of chance on the income of slot machines is in part contrary to the European Convention on Human Rights i.e. a violation of the right to ownership.

This judgment does not result in a refund of the tax on games of chance levied, but the court does consider a compensation for the taxpayer that should be further quantified in following legal proceedings.

This judgment can be considered as a big breakthrough for slot machine owners, but given the particular facts and economic and regulatory circumstances the impact for other gambling companies is yet to be seen. The Ministry of Finance is currently assessing appeal to the Supreme Court.

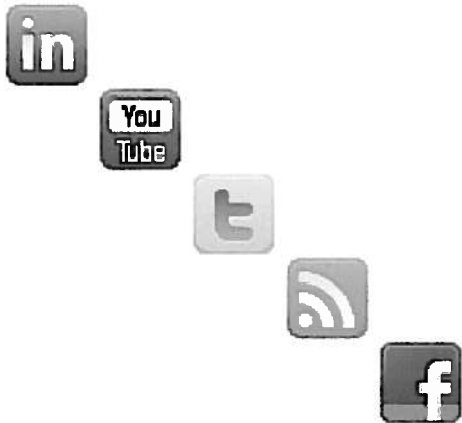
The fact that the tax on games of chance is considered in part contrary to the European Convention on Human Rights in this particular case could well be relevant for tax disputes in other cases and in other European countries.

Background

Prior to 1 July 2008, income from slot machines was subject to VAT on the net result of the game, being the difference between the stake and the prize. The VAT was then split between the proprietor (actual owner of the slot machines) and the licensee (person that enables the placing of the slot machines, e.g. a bar). This way, both parties carried a part of the tax.

As of 1 July 2008, income from slot machines was not subject to VAT anymore but to a tax on games of chance ('Kansspelbelasting'). The rate of the tax on games of chance amounts to 29% over the net result and the tax should be paid by the party owning the slot machines (proprietor). This results in a larger tax burden for the proprietor as the rate went up and the proprietor is now the sole party to pay the tax (on charging to the licensee was not successful in some cases). Further, as the slot machines income was not subject to VAT anymore, the proprietors also lost the right to deduct VAT. This resulted in a substantial increase of the tax burden for the proprietor.

The VAN (organisation representing slot machines owners) appealed this taxation from its introduction and instigated the legal test case. Amongst other, they argued that in combination with other economic and regulatory circumstances the tax on games of chance would result in the winding-up of businesses. A substantial number of arguments has been raised against the tax on games of changes on slot machine income, of which the violation of the right to ownership sticks out most.



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