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Gaming taxes do not conflict with VAT Directive

The ECJ has held that gaming taxes levied on the net receipts do not conflict with the VAT Directive, even if the operator can deduct his net VAT charge from the amounts due.

German gaming machine operators must follow strict rules on public access, stake limits and the proportion of stake receipts (takings) to be paid out as winnings. Gaming machine takings are subject to VAT, generally on the net cash remaining in the collecting trays after a set period. The operators are also subject to provincial taxes on net gaming takings and to local entertainment taxes. VAT due is usually deducted from the provincial gaming tax due. A machine operator has claimed that these provincial taxes are in conflict with the VAT Directive and undermine the VAT system. The ECJ has now held that they do not conflict with the VAT Directive or with community law as a whole.

The ECJ pointed out that the VAT Directive explicitly allows further taxes on betting and gambling as long as they are not taxes on turnover. Since the German taxes here at issue are levied on net proceeds and are only payable to the extent they exceed the net VAT due, they are not taxes on turnover. Gaming taxes are not harmonised, so member states are free to set them as they wish. The fact that the VAT due is deductible from the provincial tax payable does not impinge on the VAT itself. It impinges on the unharmonised tax beyond the jurisdiction of the court. The court went on to hold that the VAT due on the basis of the net takings after deducting the winnings paid out was the equivalent of taxing the net proceeds of the operator for placing the machines at the disposal of customers. In this light it was acceptable and the calculation (treating the net takings as the receipts gross of VAT) ensured that the full VAT was passed on to the consumer – at least, mathematically. Thus, the system was preserved intact.

The ECJ case reference is C-440/12 *Metropol Spielstätten*, judgment of October 24, 2013.

Keywords

conflict, gaming, stake, takings