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Update: Gains from online poker may be subject to income tax

In a most recent decision, the Supreme Tax Court held that winnings from online poker games can be subject to income tax. If a poker player plays regularly and successfully in poker tournaments, the gains are qualified as income from a trade or business.

In the **case of dispute**, a mathematics student had begun playing online poker - in the variant "**Texas Hold'em/Fixed Limit**" - in 2007. Starting with small stakes and winnings, he gradually increased his stakes. His gains also increased considerably over the time. In 2009, the year in dispute, he had already generated a profit well above €80,000 from online poker, which grew even further in subsequent years. In the period from July to December 2009 alone, his total recorded playing time came to 673 hours.

The **Muenster Tax Court** (as court of first instance) examined the facts of the case and found that the plaintiff had been engaged in commercial activities from October 2009 onwards and that, as a result, the profit of about €60,000 generated in the months from October to December 2009 was subject to income tax.

This was now confirmed by the **Supreme Tax Court**. The court thereby adhered to its previous decisions regarding poker games in „personal attendance tournaments“ (face-to-face events) and in casinos. Therefore, from a tax perspective poker is not a pure game of chance but is also characterized by elements of skill and perseverance. This also applies to online poker, even if no personal contact with the other players is possible.

“If many people with great analytical skills come together in a game of poker, the part of luck in each game is very small”, the court was heard to say in the oral hearing of the case.

However, according to established case law, not every poker player is subject to income tax, regardless of the form of the game. For recreational and hobby players, it continues to be a private activity in which profits - and losses - have no tax effect. However, if the scope of a personal pastime is exceeded and the player is no longer seeking to satisfy his gambling needs, but rather to generate income, his actions are to be regarded as a commercial activity. The decisive factor is the structural comparability with a trader or professional gambler, e.g., the systematic nature of the activity, the exploitation of a market or the amount of money and time invested.

The plaintiff's activity is **also subject to trade tax**. The object of trade tax is the German business operation, which presupposes a German permanent establishment. The plaintiff still lived in the parental household in the year in dispute; he himself has stated that he continued to occupy his former "children's room". This room in the parental home with the necessary equipment (computer) constitutes both a fixed business establishment and the place of management.

Source:

Supreme Tax Court, decision of 22 February 2023 (X R 8/21), published on 29 June 2023.

Update (22 July 2025)

Winnings from the online poker game "**Pot Limit Omaha**" can also be subject to income tax as income under special conditions. This was decided by the Supreme Tax Court in a judgment published on 17 July 2025 (decision of 2 April 2025 X R 26/21): The plaintiff gambled with the intention of making a profit and had engaged in sustained activity, participated in general economic transactions and exceeded the scope of private asset management.

In the case of dispute, the Supreme Tax Court did not see any significant differences to the **“Texas Hold'em”** variant. „Pot Limit Omaha” increases the complexity of the game significantly due to the much wider range of options which are available to all players. Thus, the individual strategy of the player is even more important. In particular, the decision to leave the game early in the event of a „bad hand“ in order to minimize the risk of loss and maximize the number of possible games per time unit must be made in the “Pot Limit Omaha” variant in the same way as in “Texas Hold'em”.

Finally, the Supreme Tax Court adds some general comments on the issue: In the case of activities carried out by a large number of people as part of their leisure pursuits and which may only be viewed as commercial in exceptional cases - for example, in the case of players such as the plaintiff but also in the case of athletes - a distinction must be made as to whether the taxpayer satisfies private gaming needs in the same way as a recreational or hobby player or whether, in a broader sense, structural business aspects come to the fore. The guiding yardstick for the comparison should be the model of the professional gambler.

Keywords

online game