



VAT alert

Belgium

Belgian Constitutional Court annuls VAT for online games and online gambling

On 22 March 2018, the Constitutional Court annulled 2016 legislation which removed the VAT exemption for online games and online gambling. The annulment will not produce retroactive effects but will only be applicable upon its publication in the Belgian Official Journal.

Background

The Program Law of 1 July 2016 abolished the VAT exemption for online games and online gambling. Since 1 August 2016, a different VAT regime has therefore been applicable to online games and gambling, with their offline equivalents (i.e. land based casinos or paper lotteries) remaining VAT exempt.

Several operators of online gambling platforms, as well as the Walloon Region, had filed a recourse in annulment before the Constitutional Court against this 2016 legislation. The arguments on the one hand related to the conflict of interest between federal and regional competencies in this field, as the regions already levy a tax on betting and games of chance. On the other hand, the applicants argued that the distinction between the online and offline forms of games, gambling and lotteries is discriminatory in nature.

Constitutional Court Ruling

On 22 March 2018, the Constitutional Court annulled the articles in the 1 July 2016 program law that abolished the VAT exemption for online games and online gambling.

The Court held that Federal legislation infringed on the Regions' competences, as the application of VAT on online games and online gambling renders them more expensive, hence less attractive. In applying VAT on those activities, Federal legislation thus reduced the Regional taxes' taxable base. The legislation should therefore have been adopted with a qualified majority, which is the applicable procedure in cases of potential conflict of interest.

As this argument leads to the legislation's complete annulment, there was no need for the Constitutional Court to evaluate the other arguments raised by the applicants, such as the potential discriminatory nature of taxation of online games and online gambling.

Next steps

In its judgment, the Constitutional Court limited the annulment's effects for budgetary and practical reasons. Consequently, the VAT exemption for online games and online gambling is not restored with retroactive effect, but will only apply as soon as the judgment is published in the Belgian Official Journal (*Belgisch Staatsblad / Moniteur Belge*). It is uncertain when this publication will occur, which will likely take several weeks or even months.

Following the court's judgment, attention will turn to what the legislative response will be at Federal and Regional level.

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