

No Significant Progress in Regulating Online Gaming In the Netherlands

Annotations to the "Tax Plan 2019" Proposal of the Government of the Netherlands

As prepared by the Netherlands' Ministry of Finance

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Original language: Netherlands

Source: NL Fiscaal: September 18th, 2018 [nlfiscaal.nl]

Published under official reference NLFs 2018/0360

Judoreg: NFB1872 | Legislative Category: 35 031

Going nowhere

The government of the Netherlands has proposed several regulatory amendments in preparations for launching the regulatory framework for online gambling in the Netherlands. This process has endured setback after setback, to say the least. In a prior annotation, NLFs 2017/0473, I did already discuss a proposal of the government to temporarily increase the rate of 29% for gambling tax by 1.1% to 30.1%, to combat the (alleged) disadvantage for the treasury that has been caused by yet another delay at the time in the regulation of online games of chance.

Rolling back this 'temporary' tax increase was made conditional on a downright uncertain event, namely the entry into force of the main bill "*Organizing remote games of chance*" (or: "*Kansspelen op Afstand*", "KOA") However, the legalization of online gambling has been debated in the Netherlands for almost fourteen years. Of course, it was already completely evident that the at that time anticipated deadline of 1 July 2018 would not be met. That prediction came true. One year later, that "*temporary*" increase has become a de facto permanent increase.

Willingness of the market to accept regulations doubtful

Several liberal members of Netherlands' parliament showed concern at the time about the potential reinforcing effects of illegal gaming behavior (the so-called "*degree of channeling*" or in Dutch: "*kanalisatiegraad*"). The government did not share this concern and replied the MP's that operators (incorrectly in my view) would not be attempting to increase the tax increase to the players. Also not helping

is another proposal from the government to make providers of land-based sports betting severally liable for the gaming tax, payable by players.

The willingness of the market to accept the new regulations was already not ideal. By proposing to add even new measures that are unfavorable to operators, it is expected that such level of acceptance shall be significantly lowered even further. [1] Illegal operators might not elect to legally participate.

The amendments are being proposed under the claim that the government is making sure that all types of games of chance shall be treated equally for tax purposes. That does not seem to be a sincere claim, as it is obvious that the changes have been tailored to further consolidate and guarantee the levy and collecting of gaming tax. Yet another proposal, to make the operator the primary taxpayer for gaming tax altogether, makes this even further evident. It is also not in line with the well-voiced principle in parliamentary discussions that the levy of gaming tax is also meant to mitigate unwanted and excessive playing behavior, an important aim of the gaming tax is to 'slow players down' so to speak. By removing gaming taxation on player level, this principle would be abolished, which would be a very bad idea. After all, illegal operators do not have to bother players with any matters of taxation. Although illegal operations are taxable in principle, in practice it is not. A 'win-win' situation for illegal providers and its participants so to speak and thus a very bad and thoughtless idea.

Online Promotional Games of Chance: a dog is a cat

In yet another proposal, online promotional games of chance would not be regarded as being offered online. That does not seem to make any sense, however it would be the only way, technically for the government, to introduce taxation on this category of games of chance. The proposal boils down to the fact that if games of chance are played via the internet, we will be pretending for tax purposes that they will not to be played via the internet. If it serves its purpose, the Netherlands government is willing to call a dog a cat, so to speak. This will not enhance the quality of any regulatory framework and will, in time, only backfire. Sooner or later, the dog that has for tax purposes been conveniently qualified as a cat, should for other purposes be requalified as a dog again. Making distinctions between online gaming and land-based gaming, in time, will prove not to be sustainable, as the internet is only just one more way of communicating. In essence it does not differ from other methods of communications that were once regarded as state of the art (phone, telex, facsimile). With the 'next thing' also the internet as we know it will become a thing of the past, sooner or later. Ergo, taxation should not be connected to methods of communication as this is at some point is doomed to fail.

Dead on arrival

How unfortunate it is that such distinction (online or offline) has become the centerpiece of the proposed regulatory framework in the Netherlands for online gambling, as it was designed twelve years ago, which was a very different time and the internet might still have felt relatively new to some of us. I do not see how the proposed framework will be able to compete in a European constellation. For example, in 2018, Malta has executed an impressive overhaul of all gambling legislation, based on the assumption that distinction in

distribution channels (online v offline) is becoming less important as these channels are increasingly converging.

When the novelty of a communication medium is "finished", history learns, it loses its distinctive characteristics. There is also no mention of games of chance via telex, fax or telephone and it is therefore foreseeable that if the new regulatory bill in the Netherlands shall every been put into practice - with the emphasis on 'if' - it will be 'dead on arrival', as at that moment it will have become so outdated, up to the point that it will have become unmanageable for providers. [B]

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Endnotes

[1] MvF, September 18th, 2018, TK 35.031, 2, 3.

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