

Gaming and Gambling eAlert

ARE ONLINE AND TELEPHONE BETTING IN THE MINISTER'S SIGHTS?

Betting Duty - Irish Finance (No.2) Act 2008

It has been widely reported that in the recent Budget, the Irish Minister for Finance, Brian Lenihan T.D. (the "Minister") doubled the tax levied on betting to 2%. However, what appears to have gone under the radar is the anti-avoidance measure inserted by Section 53 of the Finance (No.2) Act 2008. It provides that Section 67 of the Finance Act 2002 (as amended by Section 90 of the Finance Act 2006) is amended by inserting the following wording:-

"For the avoidance of doubt, betting duty imposed by subsection (1) is chargeable on all bets placed by a person with a bookmaker at the bookmaker's registered premises, irrespective of the means by which a bet was placed". (Our emphasis)

"Irrespective of the means by which a bet was placed" – what does that mean?

In exchanges between the Minister and other TD's during the Committee Stage of the Finance (No.2) Bill 2008, the Minister explained that the additional wording was inserted as an anti-avoidance measure in order to ensure that betting duty was imposed on all bets placed in a bookmaker's premises regardless of how a bet was placed. The Minister noted that it appeared that some bookmakers intended to install machines (presumably internet terminals or self service terminals) which would allow customers to place a bet online with an off-shore licensed operator. Such a machine would support the argument that because the server was located off-shore, the bet was being made off shore and accordingly no betting duty was payable. The anti-avoidance measure introduced ensures that betting duty is payable where the bet is placed with a bookmaker by whatever means at a bookmakers registered premises.

Taxation of Online and Telephone Betting

Of particular interest to those operators in the gambling sector are the comments of the Minister and the other TD's during the Committee Stage concerning the proposed taxation of online and telephone betting. Whilst it was clear from the Report on Regulating Gaming in Ireland published last year by the Department of Justice, Equality and Law Reform and it's authors regarded taxation of online gaming as an opportunity for Ireland to increase tax revenues, this new law flags that the Minister is of the same view in terms of online gambling and telephone bets. It should be noted that while gaming falls within the portfolio of the Department of Justice, Equality and Law Reform, betting legislation falls under the control of the Department of Finance.

The Minister commented that he intends to consider how best betting duty might be applied in the context of the 2010 Budget, including by examining the UK's gross profit tax model and the issue of the taxability of the substantial volume of betting and gambling which takes place outside the traditional bookmaking setting referring of course to online and telephone betting.

He commented that *“From a State point of view it is desirable to broaden the gaming tax base. That is the core problem we must address”* and *“if it can be addressed the amount of revenue could be increased”*. However, he also acknowledged that *“constitutional pitfalls”* or the *“difficulties in European Union law”* associated with such an approach should not be underestimated.

At a time when tax receipts are falling far short of expectations, it is clear that the Minister intends to find alternative sources of tax revenue. This acknowledgement of the technical ability to place bets in a bookmaker's premises in a manner other than through physically placing the bet will be seen by some as supporting the lawful introduction of various types of electronic machines in bookmaker's premises in Ireland. For others of the view that Irish law only permits bets in bookmakers premises to be made physically, it will give them pause for thought in terms of what reform of the sector might be planned.

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