

Gambling in the Netherlands: an online market waiting to become regulated

mei 2015



The online gambling market is keen to develop rapidly in the Netherlands. As online gambling is still prohibited under current Dutch law, the Dutch government is working on a bill to parliament to legalize the online gambling industry. In the spring of 2013, the Dutch government released a draft legislative proposal for public consultation. The (final) proposal is currently (year-end 2013) being considered for actual submission to Dutch parliament, with possible consequences of it taking effect in 2015 or 2016.

Regulatory framework

Gambling in the Netherlands is currently governed by the Games of Chance Act (*Wet op de Kansspelen*) providing a regulatory framework for the Dutch gambling industry. The objectives of the legislation are to prevent gambling addiction, to protect consumers from being exploited by gambling and to discourage criminal and illegal gambling. The current legislation regulates amongst others land-based casinos, traditional lotteries, domestic slot machine exploitation, and physical promotional competitions involving elements of chance.

The Dutch government is considering to change the Act to effectively allow and regulate online gambling. Online gambling is, under the referred draft legislative proposal, defined as gambling whereby the player participates by means of electronic devices and without physical contact with the organizer (or the person who makes space available on behalf of the organizer). The changes intend to include online gambling on sports, casino games and poker games using technological media such as the internet, television and/or telecommunication.

License requirements

In contrast to offline gambling, the absence of physical contact is perceived to significantly increase the risk of fraud and gambling addiction. The draft legislative amendments is intended to regulate online gambling by requiring online gambling operators to apply for a license in the Netherlands. The applicant must comply with certain requirements, such as informing on dangers of gambling addiction, requesting player identification and implementing transparency provisions to counter money laundering. Compliance with legislation (amongst others, compliance with tax obligations and timely tax payments) serves as basis for checking the good standing of the license applicant. The license will be issued for five years; no restriction has been placed on the number of licenses that can be applied for.

*Games of Chance Tax Act (*Wet op de kansspelbelasting*)*

The current Dutch tax rate on games of chance is 29%. In principle, tax on domestic organized games of chance is payable by the operator based on the casino-regime, i.e. the gross gambling proceeds minus the paid-out prizes. Lottery prizes are generally fully taxed at 29%. Foreign-sourced games of chance are generally levied at the level of the player with relief from foreign double taxation (if any).

Under the legislative changes now being considered, the tax rate differs per game and also depends on the type of taxpayer. Under the bill, providers of online gambling with a Dutch license will be subject to a tax rate of 20%, whereas traditional 'land-based' games of chance remain taxable at 29%. The 20% rate is intended as incentive for online gambling providers to commit to licensed operations. Consumers who participate in illegal online gambling risk being subject to tax themselves at 29% on their paid-out prizes.

Non-resident operators

Under the considered legislative changes, online gambling operators with a foreign license will not automatically qualify for a Dutch license. As the Dutch rules should comply with EU non-discrimination principles, the same requirements must apply to operators established in EU and EEA countries. Non-resident online gambling operators may obtain a license if their statutory seat is in the EU or EEA.

The foreign operator is required to have a control database in the Netherlands and may be required to provide security amounting to a maximum of EUR 780,000. There is no restriction on where the electronic devices (such as hardware and software) can be located, provided there are cooperation agreements between the Dutch gambling authority and the local foreign gambling authorities.

KPMG Meijburg & Co

KPMG Meijburg & Co has extensive experience in providing tax advisory services to the gambling industry, both traditional and online. We also advise on many related e-commerce business concepts. We would be pleased to advise you on the Dutch tax consequences of online and offline gambling in the Netherlands and to discuss international tax aspects of gambling investments with you.

This publication contains a very high level overview of selected rules and regulations and is of a descriptive nature. Please feel free to contact one of our tax specialists for more information tailored to your specific needs.

T: +31 (0)88 909 1000

www.meijburg.com

The information contained in this publication is of a general nature and does not address the specific circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2015 Meijburg & Co, Tax Lawyers, is an association of limited liability companies under Dutch law, registered under Chamber of Commerce registration number 53753348 and is a member of KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.