



## **MEMBERS BRIEFING NOTES**

**The EU Sixth Council Directive, Article 13 B (f) reads as follows:**

“without prejudice to other Community provisions, Member states shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straight forward application of the exemptions and preventing of possible evasion, avoidance, or abuse...

**(f) betting, lotteries, and other forms of gambling, subject to the conditions and limitations laid down by each member state”**

This Article is now recast as Article 135 Council Directive 2006/112/EC.

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The Revenue Commissioners contend that as Article B (F) has not been transposed into the VAT ACT 1972, the activity of gambling in a private members club is not ‘exempt’ and should incur VAT at 21%.

They further contend that VAT should be applied to the Gross Gaming Revenue, that is, total bets less payouts, i.e. Gross Profit.

It is the Gaming & Leisure Association’s contention that in interpreting Article 13 B (f) that the power to lay down conditions and limitations is not so broad as to allow the exclusion altogether of certain forms of gambling from the exemption permitted under the EU 6<sup>th</sup> VAT Directive.

The GLAI is also of the view, that in the absence of the exemption in respect of betting, lotteries, and other forms of gambling being transposed into Irish VAT Legislation, they can rely on the ‘direct effect’ of Articles 13 B (f) to exempt from VAT the income from gaming.

Consequently, as those games are as a rule exempt from VAT, any operator of such games can rely directly on that exemption provided that the Member State concerned has waived the power expressly conferred on it by Articles 13B (f) of the Sixth Directive or has failed to exercise that power.



## **The Gaming & Leisure Association of Ireland**

In other words as Irish law is silent on VAT re gaming, then the exemptions contained in the 6<sup>th</sup> Directive should apply.

It should be noted that no other member state imposes VAT on Gross Gaming Revenues, rather in keeping with the EU Directive, they exempt it and charge a gross profit tax more appropriate to the nature of the business.

Currently there is a decision pending in the ECJ (Leo Libera) on the same point of law, i.e. *that the power to lay down conditions and limitations is not so broad as to allow the exclusion altogether of certain forms of gambling from the exemption permitted under the EU 6<sup>th</sup> VAT Directive.*

Given a recent opinion from AG Bott on the above mentioned case, where he indicated that Member states were entitled to limit the VAT exemption under Article 135 to primarily racing and lotteries and subject to VAT all other games of chance, self regulating compliant Private Member Gaming Clubs are now extremely concerned about their ongoing commercial viability should the ECJ concur with AG Bott's opinion.

In the event that the ECJ concurs with AG Bott's opinion, it is imperative that the GLAI secures an amendment for Private Member Gaming Clubs to the VAT legislation in the next finance act to exempt 'gaming' from VAT. Given the small scale of the sector here in Ireland, and the labour intensive nature of the business, a tax of 21% on a Gross Profit Margin of Approx. 18% would simply wipe out the sector before it gets regulated, resulting in approx. 500 job losses around the country.

Instead the GLAI recommends that a Gross Gaming Profit tax (similar to that applied in the UK) of approx. 5% be introduced in the next finance act on Private Member Gaming Clubs. This would provide a suitable equivalent to the 1% turnover tax currently charged on Bookmakers, and would ensure that Private Member Gaming Clubs are brought securely into the tax net.