

## vat's important

### Online casinos and VAT - a paradox?

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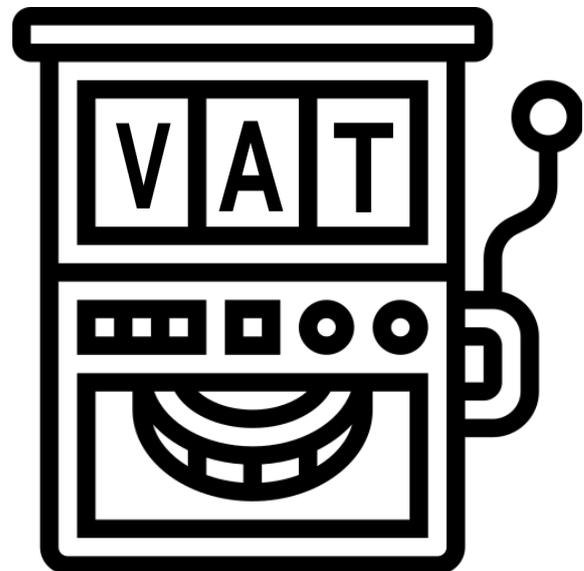
**It has always been clear that you should not play around with the Swiss Federal Tax Administration (SFTA). But the fact that the SFTA is now intervening in online gaming is completely new - and leads to many questions.**

At the end of June, the SFTA published changes in the VAT brochures. Amongst other things, the amendments deal with the delicate VAT qualification of electronic services and online betting. In this respect, the SFTA states that „where human participation is primarily aimed at improving the user experience or system environment, rather than responding to individual customer requests, human participation is generally considered minimal. Human participation which is intended to give the appearance of a real user experience to an intrinsically electronic service does not change the qualification as an electronic service“. The SFTA also cites the following example: „Offering online roulette is also an electronic service if a human croupier controls the games and the player can watch them via the Internet».

#### Why is there this change?

Sales of bets, lotteries and other forms of gambling with monetary wagers are exempt from Swiss VAT pursuant to Art. 21 para. 2 item 23 VAT law. Now there are such games of chance which are offered via the Internet. With regard to the VAT qualification of these services via the Internet, the question arises as to whether they could be electronic services. The VAT assessment would then be completely different: The service of a game of chance offered via the Internet would suddenly be a taxable service. The place of supply would follow the place of destination principle. The company providing the service would therefore be obliged to register for VAT and charge VAT at the place of residence of the recipient.

A key factor in assessing whether or not an electronic service is present is whether human participation in the service is minimal - or whether it goes beyond that. There is, of course, no definition of „minimal human participation“. This naturally leads to questions and discussions again. Now the SFTA is taking the reins in this area and determining what is minimal or not minimal in online gambling. Whether this is sensible is open to doubt. After all, it only leads to additional costs for companies - and to complete confusion among taxpayers.



### What do I have to think about?

The SFTA has now sent standard letters to all companies active in online gambling. In these letters, the SFTA states that, following this change in practice, they consider that services in the field of online casinos and sports betting meet the requirements for qualification as an electronic service. Thus, the SFTA further states that it assumes that VAT would be compulsory for all these businesses. If the companies contacted do not agree with this assessment, they must explain in detail in writing within 30 days why they would disagree in order to obtain a challengeable injunction.

### What next?

It is welcome that the SFTA wishes to specify the definition of human participation. However, it must be borne in mind that such letters lead to great uncertainty among the companies concerned. As a consultant, the question also arises as to whether the SFTA should now question the VAT qualification for all services obtained via the Internet which do not qualify as electronic services. Even if this is legitimate, the SFTA would be well advised not to make a blanket assessment but to investigate on a case-by-case basis.

On the one hand, online casinos and VAT are not a paradox at all, but on the other hand, online casinos are not necessarily electronic services per se and therefore lead to VAT obligations for operators. The practice published by the SFTA probably does not correspond 100% to reality. There are certainly online casinos that do not simply want to give the appearance of a real user experience but do advise their customers.

As your VAT and customs team, we will be happy to assist you in answering the letter or in correctly qualifying your services of any kind and, as always, will be available to answer any questions you may have.

With best regards from your VAT team

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