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Romania – It's Withholding Tax Time for Online Gamblers



Earlier this year Romania changed the taxation mechanism for revenues derived by individuals as a result of participating in online gambling: such revenues are now subject to taxation through the withholding mechanism. Following the entering into force of an amendment to the Fiscal Code included in the Emergency Ordinance adopted by the Romanian Government on March 15, 2018, published in the Official Gazette on March 23, 2018, online gambling organizers¹ are required to withhold the applicable tax from each withdrawal from an account opened by a player on a gaming platform.

Moreover, online gambling organizers are obligated to declare and pay the tax withheld by the 25th of the month following the month in which gaming revenue was incurred, as well as to submit an annual informative statement regarding the tax withheld, by January 31st of the following year.

The old approach prior to the withholding tax mechanism, known as the self-declaration system, generated controversy and criticism. Under the old approach, players were required to file a tax statement regarding the revenues obtained by May 25th of the year following the one in which the income was incurred. Subsequent to filing, the tax authority would calculate the tax due and issue a decision in which the player was required to pay within a 60-day

term. The withholding tax mechanism simplifies the process for both the player (who no longer needs to worry about the reporting and payment of the tax amount resulting from the tax decision) and tax authority (which will no longer have the burden of the administration of tax receivables for thousands of taxpayers (i.e. the recovery of amounts due). In the long run, except for some initial system adaptation costs (including reporting in tax returns), the application of the tax withholding mechanism could be considered beneficial even for online gambling organizers. In fact, the proposal for a tax withholding system originated from the representatives of these organizers.

In addition to the positive aspects of this

legislative amendment, which clarifies that the tax is to be applied to the amount actually withdrawn from the gaming account, there are some negative aspects. Firstly, the abrupt switch to the withholding taxation system, without allowing an adequate period of time for online gambling organizers to adapt their systems to comply with the new obligations, has generated significant difficulties for online gambling organizers. Some of them estimated that the adaptation of their IT and reporting systems could take several months to complete. Unfortunately, it seems that the legislator did not perform a thorough analysis of the time necessary for online gambling organizers to implement the withholding mechanism at a technical level. Within the transition period, some of the online gambling organizers find

themselves in a position where they are bearing the tax themselves, without performing the withholding of tax from the players' withdrawals. This will generate additional costs and may even lead to the player's expectation that the online gambling organizers will never withhold the tax from the requested withdrawal amount again. Secondly, reducing the time available for preparing and submitting the informative statement (from February 28th/29th to January 31st) will generate additional pressure on online gambling organizers, taking into account that the beginning of the year is usually a hectic period from a financial-reporting perspective.

There are two additional points which require clarification, namely:

- whether revenues below the threshold of RON 66,750 (Cdn \$22,060) derived from online casinos could be considered as non-taxable revenues

(as is the case with land-based casinos); and

- how the tax should be determined/withheld by online gambling organizers in relation to the gambling revenues awarded under the form of goods and services, considering that the new amendments provide that for online gambling revenues, "the tax is determined and withheld at each withdrawal from the account opened on the gaming platform to the bank account or similar".

In any case, online gambling organizers will have to be diligent to comply with the new regulations, both in terms of withholding tax as well as ensuring compliance with the monthly declaration and payment obligations.

Editor's Note: Romania has an open licensure system for private gaming operators,

contrary to the monopoly that the Canadian government has on the gaming system in its various provinces. If Canada were to adopt a private licensure system, similar to Romania's, it could successfully collect revenues through a tax withholding system similar to that of Romania. For guidance, Canada could look to such a system in Romania to determine its benefits, as well as to avoid any negative outcomes. CGL

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1. Throughout various other jurisdictions, "online gambling organizers" are commonly referred to as "online gaming/gambling operators".

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