

ECJ Preliminary Ruling Request (VAT): *Chaudfontaine Loisirs* (Case C-73/23) – Court of First Instance of Liège Submits Referral on Difference in VAT Treatment Between Online Gambling Offered by National Lottery and Online Gambling Offered by Private Economic Operators

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On 8 May 2023, a preliminary ruling request lodged on 10 February 2023 was published in the Official Journal of the European Union. By this, the Court of First Instance of Liège (*Tribunal de première instance de Liège*, Belgium) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case *Chaudfontaine Loisirs SA v. État belge* (C-73/23) on the difference in VAT treatment between online gambling and lotteries offered by the National Lottery, which are exempt from VAT, and online gambling and betting offered by various private economic operators, which are subject to VAT, considering that the Supreme Court annulled the Law which made online gambling subject to VAT from 1 July 2016 until 21 May 2018 (repealing the VAT exemption regime enjoyed by gambling and lotteries in general). In addition, the effects of the potential annulment of such national law, including regarding the refund of VAT paid in breach of the [VAT Directive \(2006/112\)](#) were questioned, and whether the taxable person is entitled to a refund of VAT that was maintained in breach of the referred directive and the principle of fiscal neutrality.

The Court of First Instance of Liège requested the ECJ to answer the following questions:

- "(1) Do Article 135(1)(i) of VAT Directive (2006/112) and the principle of fiscal neutrality permit a Member State to exclude from the benefit of the exemption contained in that provision only gambling which is provided electronically while gambling which is not provided electronically remains exempt from VAT?
- (2) Do Article 135(1)(i) of Directive 2006/112 and the principle of fiscal neutrality permit a Member State to exclude from the benefit of the exemption contained in that provision only gambling which is provided electronically to the exclusion of lotteries which remain exempt from VAT whether or not they are provided electronically?
- (3) Does the third paragraph of Article 267 of the [Treaty on the Functioning of the European Union \(TFEU\)](#) permit a higher court to decide to maintain the effects of a provision of national law which it annuls because of an infringement of national law without ruling on the infringement of EU law which was also raised before it, and, therefore, without referring for a preliminary ruling the question of the compatibility of that provision of national law with EU law or asking the Court about the

circumstances in which it could decide to maintain the effects of that provision in spite of its incompatibility with EU law?

- (4) If the answer to one of the previous questions is in the negative, could the Constitutional Court maintain the past effects of the provisions which it annulled because of their incompatibility with national rules on the division of powers when those provisions were also incompatible with Directive 2006/112, in order to prevent budgetary and administrative difficulties from arising from reimbursement of taxes already paid?
 - (5) If the answer to the previous question is in the negative, can the taxable person be reimbursed the VAT which it has paid on the actual gross margin on the gaming and betting which it operates on the basis of provisions incompatible with Directive 2006/112 and the principle of fiscal neutrality?"
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Belgium; European Union - ECJ Preliminary Ruling Request (VAT): Chaudfontaine Loisirs (Case C-73/23) – Court of First Instance of Liège Submits Referral on Difference in VAT Treatment Between Online Gambling Offered by National Lottery and Online Gambling Offered by Private Economic Operators (08 May 2023), News IBFD.

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