

GBGA challenge to remote gambling point of consumption tax referred to CJEU

We have written previously about the judicial review by the Gibraltar Betting and Gaming Association (GBGA) by way of challenge to the remote gambling point of consumption tax that came into force in the UK on 1 December 2014, whereby remote betting and gaming activities conducted by a “UK person” are subject to a 15% tax wherever the operator is located. See our previous article at <http://cliftondavies.com/gbga-commences-second-jr-proceedings-time-challenging-new-remote-gambling-point-consumption-tax/>

Mr Justice Charles has today (14 July 2015) given judgment that the tax raises issues of European law that should be decided by the Court of Justice of the European Union (“CJEU”). The GBGA had argued that the new tax regime is discriminatory and restricts the free movement of services, contrary to the Treaty on the Functioning of the European Union. He also found that in seeking to justify the tax regime, HM Revenue & Customs (“HMRC”), had relied on a principle of law which has no clear precedent in European law.

The judge also agreed with the GBGA and the Government of Gibraltar (which had intervened in the proceedings) that the case raises issues of constitutional importance for Gibraltar.

A formal reference of the case will now be made by the High Court to the CJEU. If the tax regime (which has been expected to raise £300 million per year) is found by the CJEU to be in breach of European law, HMRC could be ordered to repay all of the tax it has taken.

Dan Tench, Head of Public Law at Olswang acting for the GBGA, has commented that *“the case raises important questions for the future of online gambling in the UK. It also touches on broader issues about the UK Government’s ability to tax businesses outside its jurisdiction. We look forward to these issues being considered by the Court of Justice of the European Union.”*

David Clifton & Suzanne Davies

Clifton Davies Consultancy Limited

www.cliftondavies.com

dc@cliftondavies.com

sd@cliftondavies.com