

Zdeněk Beránek Partner  
beranek@peterkapartners.cz  
Peterka & Partners, Prague

# The Czech Ministry of Finance's guidelines on gambling bonuses

In the September 2017 edition of *Online Gambling Lawyer*, Zdeněk Beránek of Peterka & Partners discussed the auxiliary legislation published by the Czech Ministry of Finance following the coming into force of the Czech Gambling Bill at the start of 2017. Here, Zdeněk provides analysis of the Ministry's Guidelines on bonuses offered by operators and the corresponding tax implications.

## The basic rules

To understand why some bonuses are prohibited whereas others are allowed, one needs to first refer to some of the basics contained in the Czech Gambling Bill. The basic rules are that the acceptance of non-monetary deposits and non-cash bets is prohibited.

Under the Gambling Bill, a 'deposit' means any performance of activities that enables the bettor to participate in gambling and which consists of, in particular, (i) one or more bets or (ii) other performance of activities determined by the gambling operator, which entitle a bettor, alongside a bet, to participate in gambling.

A bet is defined as any non-refundable performance of activities which is voluntarily assigned by a bettor and which will be compared with the outcome of the game, including (i) the difference between the offered price of the goods or service and their usual price and (ii) an amount exceeding the cost of calling or sending a text or multimedia message resulting from a contract between a bettor and an electronic communications service provider.

Deposits can therefore be divided into two groups, (i) bets and (ii) other deposits, such as a casino entry fee.

As a rule introduced by the Gambling Bill, a bet is always non-refundable except in situations where the particular game is cancelled for objective reasons, for

example, if a betting event for which a bet has been accepted is then cancelled.

Unlike in the case of a bet, the Bill does not prohibit a deposit other than a bet being (partially) returned by the operator to the bettor if such a return depends on chance or unknown circumstances. Moreover, and as we will see below, some bonuses might fall into the category of 'winnings,' a category which is not itself defined in the Gambling Bill but is basically 'everything the gambling provider provides to a player (bettor) on the basis of chance or unknown circumstances that the operator must pre-determine in the gaming plan' (as per the explanatory note to the Gambling Bill).

## Types of bonuses

Whether the bonus is provided to the bettor based on chance or unknown circumstances or for any other reason is crucial to assessing whether the provision of a bonus by a gambling operator to the bettor is legal or prohibited.

First of all, it should be noted that winnings and the return of a deposit can only be provided if they meet the conditions set out in the Gambling Bill and the gaming plan of the operator.

For instance, if the gambling operator announces that all bettors whose bets on sports or other events held at a certain date that were not winning bets will be included in a draw for ten TV sets, such a bonus is prohibited, as the

Gambling Bill requires that winnings in odds betting are restricted to successful bets only. For the same reason, providing bettors with a bonus consisting of a return of some percentage of a non-winning bet is also prohibited.

However, the Guidelines on bonuses issued by the Ministry also deal with bonuses consisting of payments of financial funds to the bettor and this can be in cash, by wire transfer or by crediting the bettor's account, if those funds are provided without any limits or conditions (for instance, by requesting that the bettor use them for betting), which means that such bonuses are allowed under the Gambling Bill. This would be, for instance, the situation where a gambling operator provides a bettor, in connection with the setting up of a new account, with a bonus of the same amount as the amount deposited by the bettor, providing that the bettor is free to withdraw it from his/her betting account. Such payment has no impact on gaming tax either, as it is neither winnings nor the return of a deposit.

The Ministry's Guidelines also deal with a 'financial' bonus granted by the gambling operator to the bettor, which the latter would be entitled to use only for betting. For instance, the operator might wish to motivate the bettor by providing a bonus of the same amount as the initial deposit to the bettor's account providing that such bonus is dedicated solely to the purpose of

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betting and cannot be freely withdrawn by the bettor from his/her account (or, as the case may be, its withdrawal from the account is conditioned, for instance, on a certain number of 'uses' for betting). This type of bonus is regarded as a non-monetary deposit as it cannot (at least immediately) be exchanged for an amount to be withdrawn from the account, and thus such bonuses are prohibited under the Gambling Bill.

The Guidelines also discuss a bonus that consists of a refund of a deposit (or its part) notwithstanding the result of a game. The Guidelines provide the example of a casino that charges an entry fee to be refunded by the casino operator if the bettor spends at least a certain amount or if he/she visits the casino several times. Such a bonus is not prohibited as it is considered as part of the gambling operation itself, provided that such refund is only provided up to the amount of the deposit (entry fee).

If the bonus is set in a way that the gambling operator influences or allows the influencing of the game so that the bettor has a higher probability of winning, such bonus is also allowed as it will be considered as winnings. Such a 'bonus' needs to be specified in the approved gaming plan of the operator though.

Another way a bonus might be provided is by adjusting the odds of winning, for instance if the gambling operator increases the odds by a certain

percentage if the bettor bets a certain minimum amount. As in the previous case, such a bonus is considered as winnings and is allowed if included in the approved gaming plan of the operator, assuming of course that all bettors fulfilling the set conditions are then treated equally. The same assessment applies to a bonus involving an additional payment that is made together with winnings, for instance, when the operator declares that all bettors who win will, on top of their winnings, divide a fixed financial amount.

Finally, the Guidelines also allow non-monetary bonuses (except for some products explicitly prohibited by the Czech Gambling Bill such as food, drink, tobacco products and stimulating substances) that are not dependent on chance or unknown circumstances. This could take the form, for instance, of an operator providing a bettor with a token for every Euro spent gambling, which might then be exchanged for non-monetary bonuses (such as a t-shirt, etc.).

**Summary**

To sum up, the Ministry's Guidelines differentiate between the possible bonuses provided to the bettor within the provision of gambling operations and in connection with gambling operations. Those bonuses provided within gambling operations are either winnings or the return of deposits. Winnings are provided depending on chance or unknown circumstances. The

exact conditions for obtaining them must be set out in the gaming plan and must comply with the conditions set out in the Czech Gambling Bill.

The return of a deposit is a bonus that might be provided based on another circumstance other than chance. The Gambling Bill does not specify the conditions for returning a deposit but it must not be a return of a bet as the latter is, as per the Gambling Bill, strictly non-refundable. The opportunity to have a deposit returned must also be specified in the gaming plan.

As to the bonuses provided to the bettor in connection with gambling operations, the provision of non-specified financial funds and non-monetary benefits that are not explicitly prohibited by the Gambling Act are allowed. However, the provision of a bonus by an operator which the bettor is only entitled to use (at least initially) for betting is prohibited.

The Guidelines do not discuss possible bonuses other than those specified above. In this regard the Guidelines recommend prior consultation with the regulator in such cases where a possible bonus is being considered that is not covered by the Guidelines. In any case, the regulator continues to provide auxiliary regulations and guidelines, although one could argue that such documents should have been provided before the entry into force of the Czech Gambling Act.