[2012] UKUT 242(TCC)
Appeal number: FTC/56/2011

Gaming duty – section 11 Finance Act 1997 – "banker's profits" – whether commissions and rebates to be taken into account in calculating "banker's profits"

UPPER TRIBUNAL (TAX & CHANCERY CHAMBER)

ASPINALLS CLUB LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: MR JUSTICE BRIGGS

Sitting in public at the Rolls Building, EC4A 1NL, on Wednesday 20 June 2012

Andrew Hitchmough and Jonathan Bremner instructed by PricewaterhouseCoopers Legal LLP for the Appellant

Elizabeth Wilson of Counsel, instructed by the Solicitor's Office (VAT & Excise Litigation) HM Revenue and Customs for the Respondents

DECISION

Introduction

1. This is an appeal by Aspinalls Club Ltd ("the Club") against the decision of the First Tier Tribunal (Judge Brannan and Ms Bridge) dated 17 May 2011 whereby they held that for the purpose of gaming duty chargeable on the Club's premises for the accounting periods starting 1 April 2007 to 30 September 2009 inclusive, certain commissions and rebates paid and allowed by the Club to its customers were not to be taken into account in reduction of the "banker's profits" for those periods from dutiable gaming taking place on those premises, for the purpose of calculating the "gross gaming yield" from those premises in the relevant accounting period.

2. These proceedings are entirely concerned with the identification of the precise meaning of the defined phrase "banker's profits" in s.11 (8)(b) of the Finance Act 1997, as explained in s.11(10) (as amended by the Finance Act 2007, with effect from 1 September 2007), and the application of the meaning thus identified to the agreed facts about the Club's commission and rebate arrangements.

3. In bare outline, the issues may be identified as follows. Gaming duty is levied as a percentage of the gross gaming yield derived from dutiable gaming on premises in a relevant accounting period. The banker's profits form one of the two elements of the gross gaming yield. The banker's profits are the difference between the value of the stakes staked with the banker in the relevant gaming, and the value of the prizes provided by the banker to those taking part in the gaming.

4. In order to provide an incentive to high value potential customers, to encourage them to use the Club rather than other casinos (usually during short visits to the UK) the Club operates three incentive schemes. The first provides a commission to the player proportional to the amount of his chips staked during the period of the agreement. The second and third provide a percentage rebate of losses incurred by the player. In each type of agreement the commissions and rebates are subject to the customer achieving a minimum turnover requirement during the stated duration of the agreement.

5. The Club claims that the commission paid on cash chips staked should be treated as reducing the value of the stakes, alternatively as a prize for taking part in the gaming. Similarly, the Club claims that the rebates allowed on losses by the player should also be treated as prizes provided by the banker to those taking part in the gaming.

6. Both HMRC and the FTT rejected those claims of the Club. In the FTT's view the value of a cash chip staked at a casino was the face value of the chip and could not be adjusted by reference to any "collateral agreement" between the Club and its players. Prizes were limited to rewards for winning, and by definition excluded rebates or payments made for losing.

7. The question on this appeal is whether the FTT erred in law in reaching those conclusions.

Gaming duty – the statutory provisions

8. The directly applicable provisions levying gaming duty with effect from 1 September 2007 are, at least at first sight, short, clear and apparently unambiguous. Nonetheless and not least because a major part of the Club's case is based upon a change of language introduced in 2007, it is necessary to describe the development of the 2007 regime historically. The coming into force of the 2007 amendments was deliberately timed to coincide with the coming into force of the Gambling Act 2005, which made fundamental changes both to the enforceability and regulation of gambling transactions, albeit for what may be described as social rather than fiscal purposes. Since the 2007 amendments to the (by then) ten year old regime for gaming duty adopted certain words used and defined in the Gambling Act 2005, but without specifically cross-applying the definitions of those words and phrases in that Act, it is also necessary to describe those definitions in the Gambling Act, so as to address submissions about their relevance or otherwise as what Mr Andrew Hitchmough for the Club called potential "clues" to the meaning of the gaming duty legislation.

9. It is also necessary to make brief reference to certain parts of the parallel regimes for the taxation of remote gaming and for bingo duty because the cross-references to them in the 2007 amendments to the gaming duty regime (and in HMRC's Explanatory Notes to the proposed amendments in the 2007 Finance Bill) are also relied upon as relevant clues to interpretation. Generally, I shall refer to the provisions of the Finance Act 1997 simply by reference to its sections. Unless otherwise stated, those references are to the 1997 Act, as amended by the Finance Act 2007.

10. Gaming duty replaced gaming licence duty with effect from 1 October 1997. By s.10(1):

> "(1) A gaming licence shall not be required under section 13 of the Betting and Gaming Duties Act 1981 (gaming licence duty) for any gaming on or after 1st October 1997; but a duty of excise (to be known as "gaming duty") shall be charged in accordance with section 11 below on any premises in the United Kingdom where gaming to which this section applies ("dutiable gaming") takes place on or after that date."

11. By section 10(2) "dutiable gaming" was identified as casino games and equal chance gaming. Those are each defined terms in s.15(3). "Casino games" means games of chance which are not equal chance gaming. "Equal chance gaming" in Great Britain, means games which do not involve playing or staking against a bank, and in which the chances are equally favourable to all participants. The present case is concerned entirely with casino games, in which the players were playing or staking against a bank.

12. Section 11 headed "Rate of gaming duty" provides at sub-section (1):

> "Gaming duty shall be charged on premises for every accounting period which contains a time when dutiable gaming takes place on those premises."

By section 15(3), "accounting period" is defined as meaning a period of six months beginning with 1 April or 1 October.

13. Section 11(2) identifies the amount of gaming duty chargeable on any premises for any accounting period by reference to specified rates applied to the "gross gaming yield" by reference to an escalating table, in which the percentages charged increase in line with increases in the gross gaming yield.

14. Section 11(8) provides that:

> " For the purposes of this section the gross gaming yield from any premises in any accounting period shall consist of the aggregate of-
>
> (a) the gaming receipts for that period from those premises; and
>
> (b) where a provider of the premises (or a person acting on his behalf) is banker in relation to any dutiable gaming taking place on those premises in that period, the banker's profits for that period from that gaming."

This appeal is not concerned with gaming receipts. They include amounts such as front money. The word "provider" in the phrase in s.11(8)(b) "provider of the premises" is defined in s.15(3) as follows:

> "In relation to any premises where gaming takes place, means any person having a right to control the admission of persons to those premises, whether or not he has a right to control the admission of persons to the gaming".

It is common ground that the Club was both the provider of the premises and the banker in relation to the dutiable gaming relevant to this appeal.

15. The provisions directly in issue on this appeal are to be found in s.11(10), as follows:

> "In sub-section 8 above the reference to the banker's profits from any gaming is a reference to the amount (if any) by which the value specified in paragraph (a) below exceeds the value specified in paragraph (b) below, that is to say –
>
> (a) the value, in money or money's worth, of the stakes staked with the banker in any such gaming; and
>
> (b) the value of the prizes provided by the banker to those taking part in such gaming otherwise than on behalf of a provider of the premises."

16. For the whole of the period from 1997 until the coming into force of the 2007 amendments, s.11(10)(b) read as follows:

> "The value, in money or money's worth, of the winnings paid by the banker to those taking part in such gaming otherwise than on behalf of a provider of the premises."

A central question in these proceedings is whether the substitution of "prizes provided" for "winnings paid" in the 2007 amendments makes a relevant difference to the ambit of that deductible in calculating the banker's profit.

17. The other marginally relevant addition to s.11 made by the 2007 amendments was the insertion of a new subsection (10A), which provided that provisions in the Betting & Gaming Duties Act 1981 concerning the valuation of prizes in connection with expenditure on bingo winnings are to apply to gaming duty as they apply to bingo duty. The precise contents of the valuation regime introduced do not matter at all.

18. Prior to the 2007 amendments, there had been provided in the Gambling Act 2005 definitions both of the word "prize" (in different contexts) and of the word "stake", see s.353(1). In s.6(1) "gaming" as used in the 2005 Act means:

> "playing a game of chance for a prize."

In section 6(5) "prize" in relation to gaming (except in the context of a gaming machine):

> "(a) means money or money's worth and,
>
> (b) includes both a prize provided by a person organising gaming and winnings of money staked."

19. The definition of "prize" in s.353 merely refers back to s.6 in relation to gaming. "Stake" is defined as:

> "…an amount paid or risked in connection with gambling and which either-
>
> (a) is used in calculating the amount of the winnings or the value of the prize that the person making the stake receives if successful, or
>
> (b) is used in calculating the total amount of winnings or value of prizes in respect of the gambling in which the person making the stake participates, .."

20. I emphasise that these definitions in the Gambling Act are introduced for no purpose wider than the interpretation of that Act. In s.11 (of the 1997 Act) the phrase in sub-section 10(a) "stakes staked with the banker" had always formed part of the formula for the calculation of the banker's profit. By contrast, the substitution of "prize" for "winnings" was new in 2007, and introduced at the same time as the Gambling Act came into force. Plainly the definitions of the words "stake" and "prize" in the Gambling Act cannot govern their meaning in the 1997 Act as amended. But it may nonetheless give the court at least pause for thought before adopting as the true interpretation of those words, which are not

defined in the 1997 Act (either before or after amendment), a meaning substantially different from that which they have been given by Parliament in legislation designed fundamentally to re-formulate the gambling industry on a new statutory footing.

21. The need for a pause for thought is emphasised by s.105 of the Finance Act 2007 which provides that Schedule 25 contains amendments that are:

> "consequential on, or otherwise connected with, the Gambling Act 2005".

It is in Schedule 25 at paragraph 18 in Part 4 that the two amendments to s.11 of the 1997 Act to which I have referred, including in particular the substitution of "prize" for "winnings" are enacted. It is at least for consideration whether the reason for that change was to bring the statutory language for the taxation of gaming into line with the language laid down for the definition and analysis of gaming in the 2005 Act.

22. It is convenient now to refer briefly to the published guidelines issued by HMRC in connection with those two amendments as set out in the 2007 Finance Bill, in which what is now s.105 was cl.104, and the number of Schedule 25 was the same. Referring to Schedule 25 paragraph 18(2) (which substitutes "prizes" for "winnings") the guidance states that it:

> "Amends s.11(10)(b) to align the treatment of winnings with that which applies to remote gaming."

Paragraph 43 states that the insertion of the new s.11(10A):

> "Provides for valuation provisions in respect of non-cash prizes as a consequence of the amendment to s.11(10)(b) above."

23. Since Mr Hitchmough for the Appellant placed considerable reliance on paragraph 42 of that guidance, it is necessary to identify the "treatment of winnings" which applies to remote gaming. The provisions relied upon by Mr Hitchmough are all to be found in ss.26C to F of the Betting & Gaming Duties Act 1981. They were all inserted by the Finance Act 2007. By way of introduction, s.26A explains that remote gaming means gaming in which persons participate by the use of the internet, telephone, television, radio or any other kind of electronic or other technology for facilitating communications. Section 26C levies gaming duty at a defined rate on "remote gaming profits for an accounting period". By subsection (2) "remote gaming profits" means the amount of the provider's gaming receipts, less the amount of the provider's expenditure on remote gaming winnings, in each case for the relevant period.

24. Section 26F(1) provides that the amount of the provider's expenditure on remote gaming winnings for an accounting period is:

> "The aggregate of the value of prizes provided by P in that period which had been won (at any time) by persons using facilities for remote gaming provided by P".

By sub-section(3):

> "A reference to providing a prize to a user (U) includes a reference to crediting money in respect of gaming winnings by U to an account, subject to stated conditions. By sub-section(4) "the return of a stake is to be treated as the provision of a prize."

By sub-section(6):

> "Where P credits the account of a user of facilities provided by P (otherwise than as described in sub-section(3), the credit shall be treated as the provision of a prize; but the Commissioners may direct that this sub-section shall not apply in a specified case or class of cases."

HMRC published guidance suggests that the discretion to dis-apply sub-section(6) is designed to deal with instances of attempted abuse.

25. Finally, returning to the 1997 Act, section 12 provides that the liability to pay the gaming duty charged on premises for any accounting period shall fall jointly and severally on a list of four classes of persons. Class (a) "every person who is a provider of the premises at a time in that period when dutiable gaming takes place there;"

Other classes to whom the liability is extended include persons concerned in the organisation or management of the dutiable gaming, corporate members of the provider's group and directors of any corporate body thus brought into charge. It is common ground that the primary liability falls on the provider of the premises.

The Agreed Facts

26. These may be found set out almost in full in paragraphs 17 – 27 of the Decision, subject to one small addition, which only emerged for the first time during the appeal. I cannot do better than set out the FTT's concise summary, which I do below.

> "17. The Appellant holds gaming licences to operate casinos in the UK. Its business consists of gaming activities and also catering services provided by its bars and restaurants.
>
> 18. The Appellant has, since September 2007, established a number of Premium Player Programmes (the "Programmes"). The Programmes are designed as an incentive to a selected number of wealthy players to encourage them to game with the Appellant.
>
> 19. The Programmes are available only to the Appellant's most prestigious players. They are only available in London and

typically only some 40 players a year participate in them out of an estimated 8000 members.

20. The Programmes were introduced as a result of the Gambling Act 2005 which removed restrictions on the ability to offer such programmes. The changes effected by the Gambling Act 2005 came into force on 1 September, 2007.

21. Most of the players who are allowed to participate in the Programmes are based overseas and tend to come to the Appellant's casino as part of a short trip to the UK. Under the Programmes, the Appellant enters into an agreement (the "PPP Agreement") with the player at the beginning of his trip to the UK. As most of the players to whom the Appellant offers the Programmes are on a short visit to the UK, the PPP Agreement under which each player plays is generally for a short defined period of time up to 14 days (the "Relevant Period").

22. One of the innovations of the Gambling Act 2005 was to make gambling contracts (including PPP Agreements) legally enforceable (see sections 334 to 338 Gambling Act 2005). It was common ground that a PPP Agreement is a legally enforceable contract and can be enforced by the Appellant and by the player.

23. Under the PPP Agreement, the player makes available to the Appellant either cleared funds or a pre-arranged cheque facility in an agreed amount. This is known as "Front Money", by which a player establishes his credit with the Appellant.

24. In addition, under the PPP Agreement the player agrees to meet a minimum "Turnover Requirement" i.e. the player agrees to stake a minimum specified amount of chips during the period of the PPP Agreement.

25. The requirement for Front Money and the Turnover Requirement may be waived at the Appellant's discretion.

26. There are three types of PPP Agreement:

> (1) A **"Cash Chip Agreement"** under which the Appellant agrees to pay the player a percentage commission based on the total amount of cash chips staked on all bets over the course of the PPP Agreement, provided the player meets the Turnover Requirement (if applicable). The commission is payable regardless as to whether the player wins or loses.
>
> (2) A **"Rolling Chip Agreement".** Players who enter into a Rolling Chip Agreement are issued with special chips called "rolling chips". We were provided with

> examples of these chips and with examples of ordinary cash chips (which, for the avoidance of doubt, we returned). Rolling chips are easily distinguishable from ordinary cash chips. The player places his bets using rolling chips in the usual way. A Rolling Chip Agreement operates as follows:
>
> > (a) Where a player stakes a rolling chip and wins he does not receive commission on that bet but the rolling chip is returned to him so that he can use it to bet again.
> >
> > (b) Where a player plays a rolling chip and loses, the rolling chip is retained by the Appellant and is not returned to the player.
>
> Under the Rolling Chip Agreement, the Appellant agrees to pay a commission to the player based on the total value of rolling chips staked on losing bets over the course of the Relevant Period, provided the player meets the Turnover Requirement (if applicable).
>
> (3) A **"Rebate Agreement".** Under a Rebate Agreement the Appellant agrees to pay the player a percentage (typically 5%) of the player's aggregate loss over the Relevant Period, provided the player meets the Turnover Requirement (if applicable).
>
> 27. Under the PPP Agreements, any commissions or rebates due to the player are calculated at the point of settlement at the end of the Relevant Period (usually the time at which the player's trip ends and his gaming account with the Appellant is settled)."

27. The small addition which Mr Hitchmough asked me to take into account, without opposition from Miss Wilson for HMRC, comes from the unchallenged evidence of Howard Aldridge, the managing director of the Club, deployed at the hearing before the FTT. It is simply that he said, at paragraphs 13 and 17 of his witness statement dated 18 March 2011, that the Club maintains sufficient records to be able to know precisely what every player wins or loses on each bet at the table, whether using ordinary or rolling chips.

Analysis

28. It is convenient to address Mr Hitchmough's submissions that payments of commission under the Cash Chip Agreement go to reduce the value of the stakes staked under s.11(10)(a) separately from the remainder of his submissions, all of which were directed to bringing payments, commissions and rebates under all three types of PPP Agreements within the definition of prizes under s.11(10)(b). In fact, his "stake" submission related only to the Cash Chip Agreement. His "prize" submissions related to all three PPP Agreements, but were advanced in

relation to the Cash Chip Agreement only as an alternative to his primary case based on the meaning of "value…of the stakes."

29. The bedrock of Mr Hitchmough's case in relation to stakes was that the "value, in money or money's worth, of the stakes staked with the banker" by a particular player should be no more and no less than the value put at risk by the player at that moment in making his bet. If the player knew that, because he had already satisfied the minimum turnover requirement under a Cash Chip Agreement, he would be bound to receive back a commission of (say) five per cent when staking a chip with a face value of £1000, he was only putting £950 of his money at risk. He accepted (in reply) that a player who had yet to satisfy his minimum turnover requirement (if not already waived by the Club) could not be said to put at risk anything less than the full face value of the chip, because his entitlement to a percentage commission remained contingent on satisfying, or having waived, that requirement at some later time.

30. Mr Hitchmough's starting point was that, as recognised by the House of Lords in *Lipkin Gorman v Karpnale* [1992] 2 AC 548, at 575, by Lord Goff, gambling with chips is not the same as gambling for chips. In reality the player is gambling for money, chips being merely a counter or symbol used to represent the money deployed in the gaming. He acknowledged that the value put at risk (or expended) by the use of a chip might be different depending upon the use to which the chip is put at the casino. If it is used to buy food or drink, then its value would be the face value, because the Cash Chip Agreement commission is not triggered by that use of it. He submitted that it is precisely because the commission is triggered by using the chip as a stake, that its value in money or money's worth is reduced by the amount of the commission.

31. In the response to my example of the use of a chip given to a player by another player, Mr Hitchmough submitted that it was essential for his analysis that the commission came from the banker, so that any diminution in the value put at risk by the player by reason of the Cash Chip Agreement was matched symmetrically by an equivalent diminution in the economic value to the banker of the chip staked, because of its obligation to pay the commission. By contrast, the use of the chip given to the player by anyone other than the banker would have no consequence in terms of the value of the stake to the banker.

32. Finally Mr Hitchmough sought to bolster his submission that value at risk was the underlying concept behind s.11(10)(a) by reference to the definition of stake in the Gambling Act, drawing attention to the opening part of the definition namely "an amount paid or risked in connection with gambling".

33. The FTT rejected this analysis on three related grounds. The first was that, as part of the formula in an excise duty (rather than tax calculated by reference to a taxpayer's profit) the concept of the banker's profit ought to have attributed to it that simplicity and freedom from complication which it appeared to have at first sight. Recognising that staking chips was in substance staking cash, the FTT saw no reason to depart from the simple starting point that the cash value of a chip was the value stated on its face, regardless what it might have cost the player to obtain it. Secondly, the FTT placed weight upon the whole of the phrase "stakes staked

with the banker" as the basis of treating as irrelevant what they described as any collateral agreement between the player and the casino. Thirdly, they regarded their conclusion, albeit without any extended explanation, as "not inconsistent" with the definition of stake in the Gambling Act.

34. Mr Hitchmough attacked each of these reasons as wrong in law. First, he said there was no basis for preferring simplicity over an interpretation which made better economic sense as part of the formula for the ascertainment of a profit. Secondly, he submitted that the Cash Chips Agreement was not collateral in any relevant sense, not least because, since banker's profit only forms part of the gross gaming yield when the provider of the premises (or his agent) is the banker, it was inevitable that the Cash Chips Agreement would form an indivisible part of the relationship between the banker and the player. Finally, he submitted that the FTT's final reason was vitiated by being wholly unexplained.

35. In my judgment the value, in money or money's worth of the stakes staked with the banker in any casino game using chips is nothing more nor less than the face value of the chip. I agree that the starting point is the need to recognise, as reflected in the *Lipkin Gorman* case, that gambling with chips is not merely gambling for money but, in substance, with money. A chip is a form of private legal tender carrying the casino's promise that, when presented at the desk at the end of a session, it will be exchanged for cash (or other monetary credit) in the amount stated on its face. It is in my view nothing to the point that, pursuant to an agreement with the casino operator who is also the banker, the player may in due course receive an additional payment or credit as the result of having staked that chip. This is not primarily because the agreement with the casino is "collateral" or even because (as Ms Wilson submitted) it is an agreement separate and distinct from the rules of the game applicable to all those players who gamble at casinos using chips. My reason for concluding that the Cash Chips Agreement is irrelevant is that the value concept in s.11(10)(a) assumes an objective ascertainment of value, rather than one derived either from a perception of value to the player, or value to the banker. If, in substance, staking a chip is the same as staking money, then the value in money of the chip must be its face value. To the extent that Ms Wilson's rules of the game are the origin for treating a chip as tantamount to money, then I agree with her submission, but no further.

36. I recognise the force of Mr Hitchmough's submission that mere considerations of simplicity should not lightly prevail over an interpretation of the formula for calculating a profit which makes sense in economic terms. Furthermore, the fact that gaming duty is an excise duty based upon the quantification of the gross gaming yield from premises does not seriously detract from the force of the point that the relevant constituent of that yield in the present context is the banker's profit. Indeed I regard that point as the most persuasive of Mr Hitchmough's submissions towards an outcome contrary to that which I consider to be correct.

37. There is I consider some force in Ms Wilson's further submission that the commission derived from the Cash Chip Agreement is the fruit of an agreement with the casino so that, although the casino and the banker are for present purposes necessarily the same person, it is not an agreement with the banker "qua banker" and therefore not relevant to the banker's profit. It is part of the cost

incurred by the casino operator (i.e. the provider of the premises) for providing incentives to high value players to come and gamble large sums of money, but does not go to reduce the monetary value of the chips gambled, any more than if the casino permitted gambling with cash rather than chips.

38. Finally, to the limited extent that the definition of "stake" in the Gambling Act is of any assistance (bearing in mind that the word stake formed part of the banker's profit formula from 1997, and was not amended in 2007) I consider that the definition is more of a hindrance to Mr Hitchmough than a help. The reason why, in the Gambling Act, the opening part of the definition of "stake" refers in the alternative to an amount "paid or risked" in connection with gambling is simply that it ensures that the statutory regime extends to gambling on credit. But that part of the definition is concerned merely with the identification of what is or may be a stake, rather than the ascertainment of its amount. The two sub-paragraphs (a) and (b) which follow demonstrate clearly that the amount of the stake is, in relation to chips, its face value, since it is the amount used in calculating winnings or the value of the prize that the player making the stake receives if successful or the amount used in calculating the total amount of winnings or value of prizes in respect of the gambling in which the person making the stake participates. As applied to chips, that can only be the face value, and not any lesser value arrived at by taking into account a Cash Chips Agreement.

39. It follows therefore that, albeit for slightly different reasons than given by the FTT, this part of the Club's appeal fails.

Commissions and rebates as prizes

40. The Club's case is that commissions paid under the Cash Chips Agreement, and commissions and rebates under the Rolling Chip Agreement and Rebate Agreement are all "prizes provided by the banker to those taking part in" dutiable gaming within the meaning of s.11(10)(b). Mr Hitchmough acknowledged this case depended entirely upon the change of language between "winnings paid" and "prizes provided" effected by the 2007 amendment. None of the commissions or rebates could sensibly be described as winnings. They were, at best, prizes for either participating (under the Cash Chips Agreement) or participating and losing (under the other two agreements).

41. Both before the FTT and on this appeal the Club's case started, again, with an economic approach, namely that anything paid out by the banker to players in connection with the dutiable gaming ought to be deductible against the banker's profit. Relying heavily on the HMRC guidance to the 2007 amendments, Mr Hitchmough drew attention to the undoubted fact that, under s.26F(6) of the Betting & Gaming Duties Act 1981, as amended in 2007, payments for participating or losing in remote gambling would fall to be "treated as" prizes. Since the amendment to s.11(10)(b) was described as intended to align the treatment of gaming duty with that of remote gaming duty, then the change in language should be understood as designed to achieve the same objective.

42. Finally, Mr Hitchmough relied upon the definition of prize in s.6(5) of the Gambling Act 2005 as including both a prize provided by a person organising

gaming and winnings of money staked. This, he said, ought to inform the meaning of the change from "winnings" to "prize" in relation to gaming duty, and showed that prizes were not limited to winnings.

43. The FTT rejected all those submissions. In their view, there was no basis for any departure from the dictionary definition of "prize" as an award for victory or superiority in a competition, or something won in a game of chance. The HMRC guidance about aligning gaming duty with remote gaming duty was insufficient to surmount the clearly and intentionally different formulae for calculating the duty payable, there being no equivalent of s.26F(6) in that part of the 2007 amendments dealing with gaming duty. The definition of prize in the Gambling Act did not compel a departure from the ordinary meaning of "prize". Finally, the Club's case would involve impenetrable difficulties where one of the PPP Agreements straddled an accounting period, such that the minimum turnover requirement was met in a period subsequent to that in which the relevant participation or losses occurred.

44. Mr Hitchmough's attack on the FTT's conclusions during this appeal amounted in substance to a renewal of his submissions to the FTT, coupled with a demonstration that, if one looks hard enough in dictionaries, one can always find a definition to support one's case.

45. I have not found the dictionary definition or "ordinary meaning" of the word "prize" to be as forceful a starting point as did the FTT. In statutory construction, no less than the construction of contracts, words take their meaning from their context. The meaning of words and phrases is not a matter of dictionaries and grammars. Furthermore I acknowledge the force of Mr Hitchmough's economic approach, namely that, in principle, that which a banker pays to participants in the gaming ought prima facie to be deductible against the banker's receipts from the gaming, for the purpose of calculating the banker's profit.

46. Nor am I as persuaded as was the FTT by the supposed difficulties in operating the Club's definition of "prize" where PPP agreements straddled accounting periods. Where a gambling loss in one accounting period gives rise only to a contingent entitlement to a commission or rebate, pending satisfaction of the minimum turnover requirement, then the contingent nature of that entitlement at the end of the accounting period would, as Mr Hitchmough was disposed to acknowledge, be likely to prevent the relevant loss from forming any part of the computation of banker's profits for that accounting period. But the Club could deal with difficulties of that kind, at least in the future, by ensuring that its PPP agreements did not straddle accounting periods, and by limiting its claims appropriately, in those relatively infrequent cases where they did, and where the satisfaction of the minimum turnover requirement was still contingent at the end of an accounting period.

47. Nonetheless I agree with the substance of the FTT's reasoning in relation to the limited purpose and effect of the move from "winnings" to "prize" in the 2007 amendments relating to gaming duty, and in the lack of a complete alignment between gaming duty and remote gaming duty produced by considering those amendments side by side. Furthermore, I consider that the use and definition of

the word "prize" in the Gambling Act 2005 by no means supports the Club's case. In s.6(1) "gaming" is defined as meaning "playing a game of chance for a prize". The prize is that which the participant plays to obtain, rather than a consolation for having played and failed, or for merely having participated. Nothing in the detailed definition of "prize" which follows in s.6(5) detracts from that analysis. The distinction in sub-section 5(b) between "winnings of money staked" and "provided by a person organising gaming" is, as the FTT noted, a distinction designed to ensure that the definition of gaming is not limited to what in the Finance Act 1997 is called "equal chance gaming" but extends to gaming against the bank, where the bank is providing the prizes. It says nothing to extend the concept of "prize" from being that which is played for, to that which is obtained despite playing and losing.

48. More generally it seems to me that there were only two reasons for the change in language from "winnings" to "prizes" in the 2007 amendments. The first was to bring the language of the taxing regime into harmony with the language then coming into force in the regulatory regime affecting gambling. The second was to act as the springboard for the application of the prize valuation provisions relating to bingo to the valuation of non cash prizes in the context of gaming, in s.11(10A).

49. It is of course necessary to balance the considerations supportive of this part of the Club's appeal with those which are adverse to it, in arriving at a reliable interpretation of the meaning of the phrase "prizes provided" in s.11(10)(b). In my judgment the only formidable argument in the Club's favour is the economic argument. Against that, I consider that, in its context, it is clear that the introduction of the word "prize" in place of "winnings" was not intended to have the substantial widening effect for which the Club contends. I consider that the contextual rather than dictionary based analysis clearly demonstrates that no such change was intended. The alteration in the language had the much more limited purposes which I have described.

50. It follows that the allowance of the commissions and rebates paid to participants and losers under the Club's PPP Agreements are no more deductible in computation of the relevant banker's profit than they would have been prior to the 2007 amendments. Allowances for that purpose are limited to that which is won during the gaming, whether it be in cash or in non-cash prizes.

51. The result is that this part of the Club's appeal also fails, and that the appeal must therefore be dismissed.

MR JUSTICE BRIGGS

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