

Remote Gaming Duty: Taxation of online gaming

Introduction

The Gambling Act 2005, which is due to come fully into force from September 2007 has completely overhauled the social regulation of gambling and introduces a licensing/registration regime which will for the first time make it possible for persons based in Great Britain to provide remote gaming. Remote gaming will be a mainstream gambling activity in competition with other gambling sectors and the Government intends to bring it within the scope of gambling taxation so that it can, like other parts of the gambling industry, make a fair contribution to general tax revenues.

The Government deferred introducing legislation in Budget 2006 as at that stage it was unclear how the licensing principles set out in the Gambling Act would apply in practice. Since then the Gambling Commission has consulted on many aspects of the detailed regulatory framework and although this work is still in train it has progressed sufficiently for the Government to take a view on the design of the new tax framework for remote gaming. Legislation will be introduced in the 2007 Finance Bill to ensure that the necessary tax arrangements are in place when the new licensing regime comes into force.

Over the past two years HMT has had a very constructive dialogue with the industry to analyse the issues surrounding taxation of the remote gaming sector and to identify possible models for the tax regime. Against this background Ministers have now reached conclusions on the overall policy approach and shape of the tax regime and do not wish to consult further on these aspects at this stage. However the Government would welcome industry input on the detail of the draft legislation to ensure that it has the intended effect and that proposals for the administration of the tax are workable and efficient. In this context we invite comments from the industry on the draft Finance Bill clauses attached. Please note that the section of the draft clauses that deals with the rate of the remote gaming duty does not contain a final decision on the rate. The rate of remote gaming duty has already been the subject of extensive informal consultation with the industry and the Government will announce the tax rate in Budget 2007.

HMRC will also conduct further consultation on the detail of administrative procedures, including information requirements and forms, in due course, but it is envisaged that these will be broadly modelled on the current arrangements for gaming duty.

This paper outlines the key features of the proposed new tax arrangements and the policy intentions that underpin them. We are particularly keen to have your views if there are any areas where:

- commercial or technical practices in the remote gaming industry make the new tax arrangements impractical or unnecessarily burdensome
- compliance with the tax regime may be achieved with fewer burdens.

In addition there are a number of specific issues (highlighted in the text) where we specifically invite comment.

Please respond to this consultation by email to david.raw@hm-treasury.x.gsi.gov.uk or Judith.warner@hm-treasury.x.gsi.gov.uk by 16 February 2007. Or alternatively you can post your response to:

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In its 2005 Pre Budget report the Government indicated that it had reviewed gambling taxation in the light of the changes to regulations, technology and the market. It concluded that generally the existing tax system was working well and that maintaining stability, as far as possible, would be helpful during the period of transition. In keeping with this principle of minimising disruption to the existing tax regimes the Government is disinclined to amend the existing duties to accommodate remote gaming but instead proposes to create a new duty of excise (“remote gaming duty”). This will, like other duties of excise, be under the care and administration of HM Revenue and Customs. It is intended that remote gaming duty will be a self assessed tax and businesses will be required to apply for registration and account for duty themselves.

The Government’s aim is to extend the scope of tax only in so far as is necessary to bring gaming activity that is delivered remotely within the tax net. It will, therefore, exempt any supplies of gambling that are already charged with, or specifically exempted from, another form of gambling tax. This will ensure that we do not disturb the existing gambling tax regimes and we avoid the risk of taxing the same activity twice.

Subsection 1(a) of the clause inserts the provisions for the new Remote Gaming Duty as sections 26A to 26K in Part 2 of the Betting and Gaming Duties Act 1981 (BGDA). The subsequent sections in BGDA will be renumbered. Part 3 of BGDA, which covers various general provisions that apply to all excise duties (rules about offences by corporate bodies; evidence by certificate; protection of officers etc) will consequently also apply to RGD.

Subsection 1(b) of the clause says that Remote Gaming Duty will be brought into effect by Appointed Day Order. This will allow introduction of Remote Gaming Duty to coincide with the implementation of the Gambling Act.

Section (2) of the clause introduces new sections 26A - 26K of BGDA.

Section 26A Interpretation

This section sets out how, for the purposes of Remote Gaming Duty (RGD), the terms “gaming”, “remote gaming”, “remote communication”, “provision of facilities”, and “remote operating licence” are to be interpreted.

26A (1) - (5) define “gaming” and “remote gaming”. Although based on those found in the 2005 Gambling Act there is not a direct cross-reference. Instead, the definition of “gaming” reflects the definition of “game of chance” introduced into VAT law by the VAT (Betting, Gaming & Lotteries) Order in November 2006.

This provides a consistent meaning of “gaming” for both RGD and VAT, ensuring clarity and certainty for traders and HMRC officers. The definition also makes clear, as we did for VAT, that winning the chance to play the game again does not constitute a prize. If that is all that can be won the game is not gaming for the purposes of RGD (so, for example, virtual pinball, played only for the chance to play again, would not be subject to RGD).

In addition, because there is no direct cross reference to the definition of ‘gaming’ or ‘remote’ found in the Gambling Act, if DCMS amend their definitions by secondary legislation (which the Gambling Act gives them the power to do) the change would not automatically affect the definitions for the purposes of RGD. Instead, the Treasury could consider separately whether the Gambling Act provisions were suitable for RGD and whether tax law should follow them.

However, 26A (6) defines the terms ‘provision of facilities’ and ‘remote operating licence’ by direct reference to the Gambling Act. “Provision of facilities” is defined in accordance with sections 5(1) - (3) of the Gambling Act. Section 5(4) of the Gambling Act gives DCMS the power to change this definition by secondary legislation. By omitting any reference to this section, the definition for RGD would not automatically follow any change in the Gambling Act. Similarly, although “Remote operating licence” is defined by reference to section 67 of the Gambling Act, section 67 contains no power for DCMS to amend this definition by secondary legislation. Both of these terms are necessary for section 26B (described below).

Because the definitions contained in section 26A can be changed in social law by DCMS using secondary legislation, there is a risk (as we have seen with gaming machine categories) of tax law getting out of step with social law in a way that may be unwelcome to businesses or Ministers. We are therefore intending to ask Parliamentary Counsel to include a power in section 26A to allow the Treasury to amend any of the definitions contained in this section by Treasury Order. This would ensure that changes to the RGD definitions could be made to coincide with any changes to the Gambling Act, but would also ensure that the changes were made in a way that was suitable for RGD purposes.

26 B The Duty

26B (1) is drafted to ensure that if a person provides facilities for remote gaming in reliance on a remote operating licence remote gaming duty will be charged on the provision of those facilities. It should be noted that although it is proposed to link the charge to duty for remote gaming duty with the holding of an operating licence under social law the question of whether or not to issue an operating licence is a matter solely for the Gambling Commission, not for HM Revenue and Customs. However the Gambling Commission will take compliance with tax law into consideration when considering licence applications.

In addition 26B(2) ensures, in the interests of equity, that a person providing remote gaming without a remote gaming licence is nevertheless liable for RGD if the provision would be legal if they held an appropriate licence. This section only applies to remote gaming duty activity that is illegal under section 33 of the Gambling Act.

The Gambling Act does not apply to Northern Ireland, where it will remain illegal for remote gaming operators to locate. However, we also intend remote gaming provided illegally from Northern Ireland to be within the scope of Remote Gaming Duty. This is consistent with Gaming Duty, which also has UK-wide application although casinos are illegal in Northern Ireland. The drafting of this section will, therefore, change to reflect this following further discussions with Parliamentary Counsel.

There is no intention to link the liability to duty with the holding of a specific class of remote licence, for example a remote licence to operate a casino or a remote licence to provide facilities for the playing of bingo even though in practice we would expect most, if not all, dutiable remote gaming activity to be licensed under these classes. The reason is that social law does not explicitly define these classes and, although further clarification may be provided by the Gambling Commission in due course, there may be grey areas which can only be resolved on a case-by-case basis. We want to avoid uncertainty in tax law.

Q1: Are there any other issues that you think need to be considered in linking liability to the holding of an operating licence rather than to a specific class of licence?

26C The rate

The effect of 26C(1) - 26C(3) is that remote gaming duty will be charged at the rate of X% on the remote gaming profits, or net receipts, (receipts from remote gaming minus expenditure on winnings) of a dutiable person in an accounting period. The dutiable person, P, is a person who provides facilities for remote gaming which are liable to duty under section 26B.

The concept of charging excise duty on net receipts is already well established in relation to general betting duty, pool betting duty and bingo duty and we want to extend this concept to remote gaming duty.

Q2: This section does not include any provision for operators to carry over losses from the previous accounting period as we have no information to suggest that such a concession would be required in the context of remote gaming. Do you have any need for such a provision? If so, why?

26 D Accounting periods

We intend to have a three monthly accounting period, with returns ending on the last calendar day in March, June, September and December (26D(1)), but with the flexibility for businesses to apply for special tax period end dates, for example to match with other financial reporting requirements to minimise the administrative burden of accounting for remote gaming duty. Businesses will need approval from the Commissioners to vary the tax period ends (26D(2)).

If the Commissioners refuse such a request sections 14 to 16 of the Finance Act 1994 provide the mechanism for review and appeal (26D(3)).

Section 26D 4 also allows HMRC to make special transitional arrangements, which may be necessary when businesses first register for RGD; when they de-register; or when they change to new accounting periods. Businesses have no right of appeal against decisions made under this section.

26 E Remote gaming receipts

This section sets out how remote gaming receipts for an accounting period are to be determined. They are to be the monies received in the accounting period for use of the gambling facilities, and any stakes or other monies paid or due to the operator in the accounting period during the course of the use of the gambling facilities.

Section (1)(b) makes clear that stakes should only be included in an operator's receipts if he (or a business with which he is connected) is also responsible for paying any winnings related to that stake. This ensures that stakes laid in player to player games are excluded from an operators calculation of receipts. The connected businesses provision is intended to ensure that businesses cannot artificially reduce the amount of stakes included in their calculation of receipts by making arrangements for another business to pay out related winnings.

Section (2) excludes from receipts any amounts paid to the operator in respect of VAT.

The Government has considered the widespread industry practice of crediting sums to players' accounts as an incentive to play ('free plays' or 'bonuses') and tends to the view that including such amounts in the definition of receipts would be distortive. However, HM Treasury will take powers to amend the definition of receipts to include such 'free plays' if HMRC has reason to believe that this provision is being abused for tax avoidance purposes.

Q3: Do you foresee any practical difficulties in accounting for receipts net of these amounts?

26 F Remote gaming winnings

32) This section defines remote gaming winnings. Section 26F (1) defines winnings as the aggregate amounts paid by the dutiable person, by way of winnings, to persons using the facilities for remote gaming provided by that dutiable person. In addition, section 26F (4) states that the return of the stake is to be treated as payment by way of winnings. This ensures that an operator does not pay remote gaming duty on stakes that it has returned to the customer.

33) Subsection 26 F (2) excludes amounts paid out by the operator on behalf of another user from the calculation of winnings eg this would exclude amounts paid out by the operator to the holder of a winning hand in a game of player to player Poker.

Subsection 26F (3) is an anti-avoidance mechanism. An operator can only include an amount as winnings if the monies have actually been paid to the customer or are available to the customer on demand. It is aimed at preventing operators claiming that sums have been paid as winnings, when the customer is not entitled to withdraw them.

Subsection (5) allows non-cash prizes to be treated as winnings and sets out how these should be valued. This is modelled on the existing provisions for bingo duty (set out in section 20 of the Betting and Gaming Duties Act) except that any VAT incurred on the purchase of non-cash prizes will only be treated as winnings to the extent that it has not been deducted as input tax. The words “with any necessary modifications” mean that for the purposes of RGD, where section 20 of BGDA says ‘bingo’, section 26F should be taken to read ‘RGD’.

Q4: We would welcome your views on whether these provisions originally used for bingo will work for you?

26 G Exemptions

This section sets out specific exemptions from remote gaming duty.

26G (1) - (3) and (5) ensure that remote gaming duty is not charged on activities liable to, or explicitly exempted from, another gambling tax. This approach means that the tax treatment of other forms of remote gambling, including remote betting and remote lottery products, will be unaffected and they will continue to be accounted for under general betting duty and lottery duty respectively. Also those forms of gaming that currently use remote communication and will require a remote operating licence under the Gambling Act, but which are already liable to one of the existing gambling duties, will also fall outside the scope of remote gaming duty and remain within their existing duty regime. For example hand held electronic bingo in licensed bingo clubs, linked bingo, the bingo National Game will all remain chargeable to bingo duty. In addition private or small-scale gaming that makes use of remote communication but is specifically exempted from the existing gambling duties eg whist, bridge will also fall outside the scope of remote gaming duty.

No specific exemptions have been made for supplies of software, communication equipment, gaming software services etc, as these activities would not meet the definition of remote gaming, or of providing facilities for gaming. We believe they are therefore clearly outside the scope of the tax.

25G (4) gives the Treasury the power to make further exemptions from RGD by Order. As well as allowing additional games or activities to be added to the list of exemptions from RGD, this power would also allow exemptions from the tax to be made on a case-by-case basis.

In particular, because remote gaming operators will be liable to RGD if they hold a UK remote operating licence even if they have no presence in the UK, there is a risk that the same activity could also be subject to gambling tax in the country where the operator belongs. It is possible that gambling taxes could be covered by some of the existing double taxation treaties, and in these circumstances, HMRC could be required to provide relief from RGD. This provision would enable HMRC to do this.

26 H Liability to pay

26H (1) and (2) say that it is the provider of remote gaming, the holder of the operating licence, who is liable for any remote gaming duty charged. Where the person providing remote gaming facilities is a corporate body, the directors of the company will be jointly and severally liable.

26H (3) gives the Commissioners certain powers to make regulations about payment of remote gaming duty, including timing, instalments, methods of payment, the process and effect of assessments by the Commissioners of amounts due etc.

26H (4) provides for sections 12 to 16 of the Finance Act 1994 to apply in relation to liability to remote gaming duty. These provide HMRC with the power to raise assessments for excise duties, and provide businesses with the right of review and appeal against any such assessments. The provisions for assessments, review and appeal in relation to RGD will therefore be the same as for the other excise duties.

Q5: Do you see any circumstances in which this approach would not work?

26 I Registration

43) HMRC will create a remote gaming register similar to the existing register for gaming duty (26 I (1)). Anyone who holds or is required under the Gambling Act 2005 to hold an operating licence for remote gaming, and who intends to provide remote gaming must apply for registration with HMRC before any provision begins (26 I (2)). 26 I (3) provides for regulations to be made that will lay down the procedures for registration, the information to be provided and any conditions that may be attached to registration where it appears necessary to the HMRC Commissioners for the protection of the revenue.

Registration of traders based overseas (26 I (4) and (5)).

44) Attaching liability to remote gaming duty to the holding of an operating licence issued under the Gambling Act creates the possibility that an overseas operator, who opts in to UK social regulation, will also be liable to remote gaming duty. In such circumstances, where an operator has no presence in the UK it will be necessary to make provisions for protection of the revenue. Possible measures that have been considered include a security in the form of a bond or deposit as a condition of registration or a requirement for the operator to appoint a duty representative who shall be jointly and severally liable for the operator's obligations and liabilities in relation to remote gaming duty. There are precedents for this approach in other areas of taxation, for example Climate Change Levy.

Q6: The Government considers that the requirement to appoint a duty representative in the UK would be less burdensome on business than a requirement to set aside a significant sum of money as a security but would be interested to hear the views of the industry on this issue.

Group registration

Group registration is a facility that allows two or more corporate bodies, under common ownership, to consolidate duty returns and payments for administrative convenience. We intend to allow group registration for remote gaming duty (26 I (6)). The provisions will mirror those currently in place for gaming duty except in so far as there would be no requirement for members of the group to be resident or have an established place of business in the UK (as it will be possible for an overseas company to hold a British operating licence) and to be eligible to be treated as a member of a group, a body corporate must be registrable in its own right ie must hold or be required to hold an operating licence that authorises remote gaming. The intention is to prevent an overseas holding company that is not regulated by the Gambling Commission, from being the representative member of the group.

Q7: We would like to hear whether you would be likely to use the facility for group registration. If so, can you estimate the impact on compliance costs?

26 J Returns

Businesses will be required to make periodic returns to HMRC to provide information about the liability to duty. 26 J (1) and (2) gives powers to HMRC to make regulations that prescribe:

- when returns must be made eg so many days after the end of the accounting period
- who must make a return
- the form that a return must take
- the information that must be included in a return
- the declarations that must be contained in a return
- the manner in which a return must be authenticated

- treating returns as not made until they are received by HMRC Commissioners and
- the place to which a return must be made.

26K Enforcement

Under this section, businesses will be liable to penalties under section 9 of the Finance Act 1994 if they contravene the regulations made under section 26H to 26J relating to payment of RGD, registration or the making of returns. Section 9 of the Finance Act also applies in the same way to the other excise duties, and makes businesses liable to a flat rate penalty of £250 for failing to comply with the requirements about making returns, plus £20 for every day that the failure continues.

Section (3) of the Clause inserts a new heading "General" before existing section 26L of BGDA (currently 26A). This section deals with the rules that apply when the costs of gambling, prizes etc are amounts other than sterling. This will now also apply to Remote Gaming Duty. The provisions specify that the equivalent amount in sterling should be calculated by reference to the London closing exchange rate for the previous day. We would welcome views on whether non-sterling receipts should be converted on this basis. Does it raise any specific issues for your accounting systems or compliance costs?

Section (4) of the Clause adds remote gaming duty to the list of excise duties to which the provisions about the protection of officers should apply.

Section (5) of the Clause adds a new subsection (3) to section 32 of BGDA, so that any changes that would result in widening the scope of RGD would be made under the affirmative parliamentary procedure.

Record keeping

Part 1 (1) of the Customs and Excise Management Act defines the term "revenue trader". It means any person carrying on trade or business subject to any of the revenue trade provisions of the customs and excise Acts. It then explains that the Betting and Gaming Duties Act 1981 is one of these revenue trade provisions. The upshot is that by inserting provisions on RGD into BGDA they will become subject to the provisions that apply to revenue traders.

The Revenue Traders Accounts and Records Regulations 1992 sets out these provisions. In particular, it includes requirements about record keeping.

53) It is necessary for HMRC to require businesses to keep records relating to their remote dutiable activities to provide evidence that the amount of duty declared is correct. These records will need to be available to HMRC on request. The detail of the records that will be required are set out in the regulations. We want to avoid imposing any unnecessary additional record keeping requirements on the industry, relying as far as possible on the businesses normal records and accounts.

Q8: It would therefore be helpful to know whether accounting processes used within the remote gaming industry could currently provide a full audit trail of receipts and winnings, as defined above, to support the duty calculation. If modifications to existing systems would be required what would be the lead time? Can you estimate the one-off and any ongoing cost implications of these system changes?

VAT

Most gambling activities are exempt from VAT under Schedule 9 of the UK VAT Act. However, UK VAT law taxes certain charges made for participating in games, based on the social law under the Gaming Act and the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order. The charges in question are participation charges for player-to-player games in a bricks and mortar environment. This includes bingo participation fees and charges for player-to-player poker in licenced casinos. They are charged at the standard rate.

Remote gaming sites also make charges for participating in gaming. These charges are not currently made under the Gaming Act or the Northern Ireland Order, which is only concerned with premises based gaming. As a consequence charges made by remote gaming sites are within the scope of the exemption from VAT provided for gambling.

Participation charges for gaming are made for the provision of a service and there is no difficulty in identifying the VATable supply. There is, therefore, a straightforward policy decision to be made by the Government. As it will become legal for a remote gaming operator to locate in Great Britain, under the Gambling Act, the Government is considering an amendment to Schedule 9 of the VAT Act so that all charges for gaming, as opposed to stakes risked in the game, would be liable to VAT, regardless of the environment in which they are played. This would create equity between the UK VAT treatment of terrestrial and remote gaming and would apply to any charges for the right to participate in a game, whether player to player gaming or gaming against the House. An announcement will be made at Budget 2007.

Place of supply

Where charges for remote gaming are liable to VAT the normal place of supply of services rules would apply. For cross-border supplies of remote gaming, that are regarded as electronically supplied services, this means in very broad terms, that where an operator belongs outside the EU and makes supplies to players that belong in the EU the place of supply will be the Member State where the customer belongs. Operators that belong outside the EU who make VATable supplies to players that belong in the UK may be liable to register and account for any UK VAT due, subject to the normal rules for registration. Alternatively there is a special scheme which allows non-EU suppliers of electronically supplied services to register and account for VAT electronically in a single Member State of their choice on all supplies made in all Member States on a single electronic VAT return.

Where an operator belongs in the UK and makes supplies to a customer who belongs in the EU and receives the supply for non-business purposes, or is a private individual, the place of supply is determined by the place where the supplier belongs ie the UK.

The place of supply of remote gaming services made by operators that belong in the UK to customers that belong outside the EU is the customer's country. Such supplies would therefore be outside the scope of VAT. Full guidance on the VAT provisions for electronically supplied services is available in VAT Information Sheets [01/03](#), [04/03](#), [05/03](#) and [07/03](#).

Q9: We would welcome your comments on the compliance costs to business of updating VAT law so that all charges for gaming, as opposed to stake, are liable to VAT, regardless of the environment in which they are played.

Confidentiality disclosure

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties

About the consultation process

This consultation has been conducted in accordance with consultation criteria 2 to 6 in the Cabinet Office Code of Practice.

It departs from the first consultation criteria by asking for responses by 16 February 2007. However, we have been consulting the industry's trade body on various aspects of this change for some time and we believe that the focussed nature of this consultation, on the technical detail of the draft legislation, means that this should provide a long enough time for responses.

If you wish to access the full version of the Code, you can obtain it at: <http://www.cabinetoffice.gov.uk/regulation/consultation/code/index.asp>

The consultation criteria

- 1) Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- 2) Be clear about who may be affected, what questions are being asked, and the timescale for responses.
- 3) Ensure that your consultation is clear, concise and widely accessible.
- 4) Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5) Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- 6) Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you feel that the consultation does not satisfy these criteria, or if you have any complaints about the process, please contact:

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