



HM TREASURY



HM Revenue
& Customs

Taxing remote gambling on a place of consumption basis:

consultation on policy design

April 2012



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Subject of this consultation	Moving to a place of consumption based taxation system for remote gambling.
Scope of this consultation	The consultation concerns design characteristics of the reform.
Who should read this	Operators, gambling software suppliers, advertisers of remote gambling services, trade bodies and all other stakeholders who have an interest in remote gambling taxation.
Duration	The consultation will run from 5 April 2012 to 28 June 2012.
Enquiries	For general enquiries regarding this consultation please contact Mohammed Al-Saffar at HM Treasury on 020 7270 5489, or Mohammed.Al-Saffar@hmtreasury.gsi.gov.uk. For enquiries regarding the technical nature of tax administration and compliance, please contact Katherine Mansfield in HM Revenue & Customs on 0161 827 0308, or Katherine.Mansfield@hmrc.gsi.gov.uk.
How to respond	<p>Responses to this consultation should be sent either by email to: remotegamblingconsultation@hmtreasury.gsi.gov.uk</p> <p>or by post to:</p> <p>Remote gambling consultation Excise and Enterprise Tax Team Business and International Tax Group HM Treasury 1 Horse Guards Road London SW1A 2HQ</p>
Additional ways to be involved	Please contact Mohammed Al-Saffar (contact details above) if you would like to discuss your response.
After the consultation	Considering the responses to this consultation, the Government will take a decision on the design characteristics of the reform and will publish draft legislation for a technical consultation.
Getting to this stage	The consultation document reflects joint analysis carried out by HM Treasury and HM Revenue & Customs. Other departments have been involved as appropriate.
Previous engagement	HM Treasury announced on 18 July 2011 that it would review the case for changing the taxation regime for remote gambling by moving to a place of consumption basis of taxation. The Government sought feedback from industry in autumn 2011. At Budget 2012 the Government announced its intention to proceed with reform.

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Foreword

The popularity of remote gambling has grown and continues to grow significantly. However, despite the UK's sizeable market, strong history of being a leader in gambling provision, and highly reputable regulatory environment, gambling operators face strong incentives to supply to the UK from outside the UK duty regime. Today, only approximately 10 per cent of remote gambling carried out by customers in the UK is subject to UK gambling duties. In addition, an increasing number of other European countries have moved to taxing remote gambling on a place of consumption basis. These developments mean that the current remote gambling taxation regime is no longer appropriate and requires modernisation.

At Budget 2012, the Government announced that it would move to taxing remote gambling on a place of consumption basis. This announcement followed the Treasury's review of the taxation of remote gambling in autumn 2011. Under a place of consumption basis of taxation, an operator will pay tax on gross gambling profits generated from customers in the UK, no matter where in the world the operator itself is located.

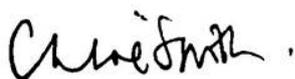
A place of consumption basis of taxation for remote gambling will level the playing field, providing a fairer basis for competition between remote gambling supplied from the UK and overseas.

As profits from non-UK customers will be excluded from the scope of tax, the reform will also enhance the competitiveness of the UK tax system, removing a disincentive for remote gambling businesses to locate in the UK and helping retain existing operators. This supports the Government's ambition of creating the most competitive tax system in the G20, as set out in the Plan for Growth.

The reformed remote gambling tax regime will also improve the sustainability of the UK's tax base by ensuring that remote gambling, alongside other gambling products, makes a fair contribution to public finances. A place of consumption basis of taxation will bring additional public revenues from operators based abroad who supply remote gambling to the UK.

This consultation is seeking views on design characteristics of the planned changes to remote gambling taxation. It presents an opportunity for the industry to work with the Government to ensure that the reformed remote gambling taxation regime works effectively and achieves its objectives.

I hope that interested parties will be able to respond fully to this consultation.



Chloë Smith

Economic Secretary to the Treasury

April 2012

1

The consultation process

About the consultation process

1.1 This consultation is being conducted in accordance with the Tax Consultation Framework. There are five stages to tax policy development:

Stage 1	Setting out objectives and identifying options.
Stage 2	Determining the best option and developing a framework for implementation including detailed policy design.
Stage 3	Drafting legislation to effect the proposed change.
Stage 4	Implementing and monitoring the change.
Stage 5	Reviewing and evaluating the change.

1.2 This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

1.3 A summary of the questions in this consultation is included at Chapter 6. Responses should be sent by 28 June 2012, by e-mail to remotegamblingconsultation@hmtreasury.gsi.gov.uk, or by post to:

Remote gambling consultation
Excise and Enterprise Tax Team
Business and International Tax Group
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ

1.4 Telephone enquiries should be directed to Mohammed Al-Saffar at HM Treasury (HMT), or Katherine Mansfield at HM Revenue & Customs (HMRC):

Mohammed Al-Saffar 020 7270 5489

Katherine Mansfield 0161 827 0308

1.5 Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMT internet site at http://www.hm-treasury.gov.uk/consult_tax_remote_gambling_consumption_basis.htm.

1.6 All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations. If you are willing and able to provide data on the impact of the taxation reform on your business, then please do so. Responses will be shared between HMT and HMRC.

1.7 When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

1.8 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).

1.9 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 HMT or HMRC.

1.10 HMT and HMRC 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.

The Code of Practice on Consultation

1.11 This consultation is being run in accordance with the Code of Practice on Consultation. A copy of the Code of Practice can be found on the Business Innovation and Skills website: <http://www.berr.gov.uk/files/file47158.pdf>. More information can be found in Annex A.

1.12 A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

2

Introduction

Background

2.1 At Budget 2012, the Government announced that it would move to taxing remote gambling on a place of consumption basis. This announcement followed the Treasury's review of the taxation of remote gambling in autumn 2011. As part of the review, the Government sought feedback from the industry on the principles of the reform and this consultation seeks comments on further details of the proposed design characteristics of the regime.

2.2 Under a place of consumption basis of taxation, operators will pay tax on gross gambling profits (the difference between stakes and winnings when gambling against the operator or the charge for using gambling facilities when gambling against other customers) generated from customers in the UK, no matter where in the world the operator itself is located. This is consistent with the approach followed by an increasing number of other European countries which have moved, or are considering moving, to taxing remote gambling on a place of consumption basis.

2.3 Currently, remote gambling activities are subject to UK gambling duties on a place of supply basis. Operators based in the UK pay tax on all of their gross gambling profits, no matter whether their customers are in the UK or abroad. Operators based outside the UK pay no UK tax on their gross gambling profits derived from UK customers.

2.4 The previous Government considered taxing remote gambling on a place of consumption basis as part of the wider consultation on general betting duty in 2000. While a place of consumption based regime was not introduced at that time, the situation today is different. Changes to the regulatory environment, the increase in popularity of remote gambling and the move abroad of large parts of the UK-facing remote gambling industry mean that a transition to a place of consumption basis of taxation has become increasingly necessary.

Policy rationale

2.5 A place of consumption basis of taxation for remote gambling supports the Government's objective of a fairer tax system. Currently, remote gambling operators can avoid paying UK gambling duties by supplying from abroad, whereas remote gambling supplied from the UK is dutiable. A place of consumption basis of taxation will level the playing field providing a fairer basis for competition between remote gambling supplied from the UK and overseas.

2.6 A place of consumption basis of taxation will also help enhance the competitiveness of the UK tax system by excluding from the scope of UK gambling duties any profits from transactions with non-UK customers. This will remove a disincentive for remote gambling businesses to locate in the UK.

2.7 Taxing remote gambling on a place of consumption basis will also help improve the sustainability of the UK's tax base by ensuring that remote gambling, alongside other gambling products, makes a fair contribution to public finances. The reform will bring additional public revenues from operators based abroad who supply remote gambling to the UK.

Scope of this consultation

2.8 Following the review of remote gambling taxation in autumn 2011, the Government has decided to retain the existing gambling duties but to change the basis of taxation of those that have an element of remote gambling (general betting duty, pool betting duty and remote gaming duty) to a place of consumption basis.

2.9 This consultation is seeking views on design characteristics of the changes to the gambling duties required to bring about a place of consumption basis of taxation. The Government welcomes general views on the proposed policy design, and also seeks answers to some specific questions summarised in Chapter 6. The Government also welcomes comments on the summary of impacts provided in Chapter 5.

2.10 The Department for Culture, Media and Sport has already consulted on the regulatory changes to remote gambling and announced the intention to regulate it on a place of consumption basis. This consultation does not seek to address regulatory issues. Tax and regulatory changes will form two separate pieces of legislation. However to ensure the lowest burden for businesses and the integrity of a consumption based duty regime, the intention is for tax and regulatory changes to complement each other and be progressed in tandem.

2.11 All interested parties are encouraged to engage fully with the consultation. The Government will take all responses into account before finalising the policy design and publishing a summary of responses.

3

Design of a place of consumption basis of taxation

Introduction

3.1 This chapter provides an outline of the planned reform to remote gambling taxation, including scope, liability for the gambling duties and transitional arrangements. Questions are posed about specific design characteristics of the duty and changes necessary to bring about the reform of remote gambling taxation.

Scope of a place of consumption basis of taxation

3.2 Remote gambling is usually undertaken over the internet or by telephone. Depending on the type of remote gambling activity, general betting duty, pool betting duty or remote gaming duty is currently charged if the gambling is supplied from the UK.

3.3 The Government will retain the existing gambling duties but move general betting duty, pool betting duty and remote gaming duty to a place of consumption basis of taxation. This will mean that remote gambling provided to customers in the UK will be subject to gambling duties irrespective of whether the operator is in the UK or elsewhere.

3.4 Gaming duty, lottery duty and bingo duty¹ are already either charged on the basis of the location of the customer or charged on gambling which is supplied and consumed in the same place. The same will apply to Machine Games Duty. Hence these duties are not expected to be subject to any further changes.

Question 1: It is envisaged that only the changes necessary to move general betting duty, pool betting duty and remote gaming duty to a place of consumption basis will be made. (i) What, if any, other changes to the existing duty regimes that have not been discussed in this document are required? (ii) Do you have any other comments on the scope or design of the reform?

Question 2: What, if any, specific gambling products (other than those discussed in this consultation document) need special consideration in regards to a move to a place of consumption basis of taxation?

Question 3: Other countries have moved, or are considering moving, to taxing remote gambling on a place of consumption basis. What, if any, lessons from your experience in providing remote gambling to customers in other countries should the UK take into account?

Defining the customer's location

3.5 In order to establish the amount of profits generated from customers in the UK, operators will have to determine the location in which a customer makes a bet or uses facilities for gaming.

3.6 Based on discussions with stakeholders, it is apparent that operators are unlikely to be able to determine the location of a customer with absolute precision in every case. It is therefore

¹ Remote bingo is subject to bingo duty if played in licensed bingo premises. Otherwise it is subject to remote gaming duty.

proposed that operators would be required to take reasonable steps to determine the location of their customers.

3.7 The type of indicator that an operator is expected to use to determine whether a customer is in the UK may include:

- instantaneous tracking technologies (such as IP address tracking, geo-location software on smartphones, mobile phone network etc.);
- verification of customer address or registered payment address as part of “Know Your Customer” arrangements; and
- self-verification.

3.8 Operators will be expected to use any location indicator consistently and to ensure that, where there is a risk that customers may choose to disguise that they are in the UK, measures are in place to mitigate that risk. Any operators failing to effectively verify the location of their customers risk submitting a return containing an error to HMRC, which may result in an inaccuracy penalty.

Question 4: It is proposed that operators will have to take reasonable steps to determine the location of their customers. (i) Do you agree with a ‘reasonableness test’ approach? If not, what alternative solutions would you propose? (ii) Are there any products for which an operator would be unable to make a reasonable attempt to determine whether the customer was in the UK or where it would be unclear when a bet was made or when the facilities were used?

General betting duty

3.9 It is proposed that general betting duty will be charged on a bookmaker’s UK net stake receipts. The UK net stake receipts will be calculated as the difference between the amount the bookmaker is due in stakes from UK customers and the amount it has paid out in winnings to customers who bet in the UK. Bookmakers will continue to be entitled to carry forward losses but only to the extent of their UK net stake receipts.

3.10 For betting exchanges, it is envisaged that exchanges’ commission earned from customers in the UK would be taxed. Thus, where exchanges charge commission from their winning customers, they would be liable to general betting duty if the winning customer placed a bet while in the UK.

3.11 Pool betting on horses and dogs is discussed under “Pool betting duty” below.

Question 5: The proposed arrangements for bookmakers and betting exchanges are outlined in 3.9 and 3.10. What, if any, products or arrangements would require further consideration?

Spread betting

3.12 It is proposed that the taxation of spread betting remains unchanged and continues to be subject to general betting duty if it is supplied from the UK.

3.13 Spread betting is primarily provided to UK customers by firms based in the UK. It is therefore expected that a move to a place of consumption basis of taxation for spread bets would not provide any significant benefit to UK firms. Based on feedback received from stakeholders, any small tax saving could be offset by increased administrative costs and burdens in order to comply with the new regime.

3.14 Furthermore, as only very few foreign firms provide spread betting to UK customers, bringing UK-generated profit of foreign spread betting providers into the scope of general betting duty would not make a material difference to either businesses or the Exchequer.

3.15 Other jurisdictions have not brought in a place of consumption tax for spread betting. Therefore, unlike for fixed-odds betting, there is currently no risk of UK firms being subject to double taxation.

3.16 Spread betting is regulated by the Financial Services Authority. Unlike for other forms of gambling, the regulation of spread betting is not intended to change. Therefore if spread betting were to be included in this reform, it would not be possible for taxation and regulation regimes to support each other.

Question 6: Do you agree that spread betting should continue to be liable to general betting duty on a place of supply basis?

Pool betting duty

3.17 Under a place of consumption approach to taxation, the basis for calculating dutiable net pool betting receipts would be the difference between pool bets received from UK customers and winnings paid out in respect of those pool bets. However, based on initial feedback from industry, this approach may lead to:

- high levels of volatility in the promoter's duty liability depending on whether the winner of a large pool was in the UK or elsewhere; and
- difficulties in participating in 'international commingling' arrangements, whereby pool betting operators join together to create larger prize funds.

It is therefore understood that more significant changes could be desirable to pool betting duty.

Question 7: Under the new regime, the basis for net pool betting receipts would be the difference between stakes due from, and winnings paid to customers in the UK. (i) Would you support such an approach for traditional pools and/or other products that are subject to pool betting duty? (ii) If not, what other approaches would you propose? (iii) Could you provide further information on your business model relevant to a move to a consumption based taxation regime?

Question 8: It is envisaged that pool betting on horses and dogs will be moved to a place of consumption basis of taxation. (i) If you operate pool betting on horses and dogs, what, if any, issues experienced by pool betting promoters discussed in 3.17 also apply to you? (ii) Should, in your view, pool betting on horses and dogs remain liable to general betting duty or would a revised pool betting duty be more appropriate?

Remote gaming duty

3.18 Under a place of consumption basis of taxation, it is proposed that remote gaming duty will be charged on the provision of facilities for remote gaming to customers in the UK.

3.19 For games against the house (such as roulette, virtual slot machines, etc.) the basis of remote gaming duty will be the difference between the amount that the provider is due in stakes from customers in the UK and the amount that the provider pays out to customers as winnings in respect of those stakes.

3.20 For person to person games, such as poker, the basis of remote gaming duty will be the amount that is paid by people in the UK as entitlement to use facilities. For example, where a payment is made to a provider of facilities from a centrally held 'pot', the provider of facilities

² In addition to traditional pool betting, some other products, where the amount that a successful bettor wins is unknown at the time of making the bet, are brought into scope for pool betting duty. For example, products where a prize may be shared amongst however many people make a winning bet and products where the prize is at the discretion of the promoter or determined by some external factor.

will be liable to duty on the proportion of the payment due from customers in the UK. Where a payment is made from an individual player (e.g. the winning player) the provider will be liable to duty if that player is in the UK.

3.21 Where more than one person is engaged in the provision of gaming (e.g. when a provider subscribes to a poker network), the provider will be responsible for the remote gaming duty on all deductions attributable to its UK players whether they are made by the poker network or by the provider themselves.

Question 9: It is proposed that remote gaming duty will be charged on the provision of facilities for remote gaming to customers in the UK. What, if any, products or arrangements exist for which the proposed approach would cause concerns?

Liability for the duty

3.22 Under a place of consumption basis of taxation, it is expected that a person who has primary liability for general betting duty, pool betting duty or remote gaming duty will normally be the same person as the person who is required to hold the remote gambling operating licence.

3.23 Where this is not the same person, the intention is to ensure that the holder of the remote operating licence is also responsible for ensuring the tax compliance of the operation by imposing joint and several liability on remote operating licence holders. As set out in table 3.A, joint and several liability already exists for general betting duty on fixed odds bets. It is envisaged that joint and several liability along these lines would be extended to betting exchanges, pool betting on horses and dogs and pool betting duty to ensure that the licence holder has ultimate responsibility for all aspects of its operation.

Question 10: It is proposed that the licence holder will be made jointly and severally liable to duties on remote gambling. Are there any commercial circumstances in which the licence holder is unaware of dutiable profits and therefore at present is unable to ensure that the right tax is paid?

Table 3.A: Current liability for gambling duties

Gambling duty	Liability for the duty
General betting duty (fixed-odds betting)	<p><i>Primary liability:</i></p> <ul style="list-style-type: none"> The bookmaker (the legal person who receives bets) <p><i>Duty is also recoverable from:</i></p> <ul style="list-style-type: none"> The holder of the regulatory licence on which the betting is reliant A person responsible for the management of the bookmaking business or a director
General betting duty (betting exchanges, pool betting on horses and dogs)	<p><i>Primary liability:</i></p> <ul style="list-style-type: none"> The person who provides facilities for one person to make a bet with another The person who provides facilities for pool betting on horses and dogs
Pool betting duty	<p><i>Primary liability:</i></p> <ul style="list-style-type: none"> The person on whose net pool betting receipts duty is charged (i.e. the person who receives pool betting stakes) <p><i>Duty is also recoverable from:</i></p> <ul style="list-style-type: none"> A person responsible for any business in the course of which dutiable pool bets have been made A person responsible for management of the totalisator If any of the above are companies, then their directors

Remote gaming duty	<p><i>Primary liability:</i></p> <ul style="list-style-type: none"> The person who provides facilities for remote gaming in reliance on a remote operating licence; or who is in breach of the requirement to hold the licence but has at least one piece of their remote gambling equipment based in the UK A person provides facilities for remote gaming by: <ul style="list-style-type: none"> inviting others to participate in gaming in accordance with arrangements made by him providing, operating or administering arrangements for remote gaming participating in the operation or administration of remote gaming by others <p><i>Duty is also recoverable from:</i></p> <ul style="list-style-type: none"> If facilities are provided by a company, its directors
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Question 11: Under the current legislation, a number of people associated with the provision of remote gambling can be liable to gambling duties (see Table 3.A). If you engage in arrangements with others to jointly provide remote gambling to UK customers, do you have (or could you contract for) sufficient certainty as to who would be liable to the duty?

3.24 Gambling supply often involves a number of critical partners (e.g. software providers and affiliates). Where a non-compliant operator accesses the UK market using third party software or through affiliates, these critical partners could become liable to some, or all, of the operator's duty, if they were benefitting (e.g. receiving profits) from the gambling activities of the non-compliant operator.

3.25 Some critical partners may already be in scope for the duty as set out in Table 3.A above. Where this is not the case, it is envisaged that critical partners would only become liable to the duty liability arising after the non-compliant operator's licence is revoked or sometime after receipt of a notice of liability from HMRC.

3.26 If a critical partner were to cease arrangements with the operator on receipt of a notice of liability the critical partner would not be liable to the operator's duty. It is envisaged that if a critical partner became liable to the duty and failed to pay, then it would be subject to the same enforcement actions as would apply to a non-compliant operator. For the critical partner this may result in enforcement against assets, criminal sanctions against directors and managers or, in the case of software suppliers, withdrawal of operating licence. Any decisions made would be linked with the usual safeguards, including the right of appeal.

Question 12: It is envisaged that where a non-compliant operator accesses the UK market using a critical partner, the partner could become liable for future duty. (i) What are your views on this approach? (ii) Which critical partners should this extend to and what arrangements between the principal and its critical partners should be in scope? (iii) To what financial extent should critical partners be liable to a non-compliant operator's future duty? (iv) What notice period would critical partners require before becoming liable for duty?

Transition to a place of consumption based taxation system

3.27 It is envisaged that operators will be required to account for duty on gross gambling profits generated from customers in the UK after the implementation date of the reform.

3.28 Under this approach, where winnings are paid out after the implementation date in respect of stakes received before that date, it will be possible to account for those winnings in the duty calculation. This will ensure that overseas operators do not have an inflated duty liability in the first accounting period after implementation. However, operators will be required to determine

the location of a customer before the implementation date to ensure that winnings can be correctly ascribed to UK customers.

Question 13: It is envisaged that overseas operators will have to account for duty on gross gambling profits generated from UK customers after the implementation date. (i) Do you agree with this approach? (ii) If not, what alternative approaches do you propose? (iii) Are there any circumstances where this approach would not be possible?

Repeal of double taxation relief

3.29 In Finance Bill 2012, the Government is introducing a double taxation relief for remote gambling. This allows UK based gambling providers to claim an amount of relief from UK gambling duties where their gambling transactions are subject to tax in other jurisdictions which have already implemented a place of consumption taxation regime.

3.30 Under a place of consumption basis of taxation, there will no longer be a need for the double taxation relief. It is therefore envisaged that the relief will be repealed when place of consumption changes come into effect. It is envisaged that the last period for which a claimant can obtain relief will be the last accounting period ending after the implementation date for place of consumption changes. It is proposed that there will be a final reconciliation at the end of that accounting period. Upon reconciliation, if the claimant has generated a loss in a jurisdiction in respect of which relief was previously claimed, repayment will be required under the existing 'clawback' arrangements.

Question 14: It is proposed that the double taxation relief for remote gambling will cease upon implementation of a place of consumption basis of taxation. Are there any circumstances under which double taxation relief would still be required?

Question 15: The final reconciliation for the double taxation relief would be conducted at the end of the accounting period ending after the implementation date of a place of consumption basis of taxation. (i) Do you agree with such an approach? (ii) If not, do you have any views on alternative means to ensure that the right amount of relief is claimed?

4

Administration of a place of consumption based taxation regime

Introduction

4.1 This chapter outlines the intended administration of gambling duties under a place of consumption basis of taxation. It covers registration requirements and enforcement issues and asks questions on specific characteristics of the administrative regime.

Filing requirements and accounting periods

4.2 It is envisaged that broadly, only the changes necessary to move general betting duty, pool betting duty and remote gaming duty to a place of consumption basis will be made. Following this consultation and depending on details of the final design characteristics of the reform, a decision will be taken on whether to continue to use the existing HMRC accounting systems or to transition to a new accounting system. This may have implications for a number of administrative matters, including whether to provide an e-registration and e-filing facility and the length of the accounting periods to be used.

Question 16: Do you believe that an electronic registration and electronic filing facility is necessary for a move to a place of consumption basis of taxation? If so, do you have any views on its design?

Question 17: If the reform were to require standardised accounting periods would you have any views as to: i) The most appropriate length for accounting periods? ii) Whether accounting periods should fit with calendar months or have other start and finish dates? iii) The amount of notice you would require before changes to accounting periods were implemented?

Interest and penalties

4.3 A new system could also influence a decision on whether to implement the harmonised interest and late filing and payment penalties for customer failures, e.g. for late submission of returns or late payment. These provide a single set of rules for charging and paying interest and penalties for all taxes and duties³. Any decisions made would be linked with the usual safeguards, including the right of appeal.

Question 18: (i) Do you have any views as to whether harmonised interest and late filing and payment penalties should be introduced for a place of consumption basis of taxation? (ii) How much notice would you require if these were to be introduced?

Registration

4.4 To increase simplicity and administrative ease for businesses, the intention is to create an aligned registration process across general betting duty, pool betting duty and remote gaming duty. This will be modelled on the current registration process for remote gaming duty.

³ For further information please see <http://www.hmrc.gov.uk/agents/compliance/penalties.htm>

4.5 Bookmakers who have notified HMRC of their activity under the current notification process, operators with existing pool betting permits and operators currently registered for remote gaming duty will need to be registered. It is envisaged that some elements of the registration process for these operators may be automatic, subject to meeting registration conditions set out below.

Question 19: It is proposed that an aligned registration process across general betting duty, pool betting duty and remote gaming duty will be created. What, if any, views do you have on its design?

4.6 For operators who supply remote gambling from foreign jurisdictions in which the EU Mutual Assistance in the Recovery of Debt (MARD) directive (or other reciprocal debt collection arrangements) do not apply⁴, registration will be made conditional on the appointment of a jointly and severally liable fiscal representative in the UK.

4.7 As an alternative to appointing a fiscal representative, it is proposed that operators could appoint an administrative representative in the UK who would not be jointly and severally liable to the principal's duty. Operators who appoint an administrative representative will be required to deposit a security with HMRC. The level of security is expected to be equivalent to six months' estimated duty liability.

Question 20: It is envisaged that operators based in jurisdictions without reciprocal debt collection arrangements with the UK will be able to appoint an administrative representative in the UK and deposit a security rather than appointing a jointly and severally liable fiscal representative. Would you expect to take advantage of the facility to appoint an administrative representative?

Validation of earnings

4.8 To ensure tax compliance where the operator is based offshore, HMRC will need to validate the level of earnings an operator generates from customers in the UK. To achieve this, a number of options have been considered.

4.9 One approach is that the operator could be required to provide that information directly to HMRC. Alternatively, where the operator is required to appoint a representative in the UK, HMRC may require the representative to provide access to records and systems. Where no representative is required, HMRC may seek the assistance of the jurisdiction in which the remote operator is based.

Question 21: To ensure tax compliance, HMRC will need to validate the level of earnings an operator generates from customers in the UK. (i) What are your views on effective approaches to validating earnings remotely? (ii) What are the best approaches to supplying transactional information to HMRC?

Enforcement of the duty

4.10 The expected high degree of voluntary compliance with the regime will be supported by an enforcement regime which can be used against those operators who fail to, or who choose not to, comply or pay.

4.11 The intention is to rely on existing civil penalties in most non-compliance cases. However, due to the international and intangible nature of supply, compliance is expected to be upheld by

⁴ MARD currently applies between the UK and the other 26 Member States of the European Union. It does not apply between the UK and British Crown Dependencies and Overseas Territories.

mutual assistance agreements with other countries and, in the most serious cases of non-compliance, new criminal penalties and regulatory enforcement.

Criminal penalty

4.12 Where HMRC believes that general betting duty, pool betting duty or remote gaming duty are at risk of being unpaid, a payment of security will be required whether the operator is based in the UK or elsewhere. Any decision to require security would be accompanied by the statutory right to an independent review of that decision and the right of appeal to an independent tribunal. For cases where an operator who is required to deposit a security fails to do so but continues to supply gambling to UK customers, it is proposed that a new criminal offence is legislated for. This approach is already in force for the purposes of VAT, certain excise duties and environmental taxes.

4.13 The criminal penalty provision would provide compliant operators with better protection from operators targeting the UK market without paying their tax liabilities. It is envisaged that the new criminal penalties would not affect operators who have received HMRC's agreement that payment can be deferred.

Question 22: It is proposed that an operator who is required but fails to deposit a security but continues to supply dutiable transactions to UK customers would be subject to a new criminal offence. Would you support such an approach? Why?

Withdrawal of operating licence

4.14 To ensure the effective enforcement of a place of consumption based taxation regime, where a remote operator fails to meet registration requirements set out above or is in default on its tax liabilities for an extended period of time without agreement from HMRC that payment can be deferred, it is proposed that its operating licence will be withdrawn. It is not expected that an operating licence will be revoked where the grounds for its revocation are under appeal.

4.15 It is proposed that where the remote operator is in default on its tax liabilities, a threshold of two periods of three months' (or one period of six months') default within five years will be set. This approach is in alignment with current provisions on the Horserace Betting Levy.

Question 23: An operator who has been in default on its tax liabilities for two periods of three months within five years, could have its operating licence withdrawn. What are your views on this proposed threshold?

Question 24: A place of consumption based taxation regime for remote gambling will extend to Northern Ireland, even though the Gambling Act does not apply to Northern Ireland. What, if any, specific issues does the taxation of remote gambling provided to customers in Northern Ireland raise which need to be considered as part of the reform?

5

Tax Impact Assessment

Summary of impacts

5.1 This chapter summarises the expected impacts from a move to a place of consumption based taxation regime for remote gambling. The Government would welcome any comments on the assessment of the impacts. Information received during the consultation will be used to refine the analysis of the impacts.

Table 5.B: Summary of Impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	0	0	70	240	270
	<p>These figures (also set out in Table 2.1 of the Budget 2012 document) have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside the Budget.</p> <p>The figures are based on a 15 per cent rate. This is equal to that currently charged under general betting duty, pool betting duty and remote gaming duty. The figures are also based on a 1 December 2014 implementation date. The rate and date will be kept under review following this consultation and confirmation of the legislative timescales for regulatory reform.</p>				
Economic impact	This measure is expected to improve the competitiveness of remote gambling operators based in the UK. The measure is not expected to have other significant economic impact. However, further information is being sought.				
Impact on individuals and households	The impact on individuals and households is expected to be negligible as this measure is not expected to have a significant impact on the availability, price and payouts of remote gambling. Further evidence is being sought in this area.				
Equalities impacts	This measure is not expected to have different impacts on any protected equality groups.				
Impact on business including civil society organisations	<p>The majority of operators offering remote gambling to customers in the UK are based abroad. These companies will become liable to UK duty and consequently face an increase in their administrative burdens and tax liabilities. If these companies are located in a jurisdiction that taxes on a place of supply basis, they will face double taxation.</p> <p>The gambling duties that operators based in the UK currently pay will be changed to a place of consumption basis. This is not expected to result in an increased administrative burden as no new duty is being introduced. Operators based in the UK will no longer pay duty in respect of gross gambling profits generated from non-UK customers.</p> <p>More evidence is being sought on how this change will impact business.</p>				
Other impacts	The measure is not expected to have any other significant impacts.				

5.2 The remote gambling market is relatively young. Gross gambling profits generated from transactions with UK customers have grown significantly in recent years as the market has expanded and developed. Different parts of the market have different characteristics. One

important distinction is between betting products and gaming products (such as casino games, bingo and poker).

Question 25: (i) What are your, or the industry's, estimates of the size of the global remote gambling market for 2011-12? (ii) What has the average market growth rate been in the past? (iii) How is the market projected to grow in the future?

Question 26: (i) How easy is it for new companies to enter the remote gambling market? (ii) What factors are important for companies building their market share in the UK?

Question 27: (i) What are your estimated gross gambling profits generated from providing remote gambling to UK customers for 2011-12? (ii) What is the split between betting and gaming? (iii) How has this split changed over time? (iv) How is it expected to change in the future? (v) What proportion of your global gross gambling profits comes from remote gambling provided to UK customers?

Question 28: (i) Would a move to a place of consumption based taxation system impact business decisions related to investment, company location and whether to offer bets to UK and/or overseas customers? (ii) If so, in what way would these decisions be impacted?

Question 29: (i) What is the profile of an 'average' remote gambling customer? (ii) How does it differ from the traditional forms of gambling? (iii) Is displacement expected from traditional forms of gambling? (iv) How much displacement has been observed in the past?

Question 30: (i) How responsive are customers to relative prices? (ii) What are your overround (profit margin) rates? (iii) What are the average overround rates in the market more generally? (iv) How would the change to remote gambling taxation change your effective tax rate and to what extent would you expect to pass it on to customers? (v) How do you expect customers to respond to this change?

6

Summary of consultation questions

General Questions

6.1 The Government welcomes general views on the proposed policy design, and also seeks answers to some specific questions summarised below.

6.2 The Government also welcomes comments on summary of tax impacts provided in Chapter 5. Information received during the consultation will be used to refine the analysis of the impacts.

Specific Questions

6.3 This consultation seeks answers to the following specific questions:

Scope of a place of consumption basis of taxation

Question 1: It is envisaged that only the changes necessary to move general betting duty, pool betting duty and remote gaming duty to a place of consumption basis will be made. (i) What, if any, other changes to the existing duty regimes that have not been discussed in this document are required? (ii) Do you have any other comments on the scope or design of the reform?

Question 2: What, if any, specific gambling products (other than those discussed in this consultation document) need special consideration in regards to a move to a place of consumption basis of taxation?

Question 3: Other countries have moved, or are considering moving, to taxing remote gambling on a place of consumption basis. What, if any, lessons from your experience in providing remote gambling to customers in other countries should the UK take into account?

Question 4: It is proposed that operators will have to take reasonable steps to determine the location of their customers. (i) Do you agree with a 'reasonableness test' approach? If not, what alternative solutions would you propose? (ii) Are there any products for which an operator would be unable to make a reasonable attempt to determine whether the customer was in the UK or where it would be unclear when a bet was made or when the facilities were used?

Question 5: The proposed arrangements for bookmakers and betting exchanges are outlined in 3.9 and 3.10. What, if any, products or arrangements would require further consideration?

Question 6: Do you agree that spread betting should continue to be liable to general betting duty on a place of supply basis?

Question 7: Under the new regime, the basis for net pool betting receipts would be the difference between stakes due from, and winnings paid to customers in the UK. (i) Would you support such an approach for traditional pools and/or other products that are subject to pool betting duty? (ii) If not, what other approaches would you propose? (iii) Could you provide further information on your business model relevant to a move to a consumption based taxation regime?

Question 8: It is envisaged that pool betting on horses and dogs will be moved to a place of consumption basis of taxation. (i) If you operate pool betting on horses and dogs, what, if any,

issues experienced by pool betting promoters discussed in 3.17 also apply to you? (ii) Should, in your view, pool betting on horses and dogs remain liable to general betting duty or would a revised pool betting duty be more appropriate?

Question 9: It is proposed that remote gaming duty will be charged on the provision of facilities for remote gaming to customers in the UK. What, if any, products or arrangements exist for which the proposed approach would cause concerns?

Liability for the duty

Question 10: It is proposed that the licence holder will be made jointly and severally liable to duties on remote gambling. Are there any commercial circumstances in which the licence holder is unaware of dutiable profits and therefore at present is unable to ensure that the right tax is paid?

Question 11: Under the current legislation, a number of people associated with the provision of remote gambling can be liable to gambling duties (see Table 3.A). If you engage in arrangements with others to jointly provide remote gambling to UK customers, do you have (or could you contract for) sufficient certainty as to who would be liable to the duty?

Question 12: It is envisaged that where a non-compliant operator accesses the UK market using a critical partner, the partner could become liable for future duty. (i) What are your views on this approach? (ii) Which critical partners should this extend to and what arrangements between the principal and its critical partners should be in scope? (iii) To what financial extent should critical partners be liable to a non-compliant operator's future duty? (iv) What notice period would critical partners require before becoming liable for duty?

Transition to a place of consumption based taxation system

Question 13: It is envisaged that overseas operators will have to account for duty on gross gambling profits generated from UK customers after the implementation date. (i) Do you agree with this approach? (ii) If not, what alternative approaches do you propose? (iii) Are there any circumstances where this approach would not be possible?

Repeal of double taxation relief

Question 14: It is proposed that the double taxation relief for remote gambling will cease upon implementation of a place of consumption basis of taxation. Are there any circumstances under which double taxation relief would still be required?

Question 15: The final reconciliation for the double taxation relief would be conducted at the end of the accounting period ending after the implementation date of a place of consumption basis of taxation. (i) Do you agree with such an approach? (ii) If not, do you have any views on alternative means to ensure that the right amount of relief is claimed?

Filing requirements and accounting periods

Question 16: Do you believe that an electronic registration and electronic filing facility is necessary for a move to a place of consumption basis of taxation? If so, do you have any views on its design?

Question 17: If the reform were to require standardised accounting periods would you have any views as to: i) The most appropriate length for accounting periods? ii) Whether accounting periods should fit with calendar months or have other start and finish dates? iii) The amount of notice you would require before changes to accounting periods were implemented?

Question 18: (i) Do you have any views as to whether harmonised interest and late filing and payment penalties should be introduced for a place of consumption basis of taxation? (ii) How much notice would you require if these were to be introduced?

Registration

Question 19: It is proposed that an aligned registration process across general betting duty, pool betting duty and remote gaming duty will be created. What, if any, views do you have on its design?

Question 20: It is envisaged that operators based in jurisdictions without reciprocal debt collection arrangements with the UK will be able to appoint an administrative representative in the UK and deposit a security rather than appointing a jointly and severally liable fiscal representative. Would you expect to take advantage of the facility to appoint an administrative representative?

Validation of earnings

Question 21: To ensure tax compliance, HMRC will need to validate the level of earnings an operator generates from customers in the UK. (i) What are your views on effective approaches to validating earnings remotely? (ii) What are the best approaches to supplying transactional information to HMRC?

Enforcement of the duty

Question 22: It is proposed that an operator who is required but fails to deposit a security but continues to supply dutiable transactions to UK customers would be subject to a new criminal offence. Would you support such an approach? Why?

Question 23: An operator who has been in default on its tax liabilities for two periods of three months within five years, could have its operating licence withdrawn. What are your views on this proposed threshold?

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Tax Impact Assessment

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A

The Code of Practice on Consultation

About the consultation process

A.1 This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

A.2 When to consult – Formal consultation should take place at a stage when there is scope to influence the policy outcome.

- 1 Duration of consultation exercises – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- 2 Clarity of scope and impact – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- 3 Accessibility of consultation exercise – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- 4 The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- 5 Responsiveness of consultation exercises – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- 6 Capacity to consult – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A.3 If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Amy Burgess, Consultation Coordinator, Budget & Finance Bill Coordination Group, Central Policy, HM Revenue & Customs, 1/73, 100 Parliament Street, London, SW1A 2BQ

e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

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This document can be found in full on our website: <http://www.hm-treasury.gov.uk>

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