

RIA for a new duty of excise called 'Remote Gaming Duty'

Issue and background

1. The United Kingdom currently has 6 duty regimes for gambling:
 - General Betting Duty applies to bets made with bookmakers, betting exchanges and the Tote;
 - Pool Betting Duty applies to the football pools and fantasy football competitions;
 - Gaming Duty applies to casino games played on licenced premises;
 - Amusement Machine License Duty taxes dutiable amusement and gaming machines;
 - Bingo Duty applies to commercial bingo; and
 - Lottery Duty is paid by the National Lottery.

2. At present, it is legal for a citizen of the United Kingdom to access, and play, remote gaming. Remote gaming operators provide the opportunity to participate in games of chance for a prize by means of remote communication e.g the internet, television, or mobile telephone. However, it is illegal for a remote gaming operator to locate in the United Kingdom and over 90% of online gaming operators are located in the tax havens of: Kahnawake, Antigua and Barbuda, Costa Rica, Netherland Antilles and Gibraltar. Remote gaming is, therefore, currently outside the scope of the UK's gambling tax regime. The scope of existing gaming duty is limited to premises based gaming in the United Kingdom.

3. The Gambling Act 2005 will make it legal for a remote gaming operator to locate in Great Britain, and be regulated under UK jurisdiction, for the first time. This policy is handled by the Department for Culture, Media and Sport. The Appointed Day Order which will bring the Gambling Act 2005 into force has not yet been made, but it is expected that remote gaming operators will be able to locate in Great Britain (The Gambling Act 2005 does not apply to Northern Ireland) from September 2007. Before they can do so an operator will need to apply for, and be granted, a remote operating licence from the Gambling Commission. The Gambling Commission is a Non-Departmental Public Body, sponsored by the Department for Culture, Media and Sport¹.

¹ It has taken over the role previously played by the Gaming Board for Great Britain in regulating casinos, bingo, gaming machines and lotteries. In addition, from 2007 it will have responsibility for the regulation of betting and remote gambling.

4. The PBR 2005 announced that ‘following the Gambling Act’s provision for remote gaming licences to be offered in the UK, remote gaming will be brought within the scope of gambling taxation’. The Government’s chosen option is to create a new duty of excise known as ‘Remote Gaming Duty’.

5. Budget 2006, built on the PBR 2005 announcement, by explaining that ‘the Government has decided to defer detailed announcements on the taxation of remote gaming until the tax regime is implemented in Budget 2007, so that the tax system can reflect detailed regulations for the sector being developed by the Gambling Commission’.

Objective

6. The main objective of the Government’s chosen option is to ensure that remote gaming, a major form of commercial gambling activity, is within the scope of gambling taxation once it becomes legal for a remote gaming operator to locate in, and be regulated under, the jurisdiction of Great Britain.

7. The Finance Bill 2007 will, therefore, provide for all remote gaming operators to be registered for remote gaming duty if they hold a remote operating licence in Great Britain, authorising the licensee to provide remote gaming, and if the remote gaming activity is not already liable to one or specifically excluded from one of the existing gambling duties. The Finance Bill 2007 will not impose any further conditions other than those necessary to capture the illegal provision of remote gaming in Great Britain and in Northern Ireland².

Options

8. The Government considered three tax responses to the changes made by the Gambling Act 2005 that will make it legal for a remote gaming operator to locate in Great Britain, and be regulated under UK jurisdiction, for the first time:

A: Do nothing

B: Extend the scope of the existing gaming duty regime to capture remote gaming activity on the net receipts (payments received minus winnings paid out).

C: Create a new duty of excise known as ‘remote gaming duty’ on the net receipts (payments received minus winnings paid out).

9. Option B could not be pursued as a realistic option. Existing gaming duty, which is applied to the 21 casino games explicitly listed in the Finance

² The Gambling Act 2005 applies only to Great Britain and makes no provision for the licensing of remote gaming in Northern Ireland, where gambling is regulated under the Betting, Gaming, Lotteries and Amusements Order 1985.

Act 1997, and played on bricks and mortar premises, is a banded structure of taxation with the top band of 40% applying to any casino with a gross profit from gaming in excess of £2,124,000. This structure would be totally inappropriate for a UK online gaming market. Online gaming is not premises based, it offers games that when taken out of their premises based form and offered remotely are very hard to define, and it is worth an estimated £450 million in 2005, of which single sites can account for up to 1/6th.

Issues of equity and fairness

10. The 'do nothing' option would create the potential for a commercial gambling activity to be offered from the United Kingdom, without being subject to gambling taxation of any sort. This would create inequity with our treatment of other forms of betting, gaming and lotteries which fall within one of the existing six duty regimes for gambling activities.

Identify the benefits

Option A:

11. The 'do nothing' option would have no administrative cost to either the industry or to the Government.

Option C:

12. A new duty of excise, known as remote gaming duty, would ensure that all commercial gambling activities offered under licence by the Gambling Commission were subject to UK gambling taxation. This also reduces the incentive for providers of gambling to manipulate their offerings to the customer in order to make them fit tax free forms of gambling.

13. A tax on net receipts is in line with our treatment of betting.

Business sectors and groups affected

Option C:

14. We estimate that there are around 1,700 firms operating in the remote gaming market. On simple economic grounds, the firms most likely to move to Great Britain and pay the new remote gaming duty are the smaller providers. To see why this is the case, consider the example of the Isle of Man, home of 5 online gaming sites.

15. In the Isle of Man the licence fee is £35 thousand per annum. The table below shows the marginal tax rate that is paid on gross gaming yield between specified bands.

Gross Gaming Yield	Tax Rate
Up to £20 million	1.5%
£20million - £40million	0.5%
Over £40 million	0.1%

16. Therefore, a firm with a gross gaming yield of £50,000 will pay £750 in tax and £35,000 in the form of licence fee. This equates to an effective rate of payment to government (tax and the licence fee) of 71.5%. However, a firm making £500,000 gross gaming yield will pay £7,500 in tax and £35,000 in the form of a licence fee. This equates to an effective rate of payment to government (tax and the licence fee) of just 8.5%.

17. In summary, at very low levels of gross gaming yield, the effective rate of payment to government is high in the Isle of Man, but as gross gaming yield rises, it drops sharply because tax on gross gaming yield is such a small part of the cost of locating in the Isle of Man. Tax on gross gaming yield is a small part of the cost of locating in all of the tax havens for remote gaming. It may, therefore, be easier for Great Britain to attract the smaller providers to its shores³.

18. In addition, the prospect of being regulated by the Gambling Commission is likely to be more attractive to UK facing firms than to firms where the UK makes up a smaller portion of their customer base. There may be revenue benefits accruing to UK facing firms that choose to be regulated in and pay UK tax. In particular being regulated by the UK may make the operation more attractive to customers, particularly those in the UK, and so increase revenues. Again, most research has concluded that the benefits of being regulated by the UK will be greater for smaller firms since larger firms typically have established reputations that do not rely on being in the UK.

Identify the costs

Option A:

19. The 'do nothing' option would have no administrative cost to either the industry or to the Government.

Option C:

20. Those businesses that choose to relocate to the UK will have to register and account for remote gaming duty on their net receipts from remote gaming. They will, therefore, incur an initial cost from registering with HMRC – learning new rules, upgrading software, filling out the application form, staff training etc. Businesses will also experience an ongoing compliance cost of completing quarterly remote gaming duty returns.

³ This is before taking into account the benefits of other remote gaming tax “breaks” in off shore jurisdictions e.g. Corporation tax at 0% (provided the site does not accept bets from Isle of Man residents), zero rate of income tax for employees of e-gaming companies etc.

21. The registration form, based on an assumption of 17 data requirements, is estimated to take 45 minutes for firms with 10 or more employees and 40 minutes for firms with less. The returns form, to be completed quarterly and containing 6 data requirements, is thought to take 115 minutes to compile the information and complete the return.

22. According to the standard cost model, which identifies firms by number of employees, completing these forms will have different costs for different sized firms.

Firm Size (no of employees)	Registration Admin Burden	Return Admin Burden⁴	Total Admin Burden (registration and returns)
Nano (0)	£7.93	£129.85	£137.78
Micro (1-9)	£15.75	£129.85	£145.59
Small (10-49)	£15.03	£129.85	£144.87
Medium (50-249)	£14.94	£129.82	£144.75
Large (250 +)	£14.94	£129.82	£144.75

23. The cost of completing returns forms is higher than the cost of registration, despite containing a lower number of data requirements, due to the nature of the information required. Whilst a registration form may require information on locations and key representatives, a returns form requires more complicated financial data so is assumed to take longer and cost more.

Public Consultation

24. We have, for some time, been consulting the industry's trade body on various aspects of this change. The industry was generally receptive and understood the need for a new remote gaming tax in light of the changes made by the Gambling Act 2005.

25. We are exposing the draft legislation on remote gaming duty for comment alongside this draft Regulatory Impact Assessment. We have specifically asked the industry's trade body, the Remote Gambling Association, to comment on the technical details of the draft legislation to ensure that it will work as intended. We hope that the responses we receive will help us to confirm that the draft legislation provides the necessary framework for the fulfilment of our policy objective i.e the collection of remote gaming duty on the net receipts from remote gaming of all those who are liable to hold a remote operating licence for the provision of that gaming.

26. Since we are not asking for comments on policy we have not sent out copies of the draft legislation beyond the industry and its close contacts. We have, however, posted the draft legislation, condoc and the RIA on HMRC's Internet site. We will take all responses into account.

⁴ Figures are for one firm over one year.

Consultation within Government

27. We have been in close dialogue with officials from the Department of Culture, Media and Sport about aligning with the operating licence regime for remote gaming.

Small Firms Impact Test

28. We been liaising with the Remote Gambling Association, who represent most of the remote gaming firms that have a UK interest, for some time. Many of the firms in the remote industry can be regarded as small firms because the structure of the industry means that high revenues can be generated from a relatively small work force. Earnings per employee are generally in the region of £500k. This may change as firms increasingly bring outsourced functions in house. As previously mentioned, the 'pure' economic benefits of moving to the UK are likely to be greater for small firms.

Competition Assessment

29. The competition filter test has been applied.

The Market

30. Applying the Office of Fair Trading definitions of a market⁵ the relevant market is the world wide remote gaming market because consumers can, through the internet, access suppliers anywhere in the world while suppliers can easily move their point of supply from one country to another.

31. The largest firm had almost 20% of the market in 2005, and the next largest firms have less than 5%. This means that the largest firms do not have a majority of the market. Recent developments in the US are likely to affect market concentration. In the short term we expect this will reduce concentration in the market as operators divest themselves of US facing business but in the long run it may make the market more concentrated as operators seek to gain a larger and larger share of the market to the rest of the world. In fact network externalities in many parts of remote gaming, such as in poker, mean that the industry could be a natural oligopoly.

32. The costs of complying with the remote gaming duty regime should affect all firms equally, whether large or small. The regulation is not, therefore, expected to have any significant effect on the market structure. Moreover, the regulation will have the same set up costs for new and existing firms since it is an entirely new tax regime and thus there are no incumbent firms to be favoured.

33. This is a sector characterised by rapid technological change. Registration for remote gaming duty will not restrict the development of technological change nor restrict the price, quality or range of products offered.

Enforcement, Sanctions and Monitoring

34. Businesses must register for, and account for, remote gaming duty themselves. As with other duties of Excise, Remote Gaming Duty will be administered, and enforced, by HM Revenue and Customs. Businesses will make periodic returns for Remote Gaming Duty and there will be a range of penalties and interest charges for when businesses fail to make declarations, make declarations in error, or fail to make them on time. There are also sanctions relating to late or non-payment. These sanctions will be based on those for existing duties of Excise.

Implementation and delivery plan

35. Once the Gambling Act 2005 comes into force, businesses regulated by the Gambling Commission and providing remote gaming must obtain an operating licence issued by the Gambling Commission. Holding a licence, whether or not the business is based in Great Britain, will mean that the business must register for Remote Gaming duty.

36. The primary legislation for Remote Gaming Duty will be contained within the Finance Bill 2007, most of which will come into force on Royal Assent. However, the secondary law and regulations for Remote Gaming duty are intended to come into force at the same time as the Gambling Act 2005 (expected to be September 2007).

37. There is a plan in place to ensure that HMRC systems will be capable of administering the regime, and HMRC officers will have the necessary training to enforce the regime, in time for the Remote Gaming Duty coming into effect.

Post Implementation Plan

38. In line with Government commitments to reduce the compliance burdens that are placed on businesses, HM Revenue & Customs (HMRC) assesses the likely change in compliance costs whenever a policy is introduced or changed. The results of that analysis are published in a final Regulatory Impact Assessment when the legislation is laid before Parliament. This document is a partial RIA for your comment alongside the draft legislation.

39. There will be, also in line with Government practice, a post implementation review of the final RIA on Remote Gaming Duty.