

NOTICE 456

DOUBLE TAXATION RELIEF FOR GAMBLING DUTIES

1. INTRODUCTION

1.1 Background

Double taxation relief (DTR) provides relief from double taxation for general betting duty (GBD), pool betting duty (PBD) and remote gaming duty (RGD) in certain circumstances where tax has been paid in another country on the same remote gambling transactions. It is intended that DTR will come into force for accounting periods ending on or after 1st April 2012; however, it will only be possible to put in claims once Finance Bill 2012 has received Royal Assent and the relevant provisions have been commenced.

1.2 What is this notice about?

This notice sets out our current policy on DTR. It also (at Annex A) lists the qualifying foreign taxes which will be specified by HMRC for the purposes of the relief in a notice published by them having the force of law.

The list at Annex A will only have legal effect when it is contained in the notice published under the legislation once it has come into force. Until that point Annex A should be taken to represent HMRC's intention only.

2. DOUBLE TAXATION RELIEF (DTR): OUTLINE

2.1 What is double taxation relief?

Double taxation relief (DTR) is available where a person is liable to pay a UK gambling duty and has paid a qualifying foreign tax for the same remote gambling transactions.

2.2 Which UK gambling duties are eligible the relief?

General betting duty (GBD), pool betting duty (PBD) and remote gaming duty (RGD).

2.3 What is a qualifying foreign tax? It is a foreign tax specified in a notice published by the Commissioners for Her Majesty's Revenue and Customs (HMRC) under the new legislation.

2.4 Where can I find the list of qualifying foreign taxes?

They are listed on a contingent basis in Annex A at the end of this notice.

2.5 Can I claim DTR for a tax not on the list of qualifying foreign taxes?

No.

2.6 How do I ask HMRC to add to the list of qualifying foreign taxes?

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You may make a case to HMRC that a foreign tax should be included on the list of qualifying foreign taxes. Cases must be made in writing and include suitable background information and an English language copy of the relevant law.

HMRC will consider cases against the conditions set out in the new section 10A of The Betting and Gaming Duties Act, 1981 which defines “qualifying foreign tax”. They will only include a foreign tax where it meets that definition.

HMRC has the power to update the Notice of qualifying taxes with retrospective effect, meaning that any relevant DTR claims could be backdated to 1 April 2012 once we are satisfied that this complies with the new section 10A.

3. APPLICATIONS FOR AND CALCULATION OF DTR

3.1 How do I claim DTR?

You need to make a separate claim on form DTR 100 Gambling Duties: Double Taxation Relief for each of the following duties against which you wish to claim DTR:

- GBD on fixed-odds bets;
- GBD on pool bets on horses and dogs;
- GBD on financial spread bets;
- GBD on other spread bets;
- GBD as a betting exchange;
- PBD
- RGD

You also need to make a separate claim for each (non-UK) territory for which you are claiming DTR.

Example:

A bookmaker in the UK provides fixed-odds bets and ‘other’ spread bets to both country A and country B and incurs double taxation on the same transactions in both countries. This would result in four separate claims, as follows:

- Fixed-odds bets in country A;
- ‘Other’ spread bets in country A;
- Fixed-odds bets in country B; and
- ‘Other’ spread-bets in country B.

3.2 Are there circumstances when you will not grant relief?

Yes. HMRC will not accept a claim for relief if you have certain gambling duty returns outstanding.

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3.3 How much DTR will I receive?

For each claim, the amount you are entitled to receive will be the lower of the notional UK liability and the notional foreign liability. Your total repayments against a UK duty cannot exceed the amount of duty that you have actually paid.

3.4 What is notional UK liability?

It is the amount of UK duty you would be liable to pay, if the remote gambling transactions included in your claim took place wholly within the UK.

3.5 How do I calculate notional UK liability for the purpose of the DTR?

Use the same UK tax rate and basis of calculation that you use for UK-the relevant UK gambling duty.

Example:

A bookmaker in the UK accepts fixed-odds bets from customers in country A:

Received stakes = €1m

Minus winnings paid out = €900k

Total net stake receipts = €100k

Notional UK liability: (Net stake receipts x UK GBD) = €100k x 15% = €15k.

3.6 What is notional foreign liability?

It is the amount of qualifying foreign duty you would be liable to pay, if the remote gambling transactions included in the claim took place wholly within the foreign territory.

You must report your stakes, prizes and gross profits separately for each qualifying foreign duty (however, if two or more qualifying foreign duties share both the same rate and basis of calculation you may report them as if they were the same duty).

Example:

If foreign country 'B' charges (a) a 2% tax on stakes for bets on football and (b) a 20% tax on profits for bets on other sports, then both (a) and (b) should be reported separately in claiming DTR.

3.7 How do I calculate notional foreign liability for the purpose of DTR?

Use the same foreign duty rate and basis of calculation that you use for transactions liable to foreign duties.

Example:

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A bookmaker in the UK accepts both football bets and other sporting bets from customers in 'B'. The notional foreign liability must be calculated separately for football bets and sporting bets:

Football bets:

Received stakes = €300k
Minus winnings paid out = €250k
Total net stake receipts = €50k (gross profit for football bets)

[Note that the above two lines are included for completeness only and are not required to calculate notional foreign liability.]

Notional foreign liability = €300k x 2% duty = €6k.

Other sporting bets:

Received stakes = €700k
Minus winnings paid out = €650k
Total net stake receipts = €50k (gross profit for sporting bets)

Notional foreign liability = €50k x 20% duty = €10k.

€6k + €10k = €16k - Total notional foreign liability for the accounting period

3.8 Do I need to make periodic reconciliations?

Yes. A reconciliation period for DTR claims is:

- 4 quarterly accounting periods,
- 12 monthly accounting periods; or
- As close as possible to 365 days - made up of non-standard accounting periods.

The reconciliation period starts with the first accounting period in which you are eligible to claim DTR.

3.9 How do I treat losses in calculating notional UK liability?

When can I carry forward losses?

You must carry forward any losses from previous accounting periods, for the purposes of calculating notional UK liability.

Example:

If the bookmaker in the above example had generated negative net stake receipts of €60k on fixed-odds bets in country A in the previous accounting period, this loss may be carried forward and deducted from future profit.

Received stakes = €1m
Minus winnings paid out = €900k
Total net stake receipts = €100k

Losses carried forward from previous accounting period = €60k

Balance for Duty Calculation = €40k

Notional UK liability: (Balance for Duty Calculation x UK GBD) = €40k x 15% = €6k.

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3.10 Are there circumstances when losses cannot be carried forward for the purposes of calculating notional UK liability?

You may not carry forward losses for the purposes of calculating notional UK liability:

- When making your first DTR claim, (ie you cannot carry forward any losses into the first accounting period); or
- from one reconciliation period to the next.

3.11 How do I treat losses in calculating notional foreign liability?

You must carry forward any losses from the previous accounting period within your claim, providing the foreign territory allows this.

When making a claim, you may not carry forward losses into the first accounting period, or from one reconciliation period to the next.

3.12 How should I treat losses from the preceding period when calculating both the Notional UK Liability and the Notional Foreign Liability in the current period?

Please see example. We have assumed that the foreign territory does not allow for losses to be carried forward for bets on football (where the territory taxes stakes), but does allow losses to be carried forward for other bets (where it taxes profits).

Notional UK Liability		
	Preceding period	Current period
Total stakes	€500k	€1m
Total prizes	€560k	€900k
Net receipts	-€60k	€100k
Losses carried forwards	€0	€60k
Balance for duty calculation	-€60k	€40k
UK duty rate	15%	15%
Notional UK Liability	€0	€6k

Notional Foreign Liability				
	Preceding period		Current period	
Foreign tax	Football Bets	Other Bets	Football Bets	Other Bets
Rate and basis	2% of stakes	20% of profits	2% of stakes	20% of profits
Stakes	€100k	€400k	€300k	€700k
Prizes	€120k	€440k	€250k	€650k
Net receipts	-€20k	-€40k	€50k	€50k
Losses carried forwards	N/A	€0	N/A	€40k

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forwards					
Balance for duty calculation	N/A	-€40k		N/A	€10k
Notional Foreign Liability	€2k	€0		€6k	€2k
Total Notional Foreign Liability	€2k			€8k	

3.13 Are there circumstances in which you will clawback DTR given?

Yes

If you make a claim within a reconciliation period and, at the end of the reconciliation period, would carry forward a loss to the following accounting period because your balance for duty calculation was negative, you must repay some, or all of, the amount claimed in the reconciliation period.

3.14 How much would I have to repay?

The lower of:

- The effective UK duty on the loss that would otherwise be carried forward;
- The sum of repayments made to you during the reconciliation period (in respect of that claim);
- If the foreign duty is calculated on the basis of net receipts, the effective foreign duty on the loss that would be carried forward.

Example:

A UK bookmaker receives bets from customers in Country 'C'. The bookmaker is liable to pay General Betting Duty (GBD) at 15% on these bets. Country 'C' also taxes the bookmaker at 20% of net stakes on the same bets. Country 'C' allows losses to be carried forward.

The profit figures shown below are those profits generated from transactions with customers in 'C' (eligible bets).

	Q1	Q2	Q3	Q4
Profit	€100k	-€50k	€100k	-€50k
Balance for duty calculation	€100k	-€50k	€50k	-€50k
Notional foreign liability	€20k	€0k	€10k	€0k
Notional UK liability	€15k	€0k	€7.5k	€0k
Repayment	€15k	€0k	€7.5k	€0k

Note that the loss in Q2 reduces the notional foreign liability and the notional UK liability in Q3, as losses are carried forward in both territories.

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The negative balance for duty calculation in Q4 means that the clawback provisions apply. The bookmaker is required to repay the lower of the following three amounts:

- a) UK duty on the loss = $15\% \times \text{€}50\text{k} = \text{€}7.5\text{k}$
- b) The sum of repayments made during the reconciliation period = $\text{€}15\text{k} + \text{€}7.5\text{k} = \text{€}22.5\text{k}$
- c) Foreign duty on the loss (this does apply as the foreign duty is calculated on the basis of net receipts) = $20\% \times \text{€}50\text{k} = \text{€}10\text{k}$

So in this case the claimant would be expected to repay €7.5k and the loss of €50k would not carry forward into the following quarter in either the UK or the foreign calculations.

Note that the total profit generated from these transactions in Qs 1-4 is 100 and the total relief given is €15k (after clawback). Therefore the sum total of relief claimed would be the bookmaker's duty contribution from these transactions.

3.15 Are there other circumstances in which I may have to repay relief?

Yes, if;

- you have made an error
- the foreign tax changes retrospectively;
- you are given a refund on foreign tax paid; or
- as a result of being liable to pay an amount of qualifying foreign tax you or a connected person is entitled to any kind of tax deduction or relief calculated by reference to the amount of qualifying foreign tax.

In any of these circumstances, you must notify HMRC and re-calculate your relief claim.

4. FURTHER INFORMATION ON MAKING A CLAIM

4.1 When can I submit a claim?

You must make a claim within one year from the end of the accounting period where the double tax liability occurs. You can only make a relevant claim for a prescribed accounting period.

4.2 What sort of documentary evidence do I need to submit to back up my claims?

You must submit your claim on form DTR 100 Gambling Duties: Double Taxation Relief together with evidence:

- of payment of a qualifying tax to an overseas territory, for dutiable transactions in the UK;
- of UK duty paid for each class of transaction with customers in the overseas territory;

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- covering the whole period of the claim;
- of stakes received for a class of bet in an overseas territory; and
- of winnings paid out on a class of bet in an overseas territory.

4.3 How long will it take to process my claim?

If we are satisfied with the evidence provided, we will aim to process your claim within a month from its receipt.

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Annex A

QUALIFYING FOREIGN TAXES

This Notice is published by the Commissioners for Her Majesty's Revenue and Customs for the purposes of sections 10A and 26IB¹ of the Betting and Gaming Duties Act 1981 (BGDA) and as such has the force of law.

The following are specified as qualifying foreign taxes² for the purposes of double taxation relief within the meaning of sections 8ZA and 26IA³ of the BGDA.

General Betting Duty

Denmark:

Betting duty - *Vaeddemaal Told* (20% of gross profit)

France:

Bets on horses - *Prélèvement sur les paris hippiques* (4.6% of stakes)

Other sports bets - *Prélèvement sur les paris sportifs* (5.7% of stakes)

Greece:

The Greek State's share of revenues - *Το ελληνικό κράτος μερίδιο των εσόδων* (30% of gross profit)

Italy:

Single and multiple bets up to 7 events (2%-3% of stakes) – *Le scommesse a quota fissa, ciascuna scommessa composta fino a sette eventi*

Multiple bets on more than 7 events (5%-8% of stakes) - *Le scommesse a quota fissa, ciascuna scommessa composta da piu' di sette eventi*

Spain:

¹ Sections 10A and 26IB were inserted respectively by paragraphs 4 and 5 of Schedule XX to the Finance Act 2012.

² Qualifying foreign tax has the meaning given by section 10A or 26IB of the Act (definition of qualifying foreign tax) as appropriate;

³ Sections 8ZA and 26IA were inserted respectively by paragraphs 3 and 5 of Schedule XX to the Finance Act 2012.

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Sporting bets against the bookmaker – *Apuestas deportivas de contrapartida* (25% of gross profit)

Horseracing bets against the bookmaker - *Apuestas hípcas de contrapartida* (25% of gross profit)

Other bets against the bookmaker - *Otras apuestas de contrapartida* (25% of gross profit)

Betting exchanges (commission on sporting bets) – *Apuestas deportivas cruzadas* (25% of commission charges)

Betting exchanges (commission on other bets) - *Otras apuestas cruzadas* (25% of commission charges)

Sporting pool bets – *Apuestas deportivas mutuas* (22% of stakes)

Horseracing pool bets - *Apuestas hípcas mutuas* (15% of stakes)

Pool Betting Duty

Denmark:

Pool betting duty - *Pool Vaeddemaal Told* (11%-30% of gross profits)

France:

Bets on horses - *Prélèvement sur les paris hippiques* (4.6% of stakes)

Other sports bets - *Prélèvement sur les paris sportifs* (5.7% of stakes)

Greece:

The Greek State's share of revenues - *To ελληνικό κράτος μερίδιο των εσόδων* (30% of gross profits)

Italy:

Totalisator betting - *Scommesse a totalizzatore su eventi diversi dalle corse dei Cavalli* (20% of stakes)

Spain:

Sporting pool bets – *Apuestas deportivas mutuas* (22% of stakes)

Other pool bets - *Otras apuestas mutuas* (15% of stakes)

Remote Gaming Duty

Denmark:

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Gaming duty pursuant to section 11 of law 203 of 26 March 2009 (20% of gross profit)

Fjernliggende gaming Told

France:

Person-to-person gaming - *Prélèvement sur les jeux de cercle* (1.8% of stakes)

Greece:

The Greek State's share of revenues - *Το ελληνικό κράτος μερίδιο των εσόδων* (30% of gross profits)

Italy:

Gaming duty on tournaments – *L'imposta unica sui giochi di abilita' a distanza con vincita in denaro* (3% of stakes)

Gaming duty on other events (20% of gross profits) – *L'imposta unica sui giochi di carte a distanza, organizzati in forma diversa del torneo; sui giochi di sorte a quota fissa a distanza con vincita in denaro, con esclusione del gioco del lotto e dei suoi giochi complementari*

Spain:

Competitions – *Concursos* (20% of stakes)

Raffles – *Rifas* (20% of stakes)

Other gaming - *Otros juegos* (25% of profits)