

HM Treasury Consultation

Consultation response from The Bingo Association on the 'Taxation of Remote Gambling on a Consumption Basis: consultation on policy design

28th June 2012

The Bingo Association is the trade association of the licensed bingo industry in Great Britain, representing the proprietors of bingo clubs licensed under the Gambling Act 2005. There are 50 proprietors in membership, operating over 200 clubs. Membership profile ranges from the large operators, including Mecca Bingo (98 clubs) to smaller operators like Carlton Leisure (14 clubs) and many single unit businesses.

We are pleased to respond to this consultation on what amounts to an important change to the UK's betting and gambling tax regime. The Bingo Association's members, who support over 13,000 jobs up and down the country, are facing unprecedented challenges at present. Not only are the current economic conditions proving a considerable headwind, our members face competition from offshore online operators who benefit from a modern regulatory regime and much lower tax rates.

The current proposals go some way to address this issue but we are disappointed to learn that contrary to the stated proposition that: "A place of consumption tax for remote gambling will level the playing field..", the proposals will not level the playing field for our members. The current proposals lead to the somewhat peculiar result that a bingo game played in a well-supervised, licensed land based bingo venue is taxed at a punitive rate compared to the same game played in an unsupervised online environment. Such a result seems perverse, and in our view undermines both the objectives of this Government and the Gambling Act 2005.

While we have no objection to a 15% tax rate for remote gambling income, we would take this opportunity to repeat our calls for a cut to the bingo duty rate to 15% to bring it in-line with other betting and gaming products. As we have said in the past, we believe a cut to the rate of tax would have the effect of increasing the amount of tax earned by the Treasury.

As these proposals hand an unfair advantage to our members' competitors, we understand that they could also fall foul of European law. Specifically, these measures could be considered to provide online operators with illegal state aid. Our members find it hard to believe that the Government would deliberately damage the interests of UK companies in preference to their (largely) offshore competitors in this way. However, at present it appears these proposals do just that. A more detailed response to the consultation is set out below.

Scope of a place of consumption basis 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?

The criteria for defining remote gambling would appear to be technology based, which does not make a clear the distinction between genuinely remote (online) activities and those merely making use of similar technologies i.e. those games accessed from non-licensed premises using computers and/or mobile personal devices and activities in licensed land based venues which are simply using a telephone line.

For tax purposes bingo played in land based venues using remote technology is defined as 'combined bingo' under the Betting and Gaming Duties Act 1981 and as such would not fall into the scope of this proposed reform. Bingo played entirely in club pays Bingo Duty (GPT) at 20% of gross profits. If similar activities are not taxed at the same rate this would be considered state aid and in the absence of any objective rationale would be incompatible with European law.

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?

Bingo needs specific consideration in order to ensure that the product is taxed consistently, regardless of the place of consumption within the UK, and to ensure that the revised tax regime does not provide subsidies to one specific method of bingo delivery. Land based bingo is currently taxed at a higher rate than other comparable gambling opportunities and the proposed changes do nothing to address this anomaly.

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?

Our members have little direct experience on this point. However, anecdotal evidence suggests that ensuring that regulatory and tax regimes are harmonised is essential in order to provide consumers and operators with a gambling industry that is well regulated, transparent, appropriately taxed and safe. To consider tax and regulatory issues in parallel, yet separate streams, does not allow a considered, holistic response to the resulting composite regime, under which operators and consumers must interact.

In implementing a coordinated regime consideration of compliance is essential. Without the full co-operation of operators, trade bodies and third party organisations involved in delivery, ensuring adherence will become an onerous, difficult and costly process.

Defining the customers' location

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?

In considering the issue of customer location it is not clear whether the current proposals would seek to establish the location of a customer at the time of undertaking a gambling transaction or their place of ordinary residence. Equally the current proposal provides no definition of a 'gambling transaction', which requires the following stages to take place:

- a) depositing funds,
- b) placing the instruction to gamble,
- c) the activity taking place,
- d) the results being announced.

The current proposed 'reasonable' steps that operators will be required to undertake in order to determine the location of a customer are not definitive and place the onus on operators, who are to a greater extent dependant upon the co-operation of third parties to provide accurate information. While this is supported by the requirement for players to undertake self-verification, which could be made a condition of participation, no single condition has been given priority in 'defining' location in cases where player location is unclear.

Such lack of clarity in defining customer location is ambiguous for all involved and leaves scope for confusion and error, which may result in penalties against an operator. Clear thought should be given to the overarching condition that must be met i.e. ordinarily resident in the UK or physically located in the UK, and a hierarchy of conditions and information to support this, in order to clearly define the issue of player location for the purpose of taxation. Such clear structure and conditions would remove ambiguity for all involved, minimize dispute and ease compliance issues.

General betting duty

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?

No comment

Spread betting

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

No comment

Pool betting

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?

No comment.

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?

No comment

Remote gambling duty

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

The difference between genuine remote gambling and land based activities that use similar technologies or even the telephone, should be clearly stated in order to avoid confusion for all involved.

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?

No comment.

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?

For many UK organisations involved in remote gambling the control would rest with an off-shore operator, in a White List jurisdiction. It would be unreasonable to make a party liable if they were not readily able to enforce issues.

While tax liability should be referenced in the commercial agreement, it would be essential that regulation and compliance issues support this i.e. a condition of White Listing and a condition of any licence to operate or transact with UK customers.

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?

It has already been stated in the consultation that Remote Gambling Duty will be charged 'on the provision of facilities for remote gambling to customers in the UK' and therefore it is essential to clearly define those involved in the provision of facilities rather than merely facilitation. While we would request greater clarity of definition in order to be clear on tax liability, we would not suggest that those involved in facilitation should be absolved of their responsibility to consumers to only establish relationships with compliant parties.

The details given in Table 3A: Current liability for gambling duties, specifically in relation to Remote Gambling Duty, are presently too broad, focusing on tasks rather than scope and ability to control and manage. Of the conditions stated under the second bullet point, the first is not appropriate, as many involved in this task have no direct control over the management and operation of games, nor do many manage the financial aspect of gambling.

There is a wide range of operating models for the provision of online/remote gambling. The liability of each participating party in a model should be appropriate to their level of involvement and scope for control and management of the game/transaction.

A critical partner that ONLY provides technology, making a platform available under a licence agreement, should only be liable for any tax liability directly arising as a result of a failure of the platform to provide accurate player and transactional information for computation and timely payment of tax due. Where a platform has provided this information, then the liability for tax should fall to those directly involved in operating the games.

Those involved in managing and operating games, whether using their own technology platform or that of a third party, assuming that they are compliant and appropriately licensed, should be liable for tax due on the gambling activity that they manage and control. Where a portion of the gambling activity is managed and controlled by a third party, then that third party should be liable for tax due on the portion of the activity that they manage and control.

Those involved in inviting others to participate in gambling in accordance with arrangements made by them, are reliant upon the operating critical partner and critical partner providing the technology. However, the terms of all the agreements used to provide the games to the end user may not be known to all the parties involved and therefore each party should only be liable for the aspects that they control and manage.

The 'principle' in most online/remote gambling models is the party responsible for the primary management and control (operation) of the gambling activity and as such tends to be the holder of a remote operating licence. Their critical partners may include technology providers and a number of companies engaged in the marketing and promotion of the games. As such critical partners should not be liable to a non-compliant operator's future duty.

Encouraging each party to only contract with compliant organisations should be enforced through regulatory issues, which would support the tax position, however, these issues are outside the scope of this consultation.

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?

In setting an implementation date and making operators account for duty on gross gambling profits an appropriate notice period should be set in order to allow operators sufficient time to establish any new key data requirements and collect data, review player terms and meet possible new regulatory requirements.

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?

Our members believe that the legislation should acknowledge the possibility of double taxation and seek to address it.

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?

Our members would prefer quarterly accounting and the ability to apply for non-standard accounting periods.

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?

No comment

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?

No comment

Interest and penalties

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?

No comment

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?

No comment

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?

No comment

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?

No comment

Enforcement of the duty – criminal penalty

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?

No comment

Withdrawal of operating licence

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?

Broadly the conditions for would be appropriate, but in the absence of information on regulatory conditions, the issue of possible enforcement is difficult to assess, as in most instances the current remote licence in place would be granted by a White List jurisdiction.

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?

No comment

Tax Impact Assessment

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?

No comment

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?

No comment

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?

No comment

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?

No comment

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?

No comment

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?

The Bingo Association

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