Addendum to Information Note December 2013

UK Person Guidance

As a result of the Gambling Tax reforms, duty will be charged on the gross gambling profits derived from remote gambling by UK persons. A UK person will be defined, in the case of an individual, as someone who usually lives in the UK. HMRC will have the power to publish statutory guidance about what an operator must do to determine whether a customer is a UK person. The guidance below is an updated draft of what HMRC propose to publish in Notices as statutory guidance. This draft takes account of discussions at the Implementation Group Meeting held on 31 January 2014.

In drafting this guidance HMRC has taken into account the records and accounts that operators are required to keep for regulatory purposes and the systems which operators say they already have in place to minimise the need for new systems and to minimise burdens.

HMRC has also taken into account that operators will wish to have certainty about whether transactions are or are not subject to duty. Provided the guidance is followed, HMRC would not expect to overturn an operator's decision that a customer does or does not live in the UK.

This is subject to the proviso that operators must in all cases take into account all information they have about where a customer lives, and assess it in a fair and reasonable manner. HMRC may wish to audit the systems and processes that an operator uses to determine where a customer lives, and will be concerned if there is evidence of manipulation of data. For example, selectively ignoring information or placing undue weight on particular information over other information.

Proposed statutory guidance

Step 1

Operators must keep appropriate records to enable them to verify whether customers usually live in the UK ('UK persons') or whether they usually live outside the UK. Operators have a responsibility to keep their records on customer location up to date. These records must be capable of audit by HMRC.

All operators should initially require their customers to state the address at which they usually live at the time the customer registers to gamble with the operator. If no address is given the customer will be determined as being a UK person.

When a UK address is given, the customer is determined to be a UK person.

Step 2

If a customer gives a non-UK address, then operators should verify the customer's declared location by reference to other information in their systems (although HMRC are not prescriptive about what this information should be, or how many information items should be collected). It is not acceptable for operators to simply accept assertions from customers about where they live. HMRC expect a robust system to have in-built verification but are not being prescriptive about what that verification has to be.

In cases of a verification system returning a conflicting result with some information indicating the customer is a UK person and other information indicating the contrary, then the following tests should be applied.

Operators should consider the customer's statement that they do not live in the UK against all other information they hold about the customer (for whatever reason it has been collected). If two current pieces of information indicate a UK address then

the customer will be determined to be a UK person regardless of their statement that they live elsewhere. Typical information items will be:

- the customer's address on a bank statement
- the customer's address associated with a credit card
- the customer's address on their driving licence
- a customer's contact telephone number and the country code attaching to it

If any two or more of these information items are known to the operator and they return a result as the UK, then irrespective of whether the customer has provided an address outside the UK, they must treat that customer as a UK person for the purposes of gambling duties taxation. This is known as the 'Two UK Indicators Rule'.

HMRC may also use this test as part of its audit and compliance response to test the robustness of systems