

Gambling Duties: Double Taxation Relief

Who is likely to be affected?

UK Gambling companies offering remote gambling to overseas customers.

General description of the measure

Double taxation relief (DTR) will be introduced for General Betting Duty (GBD), Remote Gaming Duty (RGD) and Pool Betting Duty (PBD).

Policy objective

The measure will enhance the competitiveness of the UK tax system by ensuring that UK based operators do not suffer from double taxation as other countries introduce place of consumption based taxation regimes for remote gambling. By encouraging gambling operators to remain in the UK, the relief protects both tax revenues and jobs in the UK.

Background to the measure

A review of remote gambling taxation was announced in July 2011 and an informal consultation was held with stakeholders following the July announcement.

Detailed proposal

Operative date

The measure will have effect for accounting periods for UK gambling duties ending on or after 1 April 2012.

Current law

GBD, RGD and PBD are provided for in the Betting and Gaming Duties Act 1981.

Proposed revisions

Legislation will be introduced in Finance Bill 2012. The Betting and Gaming Duties Act 1981 will be amended to introduce a DTR for operators that pay GBD, RGD or PBD in the UK and also pay qualifying taxes on the same transactions in other countries.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	This measure is expected to decrease receipts by approximately £20 million per annum. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2012. This measure also supports the Exchequer in its commitment to protect revenue.				
Economic impact	The change has no significant impact on the economy.				

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.
Equalities impacts	This measure is not expected to have different impacts on groups with protected characteristics.
Impact on business including civil society organisations	This measure will benefit UK Gambling companies offering remote gambling to overseas customers. It will provide relief against double taxation incurred in respect of GBD, RGD and PBD as other countries introduce place of consumption based taxation regimes for remote gambling. A negligible compliance cost will be placed on the small number of businesses utilising DTR.
Operational impact (£m) (HMRC or other)	There are negligible costs to HMRC from this measure.
Other impacts	<u>Small firms impact test:</u> This measure is only expected to impact on large businesses. However, any smaller firms attracted to the scheme would also benefit. <u>Competition assessment:</u> This measure will improve the competitiveness of UK based operators. This measure is not expected to have any other significant impacts.

Monitoring and evaluation

This measure will be subject to ongoing monitoring of the amount of relief claimed.

Further advice

If you have any questions about this change, please contact Ian Ayre on 0161 827 0306 (email: ian.ayre@hmrc.gsi.gov.uk).

1 Remote gambling: double taxation relief

Schedule 1 contains provision for double taxation relief in respect of remote gambling.

SCHEDULE 1

Section 1

REMOTE GAMBLING: DOUBLE TAXATION RELIEF

Unilateral relief

1 BGDA 1981 is amended as follows.

2 After section 5D insert –

“5E Double taxation relief

- (1) This section applies if a person (“P”) is liable to pay a qualifying foreign tax in respect of bets in respect of which P is also liable to pay general betting duty under a provision of sections 2 to 4 or section 5AB (“the relevant provision”).
- (2) Bets in respect of which P is liable to pay both general betting duty under the relevant provision and the qualifying foreign tax are referred to as “eligible bets”.
- (3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.
- (4) Whether any credit is allowed is determined in accordance with Schedule A1.
- (5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.
- (6) Total repayments to P for that accounting period in respect of bets of the applicable class (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.
- (7) “The applicable class” means the class of bets to which the relevant provision applies.
- (8) “The duty actually paid” means the general betting duty paid by P for that accounting period in respect of bets of the applicable class.
- (9) A bet does not count as an “eligible bet” if it was made by or on behalf of P.”

3 After section 8 insert –

“8ZA Double taxation relief

- (1) This section applies if a person (“P”) is liable to pay a qualifying foreign tax in respect of bets in respect of which P is also liable to pay pool betting duty.
- (2) Bets in respect of which P is liable to pay both pool betting duty and the qualifying foreign tax are referred to as “eligible bets”.

- (3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.
- (4) Whether any credit is allowed is determined in accordance with Schedule A1.
- (5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.
- (6) Total repayments to P for that accounting period (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.
- (7) “The duty actually paid” means the pool betting duty paid by P for that accounting period.
- (8) A bet does not count as an “eligible bet” if it was made by or on behalf of P.”

4 After section 10 insert –

“10A Definition of qualifying foreign tax

- (1) For the purposes of general betting duty or pool betting duty, a “qualifying foreign tax” is a foreign tax specified by the Commissioners in relation to that duty (“the relevant duty”).
- (2) “Specified” means specified in a notice published by the Commissioners, as revised or replaced from time to time.
- (3) The Commissioners must specify a foreign tax under this section if they are satisfied that –
 - (a) it is a gambling tax,
 - (b) the activities on which it is charged include betting,
 - (c) the bets in respect of which it is charged include bets in respect of which the relevant duty is also charged, and
 - (d) the charge in respect of such bets is based on betting by persons in or deemed to be in the country or territory where the tax is imposed.
- (4) The following factors indicate that a tax is a gambling tax –
 - (a) that it is charged on activities involving betting or gaming (rather than activities generally), and
 - (b) that it goes towards meeting general public expenditure (rather than being ring-fenced for a particular purpose).
- (5) A notice specifying a foreign tax may provide that the tax is to be treated as having been specified with effect from a date that is earlier than the date of the notice.”

5 After section 26I insert –

“26IA Double taxation relief

- (1) This section applies if –
 - (a) P is liable to pay remote gaming duty on the provision of facilities for remote gaming, and

- (b) P is also liable to pay a qualifying foreign tax in respect of remote gaming using those facilities.
- (2) The remote gaming using those facilities in respect of which the qualifying foreign tax is charged is referred to as “eligible gaming”.
- (3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.
- (4) Whether any credit is allowed is determined in accordance with Schedule 4B.
- (5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.
- (6) Total repayments to P for that period (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.
- (7) “The duty actually paid” means the remote gaming duty paid by P for that accounting period.
- (8) Remote gaming does not count as “eligible gaming” if one of the participants in the game in question is P or someone acting on P’s behalf.

26IB Definition of qualifying foreign tax

- (1) For the purposes of remote gaming duty, a “qualifying foreign tax” is a foreign tax specified by the Commissioners in relation to remote gaming duty.
- (2) “Specified” means specified in a notice published by the Commissioners, as revised or replaced from time to time.
- (3) The Commissioners must specify a foreign tax under this section if they are satisfied that –
 - (a) it is a gambling tax,
 - (b) the activities on which it is charged include remote gaming,
 - (c) the remote gaming on which it is charged includes remote gaming using facilities in respect of which remote gaming duty is also charged, and
 - (d) the charge is based on remote gaming by persons in or deemed to be in the country or territory where the tax is imposed.
- (4) The following factors indicate that a tax is a gambling tax –
 - (a) that it is charged on activities involving betting or gaming (rather than activities generally), and
 - (b) that it goes towards meeting general public expenditure (rather than being ring-fenced for a particular purpose).
- (5) A notice specifying a foreign tax may provide that the tax is to be treated as having been specified with effect from a date that is earlier than the date of the notice.

26IC Regulations about claims for double taxation relief

- (1) The Commissioners may make regulations about –
 - (a) claims for repayment under section 26IA, and
 - (b) the making of repayments under that section.
 - (2) Regulations under this section may in particular include provision about –
 - (a) the time within which claims may be made,
 - (b) the form, content and delivery of claims,
 - (c) the evidence required to satisfy the Commissioners of the validity of claims, and
 - (d) the investigation and processing of claims.”
- 6 In section 33 (interpretation) –
- (a) in subsection (1), after the definition of “the Commissioners” insert –

““foreign tax” means a tax, including any sort of duty or levy, imposed in a country or territory outside the United Kingdom (see also subsection (1B));”, and
 - (b) after subsection (1A) insert –

“(1B) A reference in this Act to a foreign tax does not include any penalty, interest, surcharge or other such cost arising in connection with the tax (whether or not recoverable as if it were that tax).”
- 7 Before Schedule 1 insert –

“SCHEDULE A1

BETTING DUTIES: DOUBLE TAXATION RELIEF

Introduction

- 1 This Schedule sets out the rules for determining whether credit is allowed under section 5E or 8ZA for qualifying foreign tax paid by P.

Definitions

- 2 (1) This Schedule is to be read as follows.
- (2) “The applicable class” –
 - (a) in the case of section 5E, has the meaning given in that section, and
 - (b) in the case of section 8ZA, means dutiable pool bets.
- (3) A “reconciliation period” is –
 - (a) if P has monthly accounting periods, a period consisting of 12 consecutive accounting periods,
 - (b) if P has quarterly accounting periods, a period consisting of 4 consecutive accounting periods, and
 - (c) if P has any other length of accounting period, a period consisting of such number of consecutive accounting

periods as would produce a period as near as possible to 365 days.

- (4) In relation to an accounting period, a reference to “the reconciliation period” is to the reconciliation period in which that accounting period falls.

Credit allowed

- 3 (1) To determine whether credit is allowed for an accounting period –
- (a) calculate the notional UK liability and the notional foreign liability for the accounting period, and
 - (b) compare the two figures.
- (2) No credit is allowed if either figure is nil or both figures are nil.
- (3) Subject to that, credit is allowed of an amount equal to the smaller of the two figures (or, if they are the same, of an amount equal to that figure).

Notional UK liability

- 4 The notional UK liability for an accounting period is calculated as follows –

Step 1

If the applicable class is a class to which a provision of sections 2 to 4 applies, calculate P’s net stake receipts for the period in accordance with section 5 but by reference to eligible bets (rather than bets of the applicable class).

If the applicable class is the class to which section 5AB applies, calculate the commission charges in accordance with that section relating to eligible bets determined in the period (rather than bets to which that section applies).

If the applicable class is dutiable pool bets, calculate P’s net pool betting receipts for the period in accordance with section 7A but by reference to eligible bets (rather than dutiable pool bets).

In calculating P’s net stake receipts or net pool betting receipts for the purposes of this Step, do not carry forward to the period any losses in respect of eligible bets that arose in an accounting period before the start of the reconciliation period.

Step 2

If the amount calculated under Step 1 is nil or a negative amount, the notional UK liability for the period is nil.

Otherwise, apply the appropriate rate to the amount calculated under Step 1. The result is the notional UK liability for the period.

“The appropriate rate” is the percentage specified in whichever of section 2(3), 3(3)(a), 3(3)(b), 4(3), 5AB(4) or 7(2) applies to the applicable class, as in force for the accounting period in question.

Notional foreign liability

- 5 The notional foreign liability for an accounting period is calculated as follows—

Step 1

Calculate the amount of qualifying foreign tax that would be payable by P for the accounting period if the tax were charged solely in respect of eligible bets and accounted for by reference to periods corresponding to P’s accounting periods.

Any apportionment needed for this calculation is to be done on a just and reasonable basis.

If the law under which the qualifying foreign tax is imposed provides for losses to be carried forward, do not carry forward to the period any losses (in respect of eligible bets) that arose before the start of the reconciliation period.

Step 2

If the amount calculated under Step 1 is nil, the notional foreign liability for the period is nil.

Otherwise, calculate the sterling equivalent of the amount calculated under Step 1. The result is the notional foreign liability for the period.

The sterling equivalent is to be calculated using the London closing exchange rate for the last day of the accounting period.

Clawback

- 6 (1) This paragraph applies if in respect of the applicable class of bets—
- (a) P receives a repayment under section 5E or 8ZA for one or more accounting periods in a reconciliation period, and
 - (b) the amount calculated under Step 1 in paragraph 4 for the final accounting period in that reconciliation period is a negative amount.
- (2) P is liable to repay all or part of the repayment or repayments received.
- (3) The amount that P is liable to repay is the smallest of—
- (a) the loss multiplied by the rate at which the qualifying foreign tax is charged in respect of eligible bets,

- (b) the loss multiplied by the appropriate rate (as defined in paragraph 4) for the applicable class of bets, and
 - (c) the repayment (or the sum of the repayments) made to P for the reconciliation period.
- (4) “The loss” means the negative amount mentioned in sub-paragraph (1)(b) but expressed as a positive number.
- (5) If there is more than one rate at which the qualifying foreign tax is charged in respect of eligible bets, each rate is to be applied to an appropriate portion of the loss in order to arrive at the amount under sub-paragraph (3)(a).
- (6) If all or part of the qualifying foreign tax is calculated other than on a net receipts basis, sub-paragraph (3) has effect as if paragraph (a) were omitted.
- (7) Any amount due from P under this paragraph is to be treated as if it were an amount of unpaid general betting duty or, as the case may be, pool betting duty.

Breach of return obligations

- 7 The Commissioners are not required to make a repayment under section 5E or 8ZA if P is in breach of any obligation to deliver a return with respect to—
- (a) general betting duty,
 - (b) pool betting duty,
 - (c) bingo duty,
 - (d) remote gaming duty,
 - (e) gaming duty, or
 - (f) lottery duty.

Reduction etc in foreign tax paid

- 8 (1) Sub-paragraphs (2) to (4) apply if any of the following events take place—
- (a) the way in which a qualifying foreign tax is charged or calculated is changed retrospectively,
 - (b) a tax authority waives or refunds all or part of an amount of qualifying foreign tax due from P, or
 - (c) as a result of being liable to pay an amount of qualifying foreign tax, P or a connected person is entitled to any kind of tax deduction or relief calculated by reference to the amount of qualifying foreign tax.
- (2) P must notify the Commissioners of the event on becoming aware of it.
- (3) If the event is a retrospective change in the way in which the qualifying foreign tax is charged or calculated, the amount for which credit is allowed under section 5E or 8ZA is to be recalculated in accordance with this Schedule.
- (4) In any other case, the amount for which credit is allowed under section 5E or 8ZA is to be reduced by a just and reasonable sum to

reflect the amount of tax waived or refunded or the deduction or relief given.

- (5) If it transpires (on account of this paragraph or otherwise) that a repayment or part of a repayment under section 5E or 8ZA should not have been made, P is liable for the amount that should not have been repaid, as if it were unpaid general betting duty or, as the case may be, pool betting duty.
 - (6) Section 1122 of the Corporation Tax Act 2010 (connected persons) applies for the purposes of sub-paragraph (1)(c).”
- 8 (1) Schedule 1 (betting duties) is amended as follows.
- (2) In paragraph 2, after sub-paragraph (4) insert –
- “(5) Regulations under this paragraph may also in particular include provision about claims for repayment under section 5E and about the making of any such repayment, including provision about –
- (a) the time within which claims may be made,
 - (b) the form, content and delivery of claims,
 - (c) the evidence required to satisfy the Commissioners of the validity of claims, and
 - (d) the investigation and processing of claims.”
- (3) In paragraph 2A, after sub-paragraph (3) insert –
- “(4) Regulations under sub-paragraph (2) may also include provision about claims for repayment under section 8ZA and about the making of any such repayment, including provision about anything mentioned in paragraph 2(5)(a) to (d).”
- 9 After Schedule 4A insert –

“SCHEDULE 4B

REMOTE GAMING DUTY: DOUBLE TAXATION RELIEF

Introduction

- 1 This Schedule sets out the rules for determining whether credit is allowed under section 26IA for qualifying foreign tax paid by P.

Reconciliation periods

- 2 (1) For the purposes of this Schedule, a “reconciliation period” is –
- (a) if P has quarterly accounting periods, a period consisting of 4 consecutive accounting periods, and
 - (b) if P has any other length of accounting period, a period consisting of such number of consecutive accounting periods as would produce a period as near as possible to 365 days.
- (2) In relation to an accounting period, a reference to “the reconciliation period” is to the reconciliation period in which that accounting period falls.

Credit allowed

- 3 (1) To determine whether credit is allowed for an accounting period –
 - (a) calculate the notional UK liability and the notional foreign liability for the accounting period, and
 - (b) compare the two figures.
- (2) No credit is allowed if either figure is nil or both figures are nil.
- (3) Subject to that, credit is allowed of an amount equal to the smaller of the two figures (or, if they are the same, of an amount equal to that figure).

Notional UK liability

- 4 The notional UK liability for an accounting period is calculated as follows –

Step 1

Calculate P's remote gaming profits for the period in accordance with section 26C(2) but by reference to the use of the facilities provided by P for eligible gaming (rather than remote gaming generally).

In calculating P's remote gaming profits for the purposes of this Step, do not carry forward to the period any losses (in respect of the use of the facilities for eligible gaming) that arose in an accounting period before the start of the reconciliation period.

Step 2

If the amount calculated under Step 1 is nil or a negative amount, the notional UK liability for the period is nil.

Otherwise, apply the appropriate rate to the amount calculated under Step 1. The result is the notional UK liability for the period.

“The appropriate rate” is the percentage specified in section 26C(1) as in force for the accounting period in question.

Notional foreign liability

- 5 The notional foreign liability for an accounting period is calculated as follows –

Step 1

Calculate the amount of qualifying foreign tax that would be payable by P for the accounting period if the tax were charged in respect of eligible gaming and were accounted for by reference to periods corresponding to P's accounting periods.

Any apportionment needed for this calculation is to be done on a just and reasonable basis.

If the law under which the qualifying foreign tax is imposed provides for losses to be carried forward, do not carry forward to the period any losses (in respect of eligible gaming) that arose before the start of the reconciliation period.

Step 2

If the amount calculated under Step 1 is nil, the notional foreign liability for the period is nil.

Otherwise, calculate the sterling equivalent of the amount calculated under Step 1. The result is the notional foreign liability for the period.

The sterling equivalent is to be calculated using the London closing exchange rate for the last day of the accounting period.

Clawback

- 6 (1) This paragraph applies if in respect of eligible gaming –
 - (a) P receives a repayment under section 26IA for one or more accounting periods in a reconciliation period, and
 - (b) the amount calculated under Step 1 in paragraph 4 for the final accounting period in that reconciliation period is a negative amount.
- (2) P is liable to repay all or part of the repayment or repayments received.
- (3) The amount that P is liable to repay is the smallest of –
 - (a) the loss multiplied by the rate at which the qualifying foreign tax is charged in respect of eligible gaming,
 - (b) the loss multiplied by the appropriate rate (as defined in paragraph 4), and
 - (c) the repayment (or the sum of the repayments) made to P for the reconciliation period.
- (4) “The loss” means the negative amount mentioned in sub-paragraph (1)(b) but expressed as a positive number.
- (5) If there is more than one rate at which the qualifying foreign tax is charged in respect of eligible gaming, each rate is to be applied to an appropriate portion of the loss in order to arrive at the amount under sub-paragraph (3)(a).
- (6) If all or part of the qualifying foreign tax is calculated other than on a net receipts basis, sub-paragraph (3) has effect as if paragraph (a) were omitted.
- (7) Any amount due from P under this paragraph is to be treated as if it were an amount of unpaid remote gaming duty.

Breach of return obligations

- 7 The Commissioners are not required to make a repayment under section 26IA if P is in breach of any obligation to deliver a return with respect to –
- (a) general betting duty,
 - (b) pool betting duty,
 - (c) bingo duty,
 - (d) remote gaming duty,
 - (e) gaming duty, or
 - (f) lottery duty.

Reduction etc in foreign tax paid

- 8 (1) Sub-paragraphs (2) to (4) apply if any of the following events take place –
- (a) the way in which a qualifying foreign tax is charged or calculated is changed retrospectively,
 - (b) a tax authority waives or refunds all or part of an amount of qualifying foreign tax due from P, or
 - (c) as a result of being liable to pay an amount of qualifying foreign tax, P or a connected person is entitled to any kind of tax deduction or relief calculated by reference to the amount of qualifying foreign tax.
- (2) P must notify the Commissioners of the event on becoming aware of it.
- (3) If the event is a retrospective change in the way in which the qualifying foreign tax is charged or calculated, the amount for which credit is allowed under section 26IA is to be recalculated in accordance with this Schedule.
- (4) In any other case, the amount for which credit is allowed under that section is to be reduced by a just and reasonable sum to reflect the amount of tax waived or refunded or the deduction or relief given.
- (5) If it transpires (on account of this paragraph or otherwise) that a repayment or part of a repayment under section 26IA should not have been made, P is liable for the amount that should not have been repaid, as if it were unpaid remote gaming duty.
- (6) Section 1122 of the Corporation Tax Act 2010 (connected persons) applies for the purposes of sub-paragraph (1)(c).”

Consequential amendments

- 10 In section 13A(2) of FA 1994 (meaning of “relevant decision”), after paragraph (g) insert –
- “(ga) any decision by HMRC as to whether or not any person is entitled to any repayment under section 5E, 8ZA or 26IA of the Betting and Gaming Duties Act 1981 (double taxation relief), or the amount of the repayment to which any person is so entitled;”.

- 11 (1) The Table in paragraph 1 of Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing) is amended as follows.
- (2) In the second column of the entry for general betting duty, for “paragraph 4(1) to (3) of Schedule 1 to BGDA 1981” substitute “paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraph 4(1) to (3) of Schedule 1 to that Act”.
- (3) In the second column of the entry for pool betting duty, for “paragraphs 4(2) and 5(1) of Schedule 1 to BGDA 1981” substitute “paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraphs 4(2) and 5(1) of Schedule 1 to that Act”.
- (4) In the second column of the entry for remote gaming duty, for “to register under regulations under section 26J of BGDA 1981” substitute “to notify under paragraph 8(2) of Schedule 4B to BGDA 1981 (reduction etc in qualifying foreign tax) and obligation to register under regulations under section 26J of that Act”.

Commencement

- 12 The amendments made by this Schedule have effect in relation to accounting periods ending on or after 1 April 2012 (and, accordingly, the first reconciliation period begins with the first accounting period in relation to which the amendments have effect).

FINANCE BILL

EXPLANATORY NOTE

REMOTE GAMBLING: DOUBLE TAXATION RELIEF

SUMMARY

1. This Clause and Schedule amend the Betting and Gaming Duties Act 1981 (BGDA) to introduce a double taxation relief (DTR) for remote gambling operators who pay General Betting Duty (GBD), Remote Gaming Duty (RGD) or Pool Betting Duty (PBD) in the UK and also pay qualifying foreign taxes on the same transactions in other countries.

DETAILS OF THE SCHEDULE

2. Paragraph 2 inserts into BGDA a new section 5E. This provides that an “eligible bet” is one of a class on which a person is liable to both general betting duty (“GBD”) and a qualifying foreign tax where the bet was not made by or on behalf of that person. In the case of an eligible bet, the person may be allowed, as determined by Schedule A1, a credit for some or all of the qualifying foreign tax and may then claim a repayment of GBD which is equal to the amount of any credit. Total repayments to a person for a particular accounting period must not exceed GBD paid in respect of bets of that class.
3. Paragraph 3 inserts into BGDA a new section 8ZA. This provides that an “eligible bet” is one on which a person is liable to both pool betting duty (“PBD”) and a qualifying foreign tax where the bet was not made by or on behalf of that person. In the case of an eligible bet, the person may be allowed, as determined by Schedule A1, a credit for some or all of the qualifying foreign tax and may then claim a repayment of PBD which is equal to the amount of any credit. Total repayments to a person for a particular accounting period must not exceed PBD paid.
4. Paragraph 4 inserts a new section 10A into BGDA.
5. New section 10A provides that a qualifying foreign tax is one specified as such in a notice published by the Commissioners (the notice may provide for it to be treated as specified earlier than the date of the notice). The Commissioners are required to specify a foreign tax if it is a gambling tax charged on activities involving betting or gaming the proceeds of which go towards meeting public expenditure.
6. Paragraph 5 inserts into BGDA new sections 26IA, 26IB and 26 IC.

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7. New section 26IA provides that “eligible gaming” occurs where a person is liable to pay both remote gaming duty (“RGD”) on the provision of remote gaming facilities and a qualifying foreign tax in respect of remote gaming on those same facilities. In the case of eligible gaming, the person may be allowed, as determined by Schedule 4B, a credit for some or all of the qualifying foreign tax and may then claim a repayment of RGD which is equal to the amount of any credit. Total repayments to a person for a particular accounting period must not exceed RGD paid.
8. New section 26IB provides that a qualifying foreign tax is one specified as such in a notice published by the Commissioners (the notice may provide for it to be treated as specified earlier than the date of the notice). The Commissioners are required to specify a foreign tax if it is a gambling tax charged on activities involving betting or gaming the proceeds of which go towards meeting public expenditure.
9. Paragraph 7 inserts a new Schedule A1 into BGDA 1981.
10. New Schedule A1 provides that credit is allowed where neither the notional liability for UK betting duties (calculated by reference to the UK betting duty liability on eligible receipts) nor the notional liability for foreign tax (calculated by reference to the liability to foreign tax in the same accounting period) are zero. Where a credit is allowed it is the lower of the notional UK liability and the notional foreign liability. HMRC are not required to make a repayment to anyone who has a return outstanding for any of the betting and gaming duties and there is a requirement to notify HMRC of any relevant refund of foreign tax with credit then being reduced accordingly. Provision is made for clawback, by means of a repayment to HMRC, in the event that someone who was entitled to a repayment in respect of eligible bets in earlier periods has made a loss in respect of eligible bets later in that same reconciliation period.
11. Paragraph 8 inserts in paragraphs 2 and 2A of Schedule 1 to BGDA powers to enable HMRC to make regulations on the making of claims including the timing and form of claims.
12. Paragraph 9 inserts a new schedule 4B into BGDA.
13. New Schedule 4B provides that credit is allowed where neither the notional liability to UK tax (calculated by reference to the RGD liability on remote gaming profits) nor the notional liability for foreign tax (calculated by reference to the liability to foreign tax in the same accounting period) are nil. Where a credit is allowed it is the lower of the notional UK liability and the notional foreign liability. HMRC are not required to make a repayment to anyone who has a return outstanding for any of the betting and gaming duties and

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there is a requirement to notify HMRC of any relevant refund of foreign tax with credit then being reduced accordingly. Provision is made for clawback, by means of a repayment to HMRC, in the event that someone who was entitled to a repayment in respect of eligible gaming in earlier periods has made a loss in respect of eligible gaming later in the same reconciliation period.

14. Paragraph 10 amends section 13A(2) of the Finance Act 1994 so as to provide that HMRC decisions on whether to make a repayment or the amount of any repayment is subject to review and appeal.
15. Paragraph 11 amends Schedule 41 to the Finance Act 2008 so as to apply penalties to the failure to notify HMRC of a refund of a qualifying foreign tax.
16. Paragraph 12 provides for the amendments made by this Schedule to have effect for accounting periods ending on or after 1 April 2012.

BACKGROUND NOTE

17. Following the announcement on 18 July 2011 of a review of remote gambling taxation, the Government has decided to legislate for a DTR for GBD, RGD and PBD in Finance Bill 2012.
18. In respect of accounting periods ending on or after 1 April 2012, operators will be able to claim relief where GBD RGD, or PBD is paid in the UK and the operator has also paid a foreign gambling tax on the same transactions.
19. The measure will enhance the competitiveness of the UK tax system by ensuring that UK based operators do not suffer from double taxation as other countries introduce place of consumption based taxation regimes for remote gambling.
20. If you have any questions about this change, or comments on the legislation, please contact Andy Grimsley on 0161 827 0330 (email: andy.grimsley@hmrc.gsi.gov.uk)

2012 No.

EXCISE

**The Remote Gambling (Double Taxation Relief) Regulations
2012**

<i>Made</i>	- - - -	<i>July 2012</i>
<i>Laid before the House of Commons</i>		<i>July 2012</i>
<i>Coming into force</i>	- -	[X]

The Commissioners for Her Majesty’s Revenue and Customs(a), in exercise of the powers conferred by section 26IC of and paragraphs 2(5) and 2A(4) of Schedule 1 to the Betting and Gaming Duties Act 1981(b), make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Remote Gambling (Double Taxation Relief) Regulations 2012 and come into force on [X].

Interpretation

2. In these Regulations—

“the Act” means the Betting and Gaming Duties Act 1981;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

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

“relevant claim” means a claim under sections 5E, 8ZA or 26IA, (double taxation relief), of the Act; and “claimant” shall be construed accordingly(d).

(a) Section 33(1) of the Betting and Gaming Duties Act 1981 (c. 63) provides that in that Act “the Commissioners” means the Commissioners of Customs and Excise. Section 26IC of and paragraphs 2(5) and 2A(4) of Schedule 1 to that Act confer upon those Commissioners the power to make regulations. The functions of those Commissioners were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of the latter Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

(b) 1981 c. 63; amendments of and relating to Part 1 (betting duties) and Part 2 (gaming duties), providing for relief from double taxation of remote gambling, were made having effect in relation to accounting periods ending on or after 1st April 2012 by Schedule XX to the Finance Act 2012. Section 26IC was inserted by paragraph 5 of Schedule XX to the Finance Act 2012 (c. xx); paragraphs 2(5) and 2A(4) of Schedule 1 were inserted respectively by paragraphs 8(2) and 8(3) of Schedule XX to the Finance Act 2012 (c. xx).

(c) Section 10A was inserted by paragraph 4 of Schedule XX to the Finance Act 2012; section 26IB was inserted by paragraph 5 of Schedule XX to that Act.

(d) Sections 5E, 8ZA and 26IA were inserted respectively by paragraphs 2, 3 and 5 of Schedule XX to the Finance Act 2012.

Amount and form of relief

3.—(1) In relation to any relevant claim, the amount of relief shall be calculated in accordance with the provisions of Schedule A1 or Schedule 4B to the Act (rules for determining whether credit is allowed for qualifying foreign tax)(a).

(2) Relief claimed under these Regulations shall be in the form of a repayment by the Commissioners to the claimant.

Claim periods

4.—(1) A relevant claim can only be made in relation to—

- (a) quarterly accounting periods,
- (b) in the case of a person who accounts for duty under the Act on a monthly basis, periods of 3 months in which a relevant claim arises, or
- (c) in the case of a person who accounts for duty under the Act on any other basis, periods of such number of accounting periods as would produce a claim period as near as possible to 91 days.

(2) In any case falling within paragraph (1), the first accounting period for which a claim can be made is the accounting period ending on or after 1st April 2012.

Application for relief

5.—(1) Any relevant claim must—

- (a) by reference to such documentary evidence as is in the possession of the claimant, state the amount of the claim and the method by which that amount was calculated, and
- (b) contain evidence of payment of the qualifying foreign tax giving rise to that claim.

(2) Any relevant claim must—

- (a) be made on a form specified by the Commissioners for the purpose, and
- (b) contain the information specified in that form.

(3) The claimant must sign and date the form and declare that the information provided on it is true and complete.

Time limit for claim

6. A relevant claim must be made within one year of the later of—

- (a) the end of the accounting period in which the entitlement to make that claim arose, or
- (b) the date on which the qualifying foreign tax was paid.

Payment of claim

7. A repayment under regulation 3(2) must be made—

- (a) within 30 days of the later of —
 - (i) the receipt by the Commissioners of a relevant claim, or
 - (ii) the receipt of such evidence or information as may be required under regulation 8;
- (b) by electronic means.

(a) Schedule A1 was inserted by paragraph 7 of Schedule XX to the Finance act 2012; Schedule 4B was inserted by paragraph 9 of Schedule XX to that Act.

Further evidence and information

8. Every claimant must furnish such certificates, documents, information and evidence in connection with the claim, or any question arising out of it, as may be required by the Commissioners and shall do so within 30 days of being required to do so or such longer period as the Commissioners may consider reasonable.

Date _____ Two of the Commissioners for Her Majesty's Revenue and Customs
Name _____
Name _____

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on XXX, provide for relief from double taxation in relation to general betting duty, pool betting duty and remote gaming duty. They provide a framework for making a claim under the provisions introduced by Schedule XX to the Finance Act 2012 (“the main Schedule”) which inserts new provisions in the Betting and Gaming Duties Act 1981. The relief is available on a claim being made where a person is liable to pay a qualifying foreign tax in respect of bets and is also liable to pay general betting duty or pool betting duty in respect of the same bets; or where a person is liable to pay remote gaming duty and is also liable to pay a qualifying foreign tax in respect of remote gaming.

A qualifying foreign tax is a foreign tax which is specified in a notice published by the Commissioners for Her Majesty's Revenue and Customs. The notice may be revised or replaced from time to time.

Regulation 2 defines expressions used in these Regulations. It defines “relevant claim” in terms of provisions in the main Schedule which introduce the relief.

Regulation 3 provides that the amount of relief shall be calculated in accordance with new Schedules A1 or 4B inserted by the main Schedule. It also states that the relief shall be in the form of a repayment by the Commissioners.

Regulation 4 provides that a relevant claim can only be made in relation to a prescribed accounting period.

Regulation 5 provides that a relevant claim must be made on a specified form, and that the claim must be made by reference to documentary evidence held by the claimant. The claim must also contain evidence that the qualifying foreign tax has been paid.

Regulation 6 provides that a relevant claim must be made within the later of one year of the end of the accounting period in which the entitlement to make that claim arose, or the date on which the qualifying foreign tax for that accounting period was paid.

Regulation 7 provides that the Commissioners must make a payment within 30 days of receipt of a claim, or the receipt of further documentary evidence requested by the Commissioners, whichever is later. The regulation also requires payment to be made by electronic means.

Regulation 8 provides that in certain cases, the Commissioners may request further documentary evidence to support claims. A claimant must provide this within one month or such other period as agreed by the Commissioners.

The commencement to the main Schedule provides for double taxation relief to have effect in relation to accounting periods ending on or after 1 April 2012 and to this extent these Regulations have retrospective effect.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

**EXPLANATORY MEMORANDUM TO
REMOTE GAMBLING – DOUBLE TAXATION RELIEF (DTR)**

2012 No

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Statutory Instrument

- 2.1 This instrument provides the regulations for making claims under the Double Taxation Relief (DTR) for gambling duties.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Legislative Context

- 4.1 These Regulations, which come into force on [X], provide for relief from double taxation in relation to General Betting Duty (GBD), Remote Gaming Duty (RGD) and Pool Betting Duty (PBD).
- 4.2 The relief is available on a claim being made where a person is liable to pay a qualifying foreign tax in respect of gambling and is also liable to pay UK gambling duties on the same transactions.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Economic Secretary to the Treasury has made the following statement regarding human rights: *“In my view the double taxation relief for GBD, RGD and PBD is compatible with the Convention rights.”*

7. Policy Background

What is being done and why

- 7.1 The Betting and Gaming Duties Act 1981 will be amended to introduce a DTR for operators that pay GBD, RGD and PBD in the UK and also pay qualifying foreign taxes on the same transactions in other countries.
- 7.2 The DTR measure will enhance the competitiveness of the UK tax system by ensuring that UK based operators do not suffer from double taxation as other countries introduce place of consumption based taxation regimes for remote gambling.
- 7.3 The DTR is therefore aimed at saving both exchequer revenues and jobs.
- 7.4 The relief will be implemented for accounting periods for UK gambling duties ending on or after 1 April 2012.
- 7.5 The level of public interest is likely to be low.

8. Consultation Outcome

8.1 An informal consultation was held with operators during the design stage of this measure. Their comments have been evaluated and taken into consideration in the design of the double taxation relief measure.

9. Guidance

9.1 A Notice on the double taxation relief will be available on www.hmrc.gov.uk as soon as the measure is passed by Parliament.

9.2 A Tax Information and Impact Note covering double taxation relief in relation to General Betting Duty, Remote Gaming Duty and Pool Betting Duty (PBD) will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

10. Impact

10.1 This Double Taxation Relief measure will benefit UK gambling companies offering gambling to overseas customers. It will provide relief against double taxation incurred in respect of GBD, RGD and PBD as other countries introduce place of consumption based taxation regimes for remote gambling.

10.2 This measure is not expected to have a significant impact on the economy.

10.3 A negligible compliance cost will be placed on the small number of businesses claiming this relief.

10.4 The measure has a negligible cost on the UK public sector.

10.5 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.

11. Regulating small business

11.1 This measure is only expected to impact on large businesses. However smaller firms attracted to the scheme would also benefit.

12. Monitoring and Review

12.1 This measure will be subject to ongoing monitoring of the amount of relief claimed.

13. Contact

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