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**Gambling Tax Reform 2014**

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**Information Note 3**

**March 2014**

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## Foreword

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At Budget 2012, the Government announced that gambling taxes in the UK would be reformed so that remote gambling was taxed on a 'place of consumption' basis.

This means that remote gambling operators will pay tax on the gross gambling profits generated from UK customers, regardless of where the operator is located.

Having already published a consultation document, summary of responses and draft legislation on the reforms, the Government published a further draft of the legislation for consultation after the Autumn Statement. The final draft of the legislation will be confirmed at Budget 2014 and the changes will be in place on 1 December 2014. Transitional arrangements will be put in place where appropriate.

After the Autumn Statement 2013, HM Revenue & Customs (HMRC) also published the first of a series of Information Notes ('Information Note 1') to give early guidance about the reforms. The second ('Information Note 2') was published on 14 February 2014. This is the third (and final) Information Note in the series.

The existing Notices (see Glossary) will be updated to take account of the reforms after the Finance Bill 2014 receives Royal Assent.

## Section 1: Introduction

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The reform of gambling taxation on 1 December 2014 will result in changes to the following gambling duties:

- General Betting Duty (GBD)
- Pool Betting Duty (PBD)
- Remote Gaming Duty (RGD)

HMRC will remain responsible for these duties and will publish full guidance in the form of revised Notices (see Glossary) for each of the reformed duties.

In advance of the new Notices being available, HMRC is publishing a series of Information Notes.

The first Information Note covered who will be liable to pay each duty, and the definition of 'UK person'. It also provided information about the treatment of pooled gambling (pools), tournaments and cash games.

The second Information Note covered administrative matters including registration, accounting periods, duty returns and payments. It also covered interest, penalties and record keeping. (See section 5 for relevant links).

This third (and final) publication in the series gives a high-level overview of administrative changes which include:

- requirement to appoint a representative in the UK
- enforceable assets for non-UK operators
- enforcement and compliance
- transition to the new arrangements.

All Information Notes will be available on HMRC's new GTR (Gambling Tax Reform) webpage. See Section 5 for more information.

## 1.1 Terminology

For the purposes of this Information Note the terms contained in the table below have the meanings specified:

<b>TERM</b>	<b>REFERENCE</b>
Customer	The customer for the purposes of this Information Note is the gambler with whom the operator contracts.
Gambling Tax (GT) Online service	HMRC's new online accounting system for GBD, PBD and RGD.
Operator	The taxpayer – each duty has its own definition of who is liable to pay. For further information on the taxpayer for each duty, see <a href="#">Information Note</a> published in December 2013, Section 2: Liability for the Duties. Use the link to obtain further information.
Remote gambling	Gambling in which people participate by means of the internet, telephone and television etc.
Accounting period	An accounting period is a period of time for which a duty return must be made. Accounting periods are sometimes called tax periods or return periods.
The three duties	GBD, PBD and RGD.

A glossary is provided at the end of this document.

## Section 2: Requirement to appoint a representative in the UK and enforceable assets for non-UK based operators

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### 2.1 Introduction

Certain non-UK based operators will need to make provision so that they have enforceable assets in the UK (meaning assets that HMRC can enforce if the operator fails in their tax obligations) and appoint a representative in the UK. This is known as 'the UK substance requirement'.

This requirement **will not apply to operators who register as a group or who have a principal place of business in:**

- the UK or EU (for these purposes, the Channel Islands, Isle of Man and Gibraltar are not considered to be in either the UK or EU),
- a country or state that is subject to the Mutual Assistance in the Recovery of Debt ('MARD') provisions. MARD refers to an arrangement with certain countries which allows HMRC to ask for help with various issues which includes the recovery of a tax or duty debt. MARD arrangements are reciprocal. MARD applies to a range of different countries including Norway, Iceland, the Faroes, New Zealand and South Africa,
- a country with which the UK has an appropriate bilateral agreement. Where HMRC is satisfied that an agreement provides assistance in the recovery of debts relating to GBD, PBD and RGD, they will not apply the UK substance requirement to gambling operators with a principal place of business in that state.

### 2.2 How will operators meet the UK substance requirement?

Operators affected by this requirement will have two different options that they can choose from. Operators will be asked at registration how they wish

to fulfil the requirement. However, those affected may wish to contact HMRC<sup>1</sup> to discuss before applying for registration.

The two methods are:

- Appointing a fiscal representative, or
- Appointing a security and administrative representative.

More information about each option is set out below.

### **2.3 Fiscal representative ('fiscal rep')**

An operator may appoint a fiscal rep in the UK. The fiscal rep will be jointly and severally liable for amounts due from the operator in respect of the tax for which they are appointed.

Operators will need to seek prior approval from HMRC before a person is appointed as a fiscal rep. The approval process will primarily focus on establishing that the fiscal rep can meet potential tax liabilities. HMRC will not object to a fiscal rep solely on the grounds that they are a related company in the UK. HMRC will publish details of the approval process at a later date. HMRC will deal with the approved fiscal rep as though they are the taxpayer.

### **2.4 Security and administrative representative ('admin rep')**

An operator can provide a security and then appoint an administrative representative ('admin rep').

HMRC will determine the amount of security required in each case, but as a working assumption it will be 6 months-worth of estimated duty liability. Once a security has been given, HMRC will review the amount periodically against actual liability and may adjust it accordingly.

In the event of a tax or penalty payment default HMRC will draw down an appropriate amount from the security. If the operator continues to supply

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<sup>1</sup> Contact details to be provided in due course

gambling to UK consumers, HMRC will require that the security is replenished.

Operators will be able to provide a security by either:

- paying a security deposit
- providing a bank guarantee
- providing a performance bond, or
- setting up a joint account with HMRC.

Under this option, for the purposes of contact with HMRC, and for HMRC to be able to access records (See Section 7.1 of [Information Note 2](#), the operator will be required to appoint an admin rep in the UK. The admin rep will not be liable for any tax but HMRC will need to approve the admin rep prior to their appointment.

## **2.5 Consequences of failure to meet UK substance requirement**

If an operator, not covered by either of the exceptions in 2.1 above, does not comply with the UK substance requirements they could potentially be subject to criminal sanctions.

There are specific criminal offences in the legislation for failure to:

- provide or replenish a security, or
- appoint a fiscal or admin rep.

In addition, failure to meet either of these requirements could also result in revocation of the Remote Operating Licence (ROL). (See Section 3.3 below on Revocation of ROL).



## Section 3: Enforcement Measures

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The gambling tax reforms will be underpinned by strong enforcement measures to ensure compliance with the new rules. These range from civil penalties and criminal offences through to remote operating licence revocation.

### 3.1 Civil Penalties

[Information Note 2](#) sets out HMRC's regime of civil penalties. Use the link to obtain further information.

### 3.2 Criminal Offences

Any person who is involved in the fraudulent evasion of any of the three duties will be liable:

- on summary conviction to a statutory maximum fine (£20,000) or three times the unpaid duty or payment being avoided, whichever is the greater, or imprisonment up to 6 months, or both, **or**
- on conviction on indictment to an unlimited fine, or imprisonment of up to 7 years, or both. Section 2.5 above explains that it is an offence when failing to comply with a requirement to:
  - provide or replenish a security, or
  - appoint a fiscal or admin rep.

Anyone guilty of either of these offences is liable on summary conviction to a fine.

### 3.3 Revocation of remote operating licence

HMRC can direct the Gambling Commission (GC) to follow a process that may result in the revocation of an operator's Remote Operating Licence (ROL)<sup>2</sup> in cases involving a failure to:

- register for one of more of the three taxes when liable to do so
- meet registration conditions, which include a condition requiring operators to make records available, on request, to HMRC officers in the UK. (Non-production of requested records will represent a failure to meet the registration conditions)
- pay the duty due. HMRC will only consider revocation where the failure is above certain thresholds, such as:
  - late payment of duty for two accounting periods in a five year rolling period ( that is, the five year period starts from the due date for the last late payment, or
  - late payment of duty for one accounting period extending for more than six months, or
- provide or replenish a security, or to appoint a fiscal or 'admin rep'.

The ROL regime and the consequences of providing remote gambling to the UK without such a licence are described in paragraph 3.3.1 below.

Any decision to initiate the licence revocation process for reasons of tax non-compliance will be an HMRC decision, not a Gambling Commission decision. Any requests for an appeal or review of the decision will be through HMRC arrangements.

Any HMRC action does not stop the Gambling Commission from separately taking action for regulatory failures.

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<sup>2</sup> HMRC will not be able to direct that the Gambling Commission follow the licence revocation process in respect of licences that are not ROLs.

### **3.3.1 The revocation process**

HMRC will take a reasonable and proportionate approach and will always consider each case of tax non-compliance on its merits. However, the right balance must be struck between helping those who need it and having a sufficiently robust enforcement regime for those who break the rules.

If HMRC consider that the operator took all reasonable steps to avoid the failure but the failure happened despite this, then that will be taken into account when deciding what, if any action to take.

Before deciding to start the formal revocation process, HMRC will, as appropriate, carry out initial fact finding checks to establish the full circumstances.

The formal revocation process begins with HMRC issuing a breach notice to the operator. This gives the operator an opportunity to put their gambling tax affairs in order.

HMRC will leave at least 90 days from the issue of a breach notice before deciding whether or not to proceed to a final notice.

HMRC will issue a final notice before the Gambling Commission suspends the ROL. There is a right to seek a review or appeal against the issuing of this notice. A licence which has been suspended by the Gambling Commission may be reinstated subject to the outcome of any review or appeal or on the direction of the Tribunal.

ROL suspension is the stage prior to the Gambling Commission revoking the licence permanently. A licence which has been revoked cannot be reinstated.

There is information about reviews and appeals on the GOV UK website or it is possible to download a copy of the Factsheet (HMRC1): [HM Revenue and Customs decisions - what to do if you disagree](#)

There is also a factsheet available from the Excise Helpline on Tel 0300 200 3700.

For more information about the [Tribunals Service](#) go to their website.

## Section 4: Transitional Arrangements

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### 4.1 Winnings paid out after 1 December 2014

HMRC will make transitional arrangements to take account of the following:

- **UK-based operators** who are liable to tax in respect of gambling by non-UK people before 1 December but are not liable to tax in respect of those gambles after that date.
- **Non-UK based operators** who are not liable to tax in respect of gambling by UK people before 1 December but are liable to tax in respect of those gambles after that date.

#### ***4.1.1 UK-based operators***

UK-based operators who have accounted for tax on stakes from non-UK customers before implementation can include any winnings from those gambles in their duty calculation after implementation. This will make sure that UK based operators do not have an inflated duty liability in the first accounting period following implementation. They must however have an audit trail to demonstrate that the relevant stakes were received from non-UK customers before 1 December 2014, and that duty was paid.

#### ***4.1.2 Non-UK based operators***

After 1 December 2014, non-UK based operators must include winnings paid to UK customers in their tax calculation (that is, deductible for duty purposes). Transitional arrangements will allow them to deduct winnings paid to UK customers from that date even if they relate to gambles before that date. They must however **have** an audit trail to demonstrate that the relevant stakes were received from UK customers before 1 December 2014.

#### **Important Note to paragraphs 4.1.1 and 4.1.2 above**

To prevent abuse and to provide a natural break to the transition, HMRC will allow the treatment for a period of 4 years. Any winnings in relation to such

gambles that are paid out more than 4 years after 1 December 2014 cannot benefit from this transitional rule.

## **4.2 Moving onto the new registration system**

Under current legislation operators currently paying any of the three impacted taxes will have notified HMRC of their activity (GBD), been permitted (PBD) or registered (RGD). HMRC will move all existing taxpayers to the new registration system being developed for the reforms. These existing taxpayers will not have to register separately themselves.

HMRC have already written to existing taxpayers alerting them to the change. Over the summer however, HMRC will be writing to these operators again asking for some further pieces of information about their businesses. This is so that HMRC will hold the same information for them as will be collected from new taxpayers. Once HMRC has the necessary information they will register the taxpayers and issue them with a 'registration certificate' which will include a new registration number.

The final accounting period for existing taxpayers under the old arrangements will end on 30 November 2014. Any accounting periods ending during November but before 30<sup>th</sup> will be extended to end on 30<sup>th</sup>. The end of the first accounting period under the new arrangements will differ according to the return stagger chosen (see [Information Note 2](#)) but it will not be before 31<sup>st</sup> January 2015.

## Section 5: More Information

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To find more information about the Gambling Tax Reform 2014, follow the links below:

- [New rules for some gambling duties from 1 December 2014](#)
- [Information Note](#) published December 2013
- [Information Note 2](#) published 14 February 2014

### **Factsheets - penalties**

- [Penalties for inaccuracies in returns and documents](#)
- [Penalties for failure to notify](#)

## GLOSSARY

<b>TERM</b>	<b>DEFINITION</b>
Accounting period	3-monthly calendar period (quarterly).
Betting	Making or accepting a bet on the outcome of an event, the likelihood of something occurring or whether or not something is true.
Betting office	The premises from which a bookmaker operates. This may be akin to a shop.
Bookmaker	Someone who carries on a business of receiving or negotiating bets or conducting pool betting.
Customer	The customer for the purposes of this guidance is the gambler with whom the operator contracts for them to carry out the gambling activity.
Gambling	Refers to any activity that is betting, gaming or participating in a lottery.
Gambling Commission	Gambling regulator in Great Britain.
Gaming	Playing a game of chance for a prize.
GBD	General Betting Duty.
Notices	Published online guidance: Notice 451 General Betting Duty; Notice 147 Pool Betting Duty and Notice 455 Remote Gaming Duty.

Operating licence	<p>An operating licence issued by the Gambling Commission under s65 of the Gambling Act 2005. In this guidance the term "operating licence" refers to an operating licence which is not a remote operating licence in that it does not authorise under s66 of that Act, activity to be carried on in respect of remote gambling or by means of remote communication.</p> <p>An operating licence will state whether or not it is a remote operating licence.</p>
Operator	The taxpayer, the person with whom the customer has made arrangements or bets.
PBD	Pool Betting Duty.
Remote gambling	Participating in gambling using remote communications, for example, the internet, telephone, television etc.
RGD	Remote Gaming Duty.