



A taxing question

With a new 'place-of-consumption' tax and related legislation set to shake up the UK remote gambling sector, we asked five experts to outline exactly how they expect the new rules and regulations to affect the industry

In December 2014 the UK remote gambling industry is likely to undergo its biggest change since the Gambling Act 2005. The first day of the month is currently scheduled as D-day, or perhaps rather PoC day – the date on which the government's 'place-of-consumption' tax is set to come into force. The legislation will see all remote gaming firms taxed on profits made from UK customers, no matter where in the world the companies themselves are based.

Depending on the type of services they offer, operators will have to pay either remote gaming duty, general betting duty or pool betting duty, all of which are currently set at

15%, with the rates set to be confirmed in next year's budget. The Treasury believe the changes will generate around £300m a year in revenues for the government. The rules will be enforced through the creation of new criminal offences, with punishments including a seven-year prison sentence and an unlimited fine.

The PoC tax is running in parallel to the Gambling (Licensing and Advertising) Bill, legislation which would amend the Gambling Act 2005 and require all remote gambling operators serving the UK market to hold a licence from the UK Gambling Commission.

The government has consulted with the industry on the changes, although many remain unhappy or unconvinced by the new legislation, and there's even talk of a potential legal challenge in some quarters. Naturally operators will want to know how the new rules will affect their business, which is why *Gambling Insider* have brought together the expert opinions of a collection of highly informed individuals. The question we posed to a lawyer, consultant, senior trade association figure and pair of regulators was: *How will the forthcoming 'place-of-consumption' tax, in its currently proposed form, alter the UK remote gambling industry?*



Bahar Alaeddini solicitor, Harris Hagan

"Place-of-consumption tax, currently due to come into force on 1 December 2014, is set to bring radical change to the UK remote gambling industry and signals the government's intention to bring the UK in line with most other EU member states. Rather than basing the tax requirement on the existence of a UK gambling licence (as currently), it is proposed that all transactions with UK customers will be subject to remote gambling duty at a rate of 15% on gross gaming revenues, regardless of the location of the operator.

It is important to note that the proposed tax changes are due to be made in parallel, and separately, to the draft Gambling (Licensing

and Advertising) Bill, which will make it a requirement to hold a UK operating licence to: (1) provide gambling facilities to British residents; and (2) advertise gambling in Great Britain or Northern Ireland.

In a recent report for the RGA, KPMG concluded that "there is a serious risk of the government's [tax] proposals failing to establish a viable market for UK licensed operators", with a danger of the government's key goals of protecting consumers, levelling the playing field and increasing public revenues not being achieved. The industry argues that at its current rate the tax will reduce the revenue, profits, advertising and marketing spend of operators to a point where they are unable to compete with



Robin Le Prevost director of e-commerce development, States of Alderney

close working relationship they have with them and to lay out the parameters of their interaction and relationship.

Point-of-consumption for regulation and (let's cut to the quick) taxation is destined to be the default position across the board for all industry sectors, and if one bears in mind the political and public resentment caused by the outing of the Google, Amazon and Starbucks tax reduction schemes it's easy to understand why.

While the reasons for the position adopted by the UK through the Gambling Act 2005 have to my mind never been fully appreciated – and, of course, it is easy to forget that they took a trailblazing path when others had not made any move in this area – it is clear that every EU market that has opened up subsequently has left the UK looking isolated. But it is erroneous and surely irrelevant to criticise the UK for now moving into a position more aligned with the new status quo, particularly from a viewpoint with the benefit of hindsight.

I am not going to spend much time putting the opposition view which has coalesced around the tax implications of the proposed changes. It looks technical and legally complex but I and very many others are not convinced by the argument being put up against the UK. It is not too onerous from a

"That the UK government is enthusiastically pushing forward with a system which will impose regulation at the point of consumption should not have come as any surprise to the industry. It might, in fact, be more pertinent to consider why it has taken so long.

Certainly Alderney has been preparing for this for some years now and among the dotcom jurisdictions we are well-placed for the consequences. We will suffer from its introduction in the short to medium term but modestly compared to some. However our strategy has been refined over several years in light of the move to PoC regulation across Europe and indeed globally and we are comfortable with our position going forward which affords us and our licensees significant protection, not to mention opportunity.

Our regulators have consulted actively with the British Gambling Commission (BGC) for some considerable time and provided much advice and assistance, and a few months back signed an MOU with them to underpin the

KPMG's recent recommendations included: using a gross profits basis for calculating tax (therefore, not including bonuses and incentives), the creation of a working group, a tax rate of well below the proposed 15%, identifiable KPIs monitoring the government's policy objectives and research on the factors that determine the optimal tax rate. KPMG's report concludes that initially offering a lower tax rate than the 15% currently proposed and allowing operators to offset costs associated with bonuses and incentives may enable operators to provide competitive products to customers, while the actual rate is adjusted to find the optimum yield.

The proposed changes, set to bring in approximately £300m per year in additional tax revenues, will affect some of the industry's largest operators. The tax has long been forecast and the focus for operators now is to persuade the government to reduce the tax rate before it is confirmed in the Spring Budget.

tax rate point of view – in fact it is relatively low compared with the rest of Europe, and it is ending the disadvantage onshore operators are currently suffering. I don't think anyone believes it will mortally damage the industry.

The extent to which the introduction of point-of-consumption regulation will succeed will depend on the ability of the BGC to effectively protect players, which is put forward as the reason for the change. If not successful then those that claim it is all about taxation may well win the day.

So what are those issues which the BGC have to address? The original position of the BGC was to say that the permitted jurisdictions who had access to the UK market had similar controls and standards. This assumption is now seemingly in serious doubt and presents the BGC's largest challenge. They have to make a difference and regulate effectively and demonstrably; they have to work with other regulators to avoid duplication, which they have stated is central to their ambitions, but they must also know when to get deeply involved where there is evidence of a lack of oversight from other regulatory bodies. Then and only then can the UK say to its detractors we did this for a real reason and for a real purpose, and that was the protection of our citizens alone."

rogue operators based in offshore jurisdictions not fazed by the prospect of committing an offence. The extent of any impact is heavily dependent on rogue offshore operators actively targeting and/or accepting play from British customers. Otherwise, operators will only be left to compete with other operators liable to the same levels of taxation, which may in turn lead to consistently adapted product offerings.

The industry expects that the new tax regime will, directly contrary to its stated aims, encourage the development of black or grey markets. Inevitably operators' profit margins will be squeezed if the tax is to be absorbed by them; some operators maintain that they will be unable to recover their costs and may either go out of business or be forced to operate in grey or black markets. If the new cost is to be passed onto customers in the form of higher prices and/or reduced bonuses and incentives, operators may lose customers pushed offshore in search of more competitive products.

For now, what is clear from HMRC's response to its consultation is that the government means business. Mechanisms and 'trigger points' will be put in place to enforce the new tax regime, which could ultimately lead to permanent revocation of a licence. Interestingly, the decision to revoke will be made by HMRC rather than the Gambling Commission.

The danger remains that the upcoming place-of-consumption tax may not achieve any of the government's key goals and, instead, could cause irreparable damage to the industry and damage the UK's reputation as an unassailable leader globally in remote gambling. This is, of course, dependent on rogue offshore operators accepting play from UK customers without paying UK remote gambling tax and ineffective enforcement by UK agencies. For the time being, it seems likely that the industry will continue to dominate the debate on this issue; inevitably, all operators will be forced to start making plans to adapt. ▶



Ray Davies head of e-gaming development, Isle of Man Government

“The new regulations and taxation suggest that, post-PoC, the UK regime will provide affordable stronger regulations and that the government will be able to manage the market for the benefit of UK players”

The UK Gambling Commission is introducing new regulations to “extend the scope of the regulatory regime currently governing remote gambling and provide greater consumer protection for customers in Britain.” In conjunction with this, the UK Treasury is introducing place-of-consumption (PoC) taxation which suggests that, post-PoC, the UK regime will provide affordable stronger regulations and that the government will be able to manage the market for the benefit of UK players. We in the Isle of Man are no strangers to high standards of consumer protection and so it is pleasing to see that the Gambling Commission recognise and are focused on this issue.

Of course, as part of the revamped regulations, the white list is expected to disappear and operators who have been able to sell or advertise into the UK from overseas because they have been regulated in an approved jurisdiction, such as the Isle of Man, Alderney and Gibraltar, will be required under the new regime to hold a UK licence. We are however confident that the Isle of Man’s robust regulatory regime will be taken into account when the UK issues their licences and, by working closely with

the UK, transitional arrangements will make the passage to a UK licence relatively smooth and pain-free for operators based in white-listed jurisdictions.

One implication of the changes is that some operators with a strong global player base, of which only a very small percentage is located in the UK, may decide to exit from the UK altogether. This will probably come down to a cost/benefit analysis; if the company can bear the cost of regulation then business is likely to be sticky but if not it is equally likely to no longer target the UK market.

Whether to remain in their primary jurisdiction and targeting the UK is a question that most FDs and CEOs will already be thinking about. Inevitably, costs are going to be a factor in the decision-making process. FDs will be acutely aware now that a fully holistic approach is required when arriving at a decision as to where to base the business. For an operator solely based in the UK, ‘corporation tax’ will be a significant cost consideration (despite the corporation tax reductions set to occur over the coming years). Operators will have to think about lower-cost jurisdictions that are close by and offer a competitive cost base.

We know that a non-UK entity will be able to apply for a UK licence; therefore I can foresee a situation where companies use the introduction of PoC as a catalyst for a thorough review of the reasons for choosing their primary jurisdiction. When considering all of the costs involved in operating a global e-gaming business, some may consider a move to the UK, others may hold out in their primary jurisdiction, whilst other ‘savvy’ operators will already be considering where they may see their future home and perhaps splitting their operations over several jurisdictions.

For those considering an offshore base, it is equally worth considering that when the UK recently hosted the G8 summit in Northern Ireland, the key themes under debate were ‘tax, trade and transparency’. In advance of the summit, the UK offshore centres were keen to engage with the UK government and bring up to date their tax information exchange protocols. With the pressures building upon corporations to act responsibly, there is a likelihood that so-called ‘brass plaques’ will no longer be tolerated and that only a ‘real presence’ in an offshore jurisdiction will be the future standard to be adopted by operators.



Sue Rossiter director of projects and policy, Remote Gambling Association

“Operators who remain outside of the British regulatory and taxation net will have lower operating costs and therefore a clear competitive advantage if they can still access the British market in any meaningful way”

The most obvious impact is that, according to HM Treasury estimates, the new tax regime will take around £300m per annum out of the industry. Most of the other impacts arise from companies having to find ways to absorb an extra cost of that scale. The truth is that there are limited options for them to do that. Depending on the scale of the companies concerned, the same range of options will realistically not even be available to all of them.

The fundamental issue is the extent to which any necessary changes will reduce the competitiveness of particular companies and possibly even the British-licensed market as a whole. Potential impacts could arise in any of the following areas:

- Online gambling operators take full advantage of technological developments to make the customer experience more enjoyable and easier to use. For some, the funds available to update and develop websites and products will be reduced.
- One critical impact of the tax proposals could easily be a reduction in marketing and sponsorship. Online operators are major sponsors of both horseracing and other sports such as football in Britain. In 2011/12 sponsors made an £18,707,640 contribution to the prize funds of racing (figure from the

2011-2012 Horserace Betting Levy Board’s Annual Report). The vast majority of this will be from bookmakers, including online bookmakers. It is likely that the imposition of betting duty on non-UK based companies will reduce the amount of sponsorship that they are able to support. This sort of change would be made reluctantly, but marketing budgets are one of the few areas of expenditure where savings could be made to offset the increased costs.

- Compared to most industries, marketing budgets are high in the online gambling industry. They are also one of the few clear areas of discretionary spend. As operating costs increase they will come under pressure. This applies not just to the more obvious forms such as print and broadcast advertising, but also bonuses, free bets and other incentives which are intrinsic to the online betting model that most operators offer. On top of that, discussions continue with HM Treasury about whether and which incentives may be tax deductible.

- The impact on consumers is too frequently overlooked by legislators and regulators. Despite government protestations to the contrary, the place-of-consumption tax (POCT) could end up being detrimental to UK customers. Firstly they could see

a reduction in the number and types of bonuses and other incentives made available to them, secondly they might see erosion in price value on fixed-odds betting, and thirdly they might find that the innovation and customer service that has characterised the industry will taper off.

One potential outcome of all this is that operators who remain outside of the British regulatory and taxation net will have lower operating costs and therefore a clear competitive advantage if they can still access the British market in any meaningful way. Unfortunately, companies who are willing to operate in that way, almost certainly outside Europe, are likely to have lower safeguards for consumers and against money laundering, fraud, and match-fixing. This will be hugely detrimental to both customers and the reputation of the industry. Other countries have tried to guard against this by seeking to ring-fence their markets.

If the UK fails to enforce the barriers effectively, and there must be serious doubts that it can, then the biggest impact of the POCT might be to drive market share away from the well-regulated companies who currently dominate the market and leave the consumers more exposed than they ever have been. ▶



Christina Thakor-Rankin principal consultant, 1710 Gaming

“The risk is that the Commission has backed itself into a corner by maintaining player protection rather than taxation as the reason for change, resulting in regulation saying one thing but meaning something else”

While we won't really know the full implications until after the changes are implemented, our experience to date and the various ongoing consultations may allow us a glimpse of the future. This is actually based not upon what the documents state but rather what they do not include.

Firstly, despite the various incidents of 'poker-gate' over the last decade or so, there is no actual poker-specific licence – the Commission taking the view that, with the exception of a few changes, the current casino licence is adequate as a starting point. As we know, poker is a complicated B2B-cum-B2C creature which requires careful handling. That “the Commission does not consider it appropriate to define...obligations”, combined with a lack of prescriptive guidance, potentially throws the B2B firm into the role of 'de facto' regulator by proxy, and potentially opens up a range of interpretive 'opportunities' for both.

There appears to be no definitive mention of a move from dotcom to co.uk. It is to be assumed that this comes as a huge relief to existing websites using co.uk but operating from outside of the white list, begging the question: if it is possible to target UK customers so directly now, how much easier will it become when the Commission's workload increases next year?

The test for a licensable activity will not be where a customer claims residency (which is also a central pillar of verification

and AML checks) but where a customer is “physically located in Britain when gambling facilities are used”.

Does this mean that if an operator cannot state categorically that the customer was in the UK at the time the activity occurred, e.g. proxy server, VNP routed via a different country, on the Irish border, on a ferry mid-way to the Isle of Man etc, that the tax does not apply?

Conversely, if the test is physical location does this mean that the tax will apply in the case of a holidaymaker accessing a non-UK site while being physically located in Birmingham? Does this mean that for the few hours this customer plays, the non-UK operator will require a UK gambling licence? In the case of poker, at which point will the tax apply? Is it the rake? How will tax be calculated where a table of 10 has three UK players, one folds immediately, one checks and the other goes all-in?

And this perhaps is the largest omission of all. Failure to openly acknowledge and discuss the tax issue in any of the documentation invariably means fragmentation, which potentially means loopholes. Arguably, focusing on making the white-listed pay their dues has resulted in little thought being given to those who currently operate outside of this catchment area.

The assumption is that all of those, or certainly the big names (those who have a UK land presence, those who wish to maintain TV marketing campaigns and those who are

sufficiently established in the UK to maintain reputations) will automatically apply for a licence. The obvious question is, if there is no obvious evidence of effective enforcement of those who do not, why should anyone apply for a licence? The only immediate benefit of a licence becomes the privilege of TV advertising – at least until the Commission potentially add any other marketing and affiliate restrictions.

Further, given that HMRC is not necessarily adverse to tax concessions, especially if repatriation means jobs and boosting the economy, will this lead to an opportunity for negotiation of concessions for large-scale employers which is not open to the smaller ones?

In fairness to the Commission the process is still ongoing, and it may be that the culmination is a set of guidelines which cover both enforcement and policing effectively.

The risk is that the Commission has backed itself into a corner by maintaining player protection rather than taxation as the reason for change, resulting in regulation saying one thing but meaning something else.

Unless this is addressed now the result will be a grey jurisdiction whose landscape is determined not by what the regulation states but by what it does not. This in turn will mean that only those who can, or have to, will actually apply for a licence, resulting in a landscape which is effectively dominated by the big boys and 'cowboys'.

THE BOTTOM LINE

We were hoping for a wide-ranging and thorough debate on this most relevant and pertinent issue and we certainly weren't disappointed. Some of our experts focused purely on the taxation element of the topic, while others broadened their approach to assess the wider licensing implications, meaning that a vast number of angles were covered across the quintet of contributions.

Regarding taxation, Sue Rossiter highlights the impact that a mandatory 15% levy would have on operators, noting that firms may have to cut back on spending in other areas of their businesses. She considers that consumers could be left “exposed” if they are driven away from well-regulated companies. Bahar Alaeddini agrees that UK customers could be

lost to rogue operators, which could affect the reputation of the UK industry, while she also believes the impact of the tax on licensed firms will depend on the intentions/ambitions of those rogue entities. However Robin Le Prevost actually considers the tax rate to be relatively low and remains unconvinced by some of the arguments against it, adding that the levy won't “mortally damage” the industry.

As for the wider licensing legislation, Le Prevost believes its success will depend on the ability of the UK Gambling Commission to protect players, a challenge that Ray Davies appears confident they will meet. Davies does however consider that some global firms without a strong British player base may simply leave the UK market, while

he also foresees some companies reassessing the location of their primary jurisdiction.

Christina Thakor-Rankin wonders whether there has been too much focus on making white-listed firms “pay their dues” while the activities of those operating outside of this area get overlooked. She also raises the possibility of the UK landscape becoming a “grey jurisdiction” dominated by a combination of powerhouses and rogue operators.

The forthcoming legislation is underpinned, according to the government, by a desire to better protect players. As our debate shows, it depends on your view as to whether it will either do just that or, conversely, leave consumers more open to the services of unlicensed operations. The difference in opinion really is that stark. ◀

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