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UK announces double taxation relief for online operators

UK licensed remote operators should be pleased with the contents of this year's Christmas stocking - from 1 April 2012 they will no longer be subject to remote betting and gaming duty (at 15% of gross gambling yield) on bets accepted from some overseas customers.

Under the draft legislation, which will form part of the Finance Bill 2012, the relief will apply only to transactions with customers in specified jurisdictions with a "qualifying foreign tax". HMRC must include jurisdictions on this list if they impose a gambling tax on betting or gaming activities, the proceeds of which go towards meeting public expenditure.

It is expected that UK operators will save a combined total of £20m of duty per year as a result of these changes.

Whether this move will be sufficient to encourage large betting operators such as Ladbrokes and William Hill back onshore remains to be seen. Until the proposed legislative changes introducing a UK licence requirement are brought into force, the 15% rate of duty for bets placed by UK residents is likely to remain a major disincentive, notwithstanding the new relief in relation to bets placed from other jurisdictions. It is however an early Christmas present for those (few) online operators to have invested in the UK.

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UK Update

Slot machine review

John Penrose, the UK's Gambling Minister, has announced that the Government plans to review the slot machine sector for the first time since the Gambling Act 2005, but that it will be at least 18 months before reform can be achieved. Currently, there is a triennial process for the slots review but Mr Penrose expressed his concerns about that frequency, especially nowadays, when the gaming industry and the technology evolve so quickly. 18 months due however seem to us, and no doubt the slot machine sector, to be an interminably long time.

Data protection

An individual has admitted acquiring the data of 65,000 customers of the bingo website Foxy Bingo, and attempting to offer it to some contacts in the gaming industry in exchange for cash. Thanks to Cashcade Limited (the data controller of the stolen customer information) and the Information Commissioner's Office ("ICO"), the individual was tracked down and identified. Hendon Magistrates Court found him guilty of committing three offences under section 55 of the Data Protection Act 1998. He was given a three-year conditional discharge and ordered to pay £1,700 to Cashcade Limited as well as £830.80 costs (he faced a penalty of up to £5,000 in front of the Magistrates Court).

This case underlines the importance of data protection for online operators and the responsibilities they have, but also the need for tougher sentences for data protection offenders. The ICO calls for penalties such as community service or prison.

Reform of taxation on gaming machines

On 6 December 2011, the UK Government announced the introduction of a new Machine Games Duty, which will replace Amusement Machine Licence Duty and VAT payable on machine games. Provisions for the new duty will be contained in the Finance Bill 2012 and will come into force on 1 February 2013, with AMLD continuing to be paid until 31 January 2013.

The decision to consolidate the taxes payable on gaming machines comes in the wake of the recent European Court of Justice ruling against HMRC, allowing Rank to reclaim VAT paid on gaming machines on the basis that different machines should not be subject to different rates. Despite now commencing an appeal against this ruling, HMRC has clearly decided that it would be sensible to scrap VAT on machines and avoid future extensive litigation on the issue.

As it is possible to pay up front for a 12 month AMLD licence, after 1 February 2012 operators who usually use this payment option will need to consider whether this will be cost effective, in light of the fact that the 12 month licence will only be effective until 1 February 2013.



French regime: 18 months on

Since its introduction in June 2010, a couple of days before the football World Cup's kick-off, the French national licensing regime has turned out to be a failure on many levels. High expectations had been raised among operators when France opened its market, representing more than 60 millions inhabitants.

The tax regime in France is based on gambling turnover. For example, 2% of all stakes on poker are collected by the State. Two levies were set up: one for horserace betting and the other based on the "sports betting right".

Moreover, France had the idea to create the "TRJ" (Taux de Retour aux Joueurs) which ensures that no more than a fixed percentage of money gambled can be redistributed to players. This started at 85% in 2010 and has now been reduced to 80%.

Currently, the companies operating in France are facing difficulties: some websites have closed, some others have merged, companies that were granted licences have not opened their websites yet and some have even surrendered their licence. According to the latest published figures, even if horserace betting and poker continue to attract the same amount of money as last year, the amount of money wagered on sports betting has decreased by 24% since the end of 2010. This could be easily explained by the unattractiveness of the legal market compared to the black market, but may also be partly due to the lack of a culture of sports betting among the French.



The French law made provision for a possible modification of the taxation regime after 18 months, and both operators and several politicians have been pushing for a modification of the basis of taxation (a switch to tax on gross gambling yield, rather than turnover), or, at least a reduction of the rate. Senator Jean Francois Lamour has announced that he will produce a report in April 2012 which may propose reform of taxation, however this means that nothing will change before at least the beginning of 2013.

"Silence, on coule" as the French would say.

AGCC and Full Tilt

The Alderney Gambling Control Commission announced on 7 December 2011 that it has launched an independent review of its actions and response in relation to Full Tilt Poker. Peter Dean CBE (former chairman of the British Gambling Commission) has been appointed to conduct the review. On 29 June, the AGCC announced that it had suspended Full Tilt's eGambling licence in Alderney, and on 29 September, after hearings of Full Tilt's representatives, revoked the licence.

The decision of launching this review has been made to provide full transparency of the action taken against Full Tilt.

Andre Wilsenach, Executive director of the AGCC, stated: "*As soon as we became aware that there were possible irregularities in relation to FTP's operational integrity AGCC acted to discharge fully our statutory obligations. We believe we acted appropriately and fairly at all times but, following our own internal assessment and the inevitable questions that have been raised by third parties, the Commission decided that it is in the best interests of players, licence holders and AGCC itself to commission an independent review and to make the outcome public*"

Peter Dean is due to present a final report before the end of March 2012.

Denmark issues first licences, market still on track for 1 January

Things have moved quickly since the European Commission gave its green light to the new Danish national licensing regime. The Danish Gambling Authority announced on 15 December that it has awarded 38 licences in the first wave of applications, including PokerStars, Betfair, 888, Ladbrokes, PKR and Unibet.

However, in order for the market to open as soon as 1 January 2012, several adjustments have had to be made.

Verification of all players' identities is supposed to be carried out through a digital signature system run by a Danish company, DanID. But this system will not be ready before February. In the meantime, licensed operators will have to run the verifications themselves using the social security number of the player and a scanned copy of his ID. This will leave operators scrambling to modify their systems to ensure these verifications can take place from 1 January. During the period until a player is identified, he will not be able to deposit more than €1,350 and will not be able to withdraw any winnings.

These teething issues are perhaps inevitable given the short time frame between Denmark receiving the go ahead from the European Commission for the new regime (following the challenge to tax rates from the land based industry) and the proposed opening date.

Meanwhile, Denmark's land based industry have announced that they propose to challenge the European Commission's decision and have also requested a stay of execution of the market. The success of these actions is unlikely, but it must still weigh on the Danish Gambling Authority's shoulders.

Germany signs new interstate treaty

15 German states, with the exception of Schleswig-Holstein, have signed up to the new draft interstate gambling treaty. The treaty does not provide for the regulation of poker or casino games and allows sports betting only with a high level of taxation at 5% of turnover.

The latest draft of the treaty increased the number of licences available to 20, but the industry remains disappointed with its provisions.

Signature to the treaty follows the news that Betfair has lodged a complaint about the treaty with the European Commission, on the basis that the latest draft still heavily favours the state monopolies.

The treaty must now be approved by the European Commission before it can be enacted into law by each of the 15 states.



Spanish licence applications close

The application deadline for Spain's first round of licences was 14 December, with the market scheduled to open on 20 December. We hear that BwinParty, Betfair and Bet365 are among the 61 companies to have submitted applications before the deadline. A full list of successful licensees was expected to be published on 19 December, however there is now speculation that the market opening may be delayed due to the fact that a new Government is being sworn in this week. Under the legislation as it stands, the new regime will come into effect on 1 January 2012 and any operators not holding a licence will need to close their Spanish operations on that date or risk facing prosecution by the authorities. In light of this, we anticipate that the regulator will endeavour to issue licences to successful applicants by the end of the year, alternatively it is always possible that the law could be amended to put back the market opening. Until "mañana"...

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