

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

Section 194 Schedule 25: Remote Gambling: Double Taxation Relief

Summary

1. [Section 194](#) and Schedule 25 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.
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.

*These notes refer to the Finance Act 2012 (c.14)
which received Royal Assent on 17 July 2012*

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 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 Act 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.