

The UK gambling industry – keeping up to date with constant change

By Julie Butler

From 1 September 2007 the Gambling Act 2005 will be fully effective. The 2007 Budget made a surprise announcement of a tax 'break' for online gaming companies, although this has not been received with much enthusiasm by the UK gambling industry. Most such companies are based in the offshore tax haven of Gibraltar.

The taxation of UK gambling was brought to the forefront of the financial world in 2006 by the US crackdown that so adversely affected internet gambling in the UK. 2006 saw a flurry of VAT business briefs, a tax case and attention from the European Union (EU). Is there any other industry in the UK that received so many attempts at 'tax regularisation' recently?

The low tax jurisdiction of Gibraltar
In April 2004 the European Commission (EC) announced that tax rules in Gibraltar provided companies domiciled there with an unfair tax advantage over other countries in the EU.

The EC view was that by 2010 Gibraltar would have to abolish its exempt company regime and implement a replacement tax regime instead. This raised the possibility that online gaming groups based in Gibraltar could find themselves paying corporation tax of 30 per cent. A recent European Court ruling, however, has indicated that the advantages will continue. Gibraltar's 1969 constitution provides the territory with fiscal autonomy and the region should be able to continue providing companies with an attractive tax regime.

What of the UK tax position of the gambler?

Essentially betting is tax free – the professional gambler is outside the scope of tax. This is confirmed in HMRC's *Business Income Manual* (BIM) at para 22015.

The basic position is that betting and gambling, as such, do not constitute trading. Rowlatt J said in *Graham v Green* (1925) 9 TC 309:

A bet is merely an irrational agreement that one person should pay another person on the happening of an event.

This decision has stood the test of time. In an Australian case, *Evans v FCT* (1989) 20 ATR 922, 89 ATC 4540, Hill J said:

There has been no decision of a court in Australia nor, so far as I am aware, in the United Kingdom where it has been held that a mere punter was carrying on a business.

However, an organised activity to make profits out of the gambling public will normally amount to trading.

Although over time new forms of games of chance have evolved, these principles remain the same. The taxpayer placing a spread bet is not normally carrying on a trade (see BIM 22020 for exceptions). The gambler is not taxable on the profits, nor does he or she receive relief for losses. But, the bookmaker organising the spread bet is taxable on his or her profits.

The section on betting and gambling in the HMRC manual contains the following further guidance:

- What is a bet – BIM 22016.
- The professional gambler – BIM 22017.
- Organised activity – BIM 22018.

- Element of existing trade – BIM 22019.
- Spread betting – BIM 22020.

What of the new breed of exchange pro-punters?

Is an online gambler still just operating a system by habit or are they trading? Provided that the 'pro-punter' is not carrying on an organised activity to make profits out of the gambling public this will not amount to trading.

The betting exchanges have produced a large number of pro-punters who approach their work on a scientific well-researched basis and the profit is tax free. There is no distinction between recreational and non-recreational players. How does the pro-punter deal with the issues of tax compliance? The safe answer has to be to make HMRC aware of the position. This can be done by simply writing to the pro-punter's local tax office stating that he or she has income from gambling.

The placing of a bet is exempt for VAT but this is not the case with gaming machines – see HMRC *Business Briefs* 15/06, 16/06, 17/06 and 20/06.

For the tax adviser the gambling industry will impact upon virtually all practices within the UK. Most firms have a client base that somewhere will include a gaming machine, a bookmaker, a (possibly hidden) number of gamblers and tipsters together with a large number of investors (and potential investors) in this vibrant world. It will be essential to understand all the basic rules of the game ...

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