
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 25. (See end of Document for details)

SCHEDULES

SCHEDULE 25

Section 194

REMOTE GAMBLING: DOUBLE TAXATION RELIEF

Unilateral relief

- 1 BGDA 1981 is amended as follows.
2 After section 5D insert—

“5E Double taxation relief

- (1) This section applies if a person (“P”) is liable to pay a qualifying foreign tax in respect of bets in respect of which P is also liable to pay general betting duty under a provision of sections 2 to 4 or section 5AB (“the relevant provision”).
- (2) Bets in respect of which P is liable to pay both general betting duty under the relevant provision and the qualifying foreign tax are referred to as “eligible bets”.
- (3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.
- (4) Whether any credit is allowed is determined in accordance with Schedule A1.
- (5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.
- (6) Total repayments to P for that accounting period in respect of bets of the applicable class (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.
- (7) “The applicable class” means the class of bets to which the relevant provision applies.
- (8) “The duty actually paid” means the general betting duty paid by P for that accounting period in respect of bets of the applicable class.
- (9) A bet does not count as an “eligible bet” if it was made by or on behalf of P.”

- 3 After section 8 insert—

“8ZA Double taxation relief

- (1) This section applies if a person (“P”) is liable to pay a qualifying foreign tax in respect of bets in respect of which P is also liable to pay pool betting duty.

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- (2) Bets in respect of which P is liable to pay both pool betting duty and the qualifying foreign tax are referred to as “eligible bets”.
- (3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.
- (4) Whether any credit is allowed is determined in accordance with Schedule A1.
- (5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.
- (6) Total repayments to P for that accounting period (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.
- (7) “The duty actually paid” means the pool betting duty paid by P for that accounting period.
- (8) A bet does not count as an “eligible bet” if it was made by or on behalf of P.”

4 After section 10 insert—

“10A Definition of qualifying foreign tax

- (1) For the purposes of general betting duty or pool betting duty, a “qualifying foreign tax” is a foreign tax specified by the Commissioners in relation to that duty (“the relevant duty”).
- (2) “Specified” means specified in a notice published by the Commissioners, as revised or replaced from time to time.
- (3) The Commissioners must specify a foreign tax under this section if they are satisfied that—
 - (a) it is a gambling tax,
 - (b) the activities on which it is charged include betting,
 - (c) the bets in respect of which it is charged include bets in respect of which the relevant duty is also charged, and
 - (d) the charge in respect of such bets is based on betting by persons in or deemed to be in the country or territory where the tax is imposed.
- (4) The following factors indicate that a tax is a gambling tax—
 - (a) that it is charged on activities involving betting or gaming (rather than activities generally), and
 - (b) that it goes towards meeting general public expenditure (rather than being ring-fenced for a particular purpose).
- (5) A notice specifying a foreign tax may provide that the tax is to be treated as having been specified with effect from a date that is earlier than the date of the notice.”

5 After section 26I insert—

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“26IA Double taxation relief

- (1) This section applies if—
 - (a) P is liable to pay remote gaming duty on the provision of facilities for remote gaming, and
 - (b) P is also liable to pay a qualifying foreign tax in respect of remote gaming using those facilities.
- (2) The remote gaming using those facilities in respect of which the qualifying foreign tax is charged is referred to as “eligible gaming”.
- (3) Credit may be allowed for all or part of the qualifying foreign tax paid by P.
- (4) Whether any credit is allowed is determined in accordance with Schedule 4B.
- (5) If credit is allowed for an accounting period, P is entitled to claim a repayment of so much of the duty actually paid as is equal to the amount of credit allowed.
- (6) Total repayments to P for that period (taking into account all qualifying foreign taxes) must not, in aggregate, exceed the duty actually paid.
- (7) “The duty actually paid” means the remote gaming duty paid by P for that accounting period.
- (8) Remote gaming does not count as “eligible gaming” if one of the participants in the game in question is P or someone acting on P's behalf.

26IB Definition of qualifying foreign tax

- (1) For the purposes of remote gaming duty, a “qualifying foreign tax” is a foreign tax specified by the Commissioners in relation to remote gaming duty.
- (2) “Specified” means specified in a notice published by the Commissioners, as revised or replaced from time to time.
- (3) The Commissioners must specify a foreign tax under this section if they are satisfied that—
 - (a) it is a gambling tax,
 - (b) the activities on which it is charged include remote gaming,
 - (c) the remote gaming on which it is charged includes remote gaming using facilities in respect of which remote gaming duty is also charged, and
 - (d) the charge is based on remote gaming by persons in or deemed to be in the country or territory where the tax is imposed.
- (4) The following factors indicate that a tax is a gambling tax—
 - (a) that it is charged on activities involving betting or gaming (rather than activities generally), and
 - (b) that it goes towards meeting general public expenditure (rather than being ring-fenced for a particular purpose).

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- (5) A notice specifying a foreign tax may provide that the tax is to be treated as having been specified with effect from a date that is earlier than the date of the notice.

261C Regulations about claims for double taxation relief

- (1) The Commissioners may make regulations about—
- (a) claims for repayment under section 261A, and
 - (b) the making of repayments under that section.
- (2) Regulations under this section may in particular include provision about—
- (a) the time within which claims may be made,
 - (b) the form, content and delivery of claims,
 - (c) the evidence required to satisfy the Commissioners of the validity of claims, and
 - (d) the investigation and processing of claims.”

6 In section 33 (interpretation)—

- (a) in subsection (1), after the definition of “the Commissioners” insert—

““foreign tax” means a tax, including any sort of duty or levy, imposed in a country or territory outside the United Kingdom (see also subsection (1B));”, and

- (b) after subsection (1A) insert—

“(1B) A reference in this Act to a foreign tax does not include any penalty, interest, surcharge or other such cost arising in connection with the tax (whether or not recoverable as if it were that tax).”

7 Before Schedule 1 insert—

“SCHEDULE A1

BETTING DUTIES: DOUBLE TAXATION RELIEF

Introduction

- 1 This Schedule sets out the rules for determining whether credit is allowed under section 5E or 8ZA for qualifying foreign tax paid by P.

Definitions

- 2 (1) This Schedule is to be read as follows.
- (2) “The applicable class”—
- (a) in the case of section 5E, has the meaning given in that section, and
 - (b) in the case of section 8ZA, means dutiable pool bets.
- (3) A “reconciliation period” is—
- (a) if P has monthly accounting periods, a period consisting of 12 consecutive accounting periods,

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- (b) if P has quarterly accounting periods, a period consisting of 4 consecutive accounting periods, and
 - (c) if P has any other length of accounting period, a period consisting of such number of consecutive accounting periods as would produce a period as near as possible to 365 days.
- (4) In relation to an accounting period, a reference to “the reconciliation period” is to the reconciliation period in which that accounting period falls.

Credit allowed

- 3 (1) To determine whether credit is allowed for an accounting period—
- (a) calculate the notional UK liability and the notional foreign liability for the accounting period, and
 - (b) compare the two figures.
- (2) No credit is allowed if either figure is nil or both figures are nil.
- (3) Subject to that, credit is allowed of an amount equal to the smaller of the two figures (or, if they are the same, of an amount equal to that figure).

Notional UK liability

- 4 The notional UK liability for an accounting period is calculated as follows—
- Step 1* If the applicable class is a class to which a provision of sections 2 to 4 applies, calculate P's net stake receipts for the period in accordance with section 5 but by reference to eligible bets (rather than bets of the applicable class).
- If the applicable class is the class to which section 5AB applies, calculate the commission charges in accordance with that section relating to eligible bets determined in the period (rather than bets to which that section applies).
- If the applicable class is dutiable pool bets, calculate P's net pool betting receipts for the period in accordance with section 7A but by reference to eligible bets (rather than dutiable pool bets).
- In calculating P's net stake receipts or net pool betting receipts for the purposes of this Step, do not carry forward to the period any losses in respect of eligible bets that arose in an accounting period before the start of the reconciliation period.
- Step 2* If the amount calculated under Step 1 is nil or a negative amount, the notional UK liability for the period is nil.
- Otherwise, apply the appropriate rate to the amount calculated under Step 1. The result is the notional UK liability for the period.
- “The appropriate rate” is the percentage specified in whichever of section 2(3), 3(3)(a), 3(3)(b), 4(3), 5AB(4) or 7(2) applies to the applicable class, as in force for the accounting period in question.

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Notional foreign liability

- 5 The notional foreign liability for an accounting period is calculated as follows—

Step 1 Calculate the amount of qualifying foreign tax that would be payable by P for the accounting period if the tax were charged solely in respect of eligible bets and accounted for by reference to periods corresponding to P's accounting periods.

Any apportionment needed for this calculation is to be done on a just and reasonable basis.

If the law under which the qualifying foreign tax is imposed provides for losses to be carried forward, do not carry forward to the period any losses (in respect of eligible bets) that arose before the start of the reconciliation period.

Step 2 If the amount calculated under Step 1 is nil, the notional foreign liability for the period is nil.

Otherwise, calculate the sterling equivalent of the amount calculated under Step 1. The result is the notional foreign liability for the period.

The sterling equivalent is to be calculated using the London closing exchange rate for the last day of the accounting period.

Clawback

- 6 (1) This paragraph applies if in respect of the applicable class of bets—
- (a) P receives a repayment under section 5E or 8ZA for one or more accounting periods in a reconciliation period, and
 - (b) the amount calculated under Step 1 in paragraph 4 for the final accounting period in that reconciliation period is a negative amount.
- (2) P is liable to repay all or part of the repayment or repayments received.
- (3) The amount that P is liable to repay is the smallest of—
- (a) the loss multiplied by the rate at which the qualifying foreign tax is charged in respect of eligible bets,
 - (b) the loss multiplied by the appropriate rate (as defined in paragraph 4) for the applicable class of bets, and
 - (c) the repayment (or the sum of the repayments) made to P for the reconciliation period.
- (4) “The loss” means the negative amount mentioned in sub-paragraph (1)(b) but expressed as a positive number.
- (5) If there is more than one rate at which the qualifying foreign tax is charged in respect of eligible bets, each rate is to be applied to an appropriate portion of the loss in order to arrive at the amount under sub-paragraph (3)(a).
- (6) If all or part of the qualifying foreign tax is calculated other than on a net receipts basis, sub-paragraph (3) has effect as if paragraph (a) were omitted.

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- (7) Any amount due from P under this paragraph is to be treated as if it were an amount of unpaid general betting duty or, as the case may be, pool betting duty.

Breach of return obligations

- 7 The Commissioners are not required to make a repayment under section 5E or 8ZA if P is in breach of any obligation to deliver a return with respect to—
- (a) general betting duty,
 - (b) pool betting duty,
 - (c) bingo duty,
 - (d) remote gaming duty,
 - (e) gaming duty, or
 - (f) lottery duty.

Reduction etc in foreign tax paid

- 8 (1) Sub-paragraphs (2) to (4) apply if any of the following events take place—
- (a) the way in which a qualifying foreign tax is charged or calculated is changed retrospectively,
 - (b) a tax authority waives or refunds all or part of an amount of qualifying foreign tax due from P, or
 - (c) as a result of being liable to pay an amount of qualifying foreign tax, P or a connected person is entitled to any kind of tax deduction or relief calculated by reference to the amount of qualifying foreign tax.
- (2) P must notify the Commissioners of the event on becoming aware of it.
- (3) If the event is a retrospective change in the way in which the qualifying foreign tax is charged or calculated, the amount for which credit is allowed under section 5E or 8ZA is to be recalculated in accordance with this Schedule.
- (4) In any other case, the amount for which credit is allowed under section 5E or 8ZA is to be reduced by a just and reasonable sum to reflect the amount of tax waived or refunded or the deduction or relief given.
- (5) If it transpires (on account of this paragraph or otherwise) that a repayment or part of a repayment under section 5E or 8ZA should not have been made, P is liable for the amount that should not have been repaid, as if it were unpaid general betting duty or, as the case may be, pool betting duty.
- (6) Section 1122 of the Corporation Tax Act 2010 (connected persons) applies for the purposes of sub-paragraph (1)(c).”

- 8 (1) Schedule 1 (betting duties) is amended as follows.

- (2) In paragraph 2, after sub-paragraph (4) insert—

“(5) Regulations under this paragraph may also in particular include provision about claims for repayment under section 5E and about the making of any such repayment, including provision about—

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- (a) the time within which claims may be made,
- (b) the form, content and delivery of claims,
- (c) the evidence required to satisfy the Commissioners of the validity of claims, and
- (d) the investigation and processing of claims.”

(3) In paragraph 2A, after sub-paragraph (3) insert—

“(4) Regulations under sub-paragraph (2) may also include provision about claims for repayment under section 8ZA and about the making of any such repayment, including provision about anything mentioned in paragraph 2(5) (a) to (d).”

9 After Schedule 4A insert—

“SCHEDULE
4B

REMOTE GAMING DUTY: DOUBLE TAXATION RELIEF

Introduction

- 1 This Schedule sets out the rules for determining whether credit is allowed under section 261A for qualifying foreign tax paid by P.

Reconciliation periods

- 2 (1) For the purposes of this Schedule, a “reconciliation period” is—
- (a) if P has quarterly accounting periods, a period consisting of 4 consecutive accounting periods, and
 - (b) if P has any other length of accounting period, a period consisting of such number of consecutive accounting periods as would produce a period as near as possible to 365 days.
- (2) In relation to an accounting period, a reference to “the reconciliation period” is to the reconciliation period in which that accounting period falls.

Credit allowed

- 3 (1) To determine whether credit is allowed for an accounting period—
- (a) calculate the notional UK liability and the notional foreign liability for the accounting period, and
 - (b) compare the two figures.
- (2) No credit is allowed if either figure is nil or both figures are nil.
- (3) Subject to that, credit is allowed of an amount equal to the smaller of the two figures (or, if they are the same, of an amount equal to that figure).

Notional UK liability

- 4 The notional UK liability for an accounting period is calculated as follows—

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Step 1 Calculate P's remote gaming profits for the period in accordance with section 26C(2) but by reference to the use of the facilities provided by P for eligible gaming (rather than remote gaming generally).

In calculating P's remote gaming profits for the purposes of this Step, do not carry forward to the period any losses (in respect of the use of the facilities for eligible gaming) that arose in an accounting period before the start of the reconciliation period.

Step 2 If the amount calculated under Step 1 is nil or a negative amount, the notional UK liability for the period is nil.

Otherwise, apply the appropriate rate to the amount calculated under Step 1. The result is the notional UK liability for the period.

“The appropriate rate” is the percentage specified in section 26C(1) as in force for the accounting period in question.

Notional foreign liability

- 5 The notional foreign liability for an accounting period is calculated as follows—

Step 1 Calculate the amount of qualifying foreign tax that would be payable by P for the accounting period if the tax were charged in respect of eligible gaming and were accounted for by reference to periods corresponding to P's accounting periods.

Any apportionment needed for this calculation is to be done on a just and reasonable basis.

If the law under which the qualifying foreign tax is imposed provides for losses to be carried forward, do not carry forward to the period any losses (in respect of eligible gaming) that arose before the start of the reconciliation period.

Step 2 If the amount calculated under Step 1 is nil, the notional foreign liability for the period is nil.

Otherwise, calculate the sterling equivalent of the amount calculated under Step 1. The result is the notional foreign liability for the period.

The sterling equivalent is to be calculated using the London closing exchange rate for the last day of the accounting period.

Clawback

- 6 (1) This paragraph applies if in respect of eligible gaming—
- (a) P receives a repayment under section 261A for one or more accounting periods in a reconciliation period, and
 - (b) the amount calculated under Step 1 in paragraph 4 for the final accounting period in that reconciliation period is a negative amount.
- (2) P is liable to repay all or part of the repayment or repayments received.
- (3) The amount that P is liable to repay is the smallest of—
- (a) the loss multiplied by the rate at which the qualifying foreign tax is charged in respect of eligible gaming,

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- (b) the loss multiplied by the appropriate rate (as defined in paragraph 4), and
 - (c) the repayment (or the sum of the repayments) made to P for the reconciliation period.
- (4) “The loss” means the negative amount mentioned in sub-paragraph (1)(b) but expressed as a positive number.
- (5) If there is more than one rate at which the qualifying foreign tax is charged in respect of eligible gaming, each rate is to be applied to an appropriate portion of the loss in order to arrive at the amount under sub-paragraph (3)(a).
- (6) If all or part of the qualifying foreign tax is calculated other than on a net receipts basis, sub-paragraph (3) has effect as if paragraph (a) were omitted.
- (7) Any amount due from P under this paragraph is to be treated as if it were an amount of unpaid remote gaming duty.

Breach of return obligations

- 7 The Commissioners are not required to make a repayment under section 261A if P is in breach of any obligation to deliver a return with respect to—
- (a) general betting duty,
 - (b) pool betting duty,
 - (c) bingo duty,
 - (d) remote gaming duty,
 - (e) gaming duty, or
 - (f) lottery duty.

Reduction etc in foreign tax paid

- 8 (1) Sub-paragraphs (2) to (4) apply if any of the following events take place—
- (a) the way in which a qualifying foreign tax is charged or calculated is changed retrospectively,
 - (b) a tax authority waives or refunds all or part of an amount of qualifying foreign tax due from P, or
 - (c) as a result of being liable to pay an amount of qualifying foreign tax, P or a connected person is entitled to any kind of tax deduction or relief calculated by reference to the amount of qualifying foreign tax.
- (2) P must notify the Commissioners of the event on becoming aware of it.
- (3) If the event is a retrospective change in the way in which the qualifying foreign tax is charged or calculated, the amount for which credit is allowed under section 261A is to be recalculated in accordance with this Schedule.
- (4) In any other case, the amount for which credit is allowed under that section is to be reduced by a just and reasonable sum to reflect the amount of tax waived or refunded or the deduction or relief given.
- (5) If it transpires (on account of this paragraph or otherwise) that a repayment or part of a repayment under section 261A should not have been made, P is

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liable for the amount that should not have been repaid, as if it were unpaid remote gaming duty.

- (6) Section 1122 of the Corporation Tax Act 2010 (connected persons) applies for the purposes of sub-paragraph (1)(c).”

Consequential amendments

- 10 In section 13A(2) of FA 1994 (meaning of “relevant decision”), after paragraph (g) insert—
- “(ga) any decision by HMRC as to whether or not any person is entitled to any repayment under section 5E, 8ZA or 26IA of the Betting and Gaming Duties Act 1981 (double taxation relief), or the amount of the repayment to which any person is so entitled;”.
- 11 (1) The Table in paragraph 1 of Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing) is amended as follows.
- (2) In the second column of the entry for general betting duty, for “paragraph 4(1) to (3) of Schedule 1 to BGDA 1981” substitute “ paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraph 4(1) to (3) of Schedule 1 to that Act ”.
- (3) In the second column of the entry for pool betting duty, for “paragraphs 4(2) and 5(1) of Schedule 1 to BGDA 1981” substitute “ paragraph 8(2) of Schedule A1 to BGDA 1981 (obligation to notify reduction etc in qualifying foreign tax) or paragraphs 4(2) and 5(1) of Schedule 1 to that Act ”.
- (4) In the second column of the entry for remote gaming duty, for “to register under regulations under section 26J of BGDA 1981” substitute “ to notify under paragraph 8(2) of Schedule 4B to BGDA 1981 (reduction etc in qualifying foreign tax) and obligation to register under regulations under section 26J of that Act ”.

Commencement

- 12 The amendments made by this Schedule have effect in relation to accounting periods ending on or after 1 April 2012 (and, accordingly, the first reconciliation period begins with the first accounting period in relation to which the amendments have effect).

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