

>> NEW DEVELOPMENTS IN JURISDICTIONS: BULGARIA

National Assembly is the unicameral parliament and body of the legislature of Bulgaria



BULGARIA: The Best Regulated Gambling Jurisdiction in Eastern Europe

By Nadya Hambach

As of January 1, 2014, Bulgaria has a new gambling taxation regime. One and a half years after the new Gambling Act ("Act") was established (July 1, 2012), the tax base for gambling has changed from a turnover to Gross Gaming Revenue (GGR). The Amendments in the Act ("Amendments") give the country a significant advantage over all other Eastern European gambling jurisdictions, affording the operators the opportunity not only to enjoy the advantages of obtaining an EU license but also to explore the potential of an ever growing gambling market.

Such a positive political move for taxation changes is backed up with balanced and favorable gambling regulations, foreseeing realistic market barriers. Therefore, the recent significant international interest in Bulgaria should not be a surprise. In addition, low corporate tax and highly qualified and low priced technical special-

ists make the country not only attractive for local licensing but also for local establishment. Since the beginning of 2014, two big international operators have been already granted licenses – Pokerstars and Betfair. They joined Maltese-based Efbet and Eurofootball and state-owned "Bulgarian Sports Totalizator". Several more

online gambling applications of international operators are pending.

The Amendments assured that as of January 1, 2014, the taxation of **any online games** in Bulgaria would be based on GGR with a 20% tax rate. For games in which fees and commissions are collected (such as poker), the tax rate will be 20% of the collected fees. In addition, a single fee for the issuing and maintenance of a five/ten years' license in the amount of approximately EUR 50,000 (BGL 100,000) applies. The GGR-based taxation is not a part of the common tax system, but rather it is an administrative fee regulated entirely in the Act instead of the tax laws. This predetermines no taxation arbitration with these amounts due.

A question, which still needs an official authority's confirmation, is whether the newly introduced requirement for an authorised local representative for any licensed operator- not established in Bulgaria but established in any other EU, EEA country or Switzerland- presupposes an establishment of a place of economic activity in the country, hence a local corporate tax payment obligation. The definition for the "authorised local representative" in the Act overlaps the definition for a "place of economic activity" in the country in the Tax-Insurance procedure code. Nevertheless unofficial interpretations by outstanding taxation experts show that the local representative for any foreign online operator would not create in itself a "place of economic activity" in Bulgaria. Yet, any operator who decides to have an establishment in Bulgaria can take advantage of a favorable and sustained corporate tax – only 10%. The corporate tax rate has not been changed in the country in the last eight years regardless of the political governmental changes. Local establishment might be strongly supported by other economic arguments such as a very well-educated and qualified labor force at insignificant costs.

In addition to the new taxation regime, Bulgaria has one of the most balanced gambling regulatory programs in Europe. The Act gives the opportunity to any operator to obtain a local license, without the need to establish a local company. It is enough that the operator has an establishment in any other EU, EEA country or Switzerland. The same is valid for the operator's main server. The server might be located in any other EU, EEA country or Switzerland. Nevertheless a local control server in Bulgaria is required. The central computer system of the operator should be able to register and verify players and provide real-time information flow to a server of the National Revenue Agency ("NRA") and State Commission on Gambling ("SCG"), assuring compulsory online registration for each gaming transaction. Payments could be performed through a local

bank or through a bank licensed to operate in any other EU, EEA country or Switzerland and authorized to operate subject to the Credit Institutions Act in Bulgaria.

The required investments shouldn't necessarily be made in Bulgaria but could be made any other EU, EEA country or Switzerland. On another note, a restriction which the Act imposes on applicants whose shareholder is an offshore company should be carefully considered in line with the provisions of the newly adopted Act on the relations with companies registered in preferential tax regime jurisdictions. The operators could also operate a "dot com" domain instead of only "dot bg".

Only licensed operators are allowed to advertise in strictly regulated way. This appears to be the main hurdle for the unlicensed operations in the country and proves to be significantly more efficient than the blacklisting, which was introduced back in June 2013 and still grows dynamically (as of 28 January this year, it includes 185 domains). Even if blacklisted, domains are still accessible by the majority of Internet users through partner sites.

As mentioned above, the Amendments introduce a new requirement for any operator established not in Bulgaria but in any other EU/EEA country or Switzerland to have an authorized representative in Bulgaria, granted with rights to execute agreements and represent the operator before Bulgarian authorities and courts. The Amendments also permit the operators to perform any other business activity apart from organizing gambling, which was not the case until now.

The administrative burden during the licensing process for any applicant, registered in another EU, EEA country or Switzerland is aimed to be reduced when the operator already has a license issued in any of these jurisdictions. The Bulgarian Parliament has further stimulated the licensing of online operators by approving amendments that allow the operator to be removed from the blacklist even before being granted a license if the online operator applies for removal no later than March 31, 2014.

Together with the positives, Amendments introduce some controversial provisions as well. They stipulate for the first time responsible gambling rules by giving the SGC the authorisation to organise compulsory gambling prevention campaigns. In addition, annual compulsory fees for financing such campaigns will apply to online operators – approximately EUR 25 000 (50 000 BGN). Secondary legislation in this regard will be adopted in the near future, expectedly making the standards more clear. It has been already proven that the key to the prevention of a gambling addiction should not be associated only with administrative prevention measures. In the contemporary e-world the administrative prevention measures alone appear to be insufficient to reach effectively and efficiently the set regulatory goals. Self-regulation and co-regulation can offer adequate support methods to make a substantive and positive difference. It is likely that problem gambling issues might also be raised again in the near future, especially when the effect from the above gambling prevention campaigns becomes clear. In addition the Amendments impose much stricter administrative sanctions for illegal operations.

Despite the few controversial amendments, the efforts of the Bulgarian Parliament must be highly appreciated. Instead of concentrating on blocking measures (such as ISP and/or payment blocking), the regulator sought the best practices and introduced a regulatory framework which gives online operators promising conditions to work legally in the Bulgarian market. ♣



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