

NEW LEGISLATION > Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024 > SPECIAL REPORT

Offshore Gambling Duty

Issued: April 2024

This special report provides early information on the new legislation for the offshore gambling duty ahead of an upcoming edition of the *Tax Information Bulletin*.

Table of Contents

Background	3
Key Features	3
Effective date	4
Detailed analysis	4
About this document	9

Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024

Sections 12S to 12X of the Gaming Duties Act 1971

From 1 July 2024, a 12% offshore gambling duty applies to online gambling provided by offshore operators to New Zealand residents.

The Gaming Duties Act 1971 has been amended to include a new type of gaming duty, known as offshore gambling duty. It applies to GST-registered persons that are located outside New Zealand to the extent they make supplies of remote gambling services to New Zealand residents.

The offshore gambling duty excludes amounts from betting on sports and racing because there is an existing requirement to pay “consumption charges” to the Department of Internal Affairs on these amounts.

Background

Under the Goods and Services Tax Act 1985 (GST Act) there are existing requirements for non-resident suppliers of remote services of gambling supplied to New Zealand residents to register and return GST on these supplies. The offshore gambling duty applies to these suppliers of remote gambling services if they are located outside New Zealand.

Most of the offshore gambling duty rules have been designed to align with the existing rules for GST on remote services, to allow existing systems and calculations for GST to be adapted to apply the offshore gambling duty.

The main difference from the GST rules is that the offshore gambling duty is calculated by excluding amounts for which the offshore operator is required to pay “consumption charges” to the Department of Internal Affairs. Consumption charges are 10% charges on betting on sports and racing by New Zealand residents conducted through offshore operators.

Gambling provided by offshore gambling operators remains subject to GST.

Key Features

The key features of the offshore gambling duty are:

- It applies to GST-registered persons that are located outside New Zealand to the extent they make supplies of remote gambling services to New Zealand residents.

- The rate of offshore gambling duty is 12% of the offshore gambling profits.
- Offshore gambling profits are calculated as the amounts received from residents, minus the prizes paid to residents, minus any offshore betting amounts.
- Offshore gambling profits are calculated by subtracting any amounts of “offshore betting amounts” on which the offshore operator is required to pay “consumption charges” to the Department of Internal Affairs. Consumption charges are 10% charges on betting on sports and racing by New Zealand residents conducted through offshore operators.
- If the offshore operator has a negative amount of offshore gambling profits for a return period (because it has a greater amount of prize money paid or payable to New Zealand residents, than the amount of money it has received from residents) it will carry forward this negative amount to offset future offshore gambling profits in its next return periods.
- The return periods and due dates for the offshore gambling duty provide for the same three-monthly periods and due dates that apply to non-resident suppliers of remote services in respect of their GST returns.
- The rules for the Commissioner of Inland Revenue (the Commissioner) making an assessment of offshore gambling duty and for recovering any amount of unpaid gaming duty as a debt to the Crown, are identical to the existing rules that apply for casino duty.
- The disputes process, penalties and interest rules that are prescribed by the Tax Administration Act 1994 (TAA) will apply to the offshore gambling duty.

Effective date

The offshore gambling duty applies to offshore gambling profits arising on or after 1 July 2024.

Detailed analysis

Key terms

Section 12S(1) of the Gaming Duties Act defines offshore gambling operators along with the other key terms that are used to apply the offshore gambling duty.

The offshore gambling duty applies to offshore gambling operators who are defined as registered persons located outside New Zealand who conduct any offshore gambling.

Registered persons are persons who are either registered or liable to be registered under the GST Act. An offshore operator is required to register for GST if they make \$60,000 or more of taxable supplies in a 12-month period, where taxable supplies include supplies of gambling to New Zealand residents (measured by the amount of money received from residents, minus prize money paid out to residents).

Offshore gambling means any gambling or prize competition supplied through remote services that are physically performed outside New Zealand that a person who is resident in New Zealand pays an amount of money to participate in.

The offshore gambling duty does not apply to existing online products offered by the Lotteries Commission (operating as Lotto NZ) and TAB NZ. This is because these operators use entities that are located within New Zealand to conduct their online gambling operations. Under the Gambling Act 2003, it is generally illegal for operators who are located within New Zealand to conduct remote interactive (ie, online) gambling, with exceptions for the Lotteries Commission and TAB NZ.

The offshore gambling duty applies to offshore websites owned by New Zealand casinos because this gambling is conducted by entities that are located outside New Zealand.

Remote services are defined using the same definition as how remote services are defined in the GST Act. Remote services are a service, that at the time it is performed, there is no necessary connection between the place where the service is physically performed and the location of the recipient of the service. That is, the service provider and the recipient could be in different locations. This definition includes online gambling services.

Calculating offshore gambling profits

The rate of the offshore gambling duty is 12% of the offshore gambling profits.

Offshore gambling profits are calculated under section 12T of the Gaming Duties Act by using the following formula:

amounts received from residents – prizes paid to residents – offshore betting amounts

When measuring the “amounts received from residents” and “prizes paid to residents”, it is intended that the offshore gambling operator will be able to use the same values that they calculate for the GST remote services rules. This is because equivalent terms are used in the formula used to determine the amount of consideration in section 10(14B) of the GST Act.

However, a difference from the GST calculation is that the offshore gambling profits are calculated by subtracting “offshore betting amounts”. Offshore betting amounts are the total amount in money on which consumption charges are payable under section 113 of the Racing Industry Act 2020. The offshore betting amounts arise from bets placed by New Zealand residents on sports and racing events where there is a requirement to pay “point of consumption charges” to the Department of Internal Affairs.

The offshore gambling profits are determined for supplies of offshore gambling for which the “time of supply” under section 9 of the GST Act has occurred for the return period. The

GST remote services rules also use the same “time of supply” rules. Under these rules, the supply occurs for each amount received (the bet) on the date on which the first drawing or determination of the corresponding gambling result (or prize competition) commences.

The foreign currency rules in section 77 of the GST Act apply for determining the New Zealand dollar amounts of offshore gambling profits. This is intended to allow the offshore gambling operators to use the same foreign currency conversions as they already use for GST purposes. Section 77 of the GST Act generally requires amounts of money be expressed in New Zealand dollars at the time of supply. Alternatively, the non-resident supplier (the offshore gambling operator) can make an election to express the amounts in a foreign currency. If they elect to use a foreign currency, they must use one of the methods in section 77(3) to convert the foreign currency amounts to New Zealand dollar amounts and must maintain the same conversion method for at least 24 months unless the Commissioner agrees otherwise.

Example 1: Online casino games only

An offshore gambling operator conducts online casino games that are supplied to New Zealand residents.

In the three-month period between 1 July 2024 and 30 September 2024, it receives \$151.5 million of bets from New Zealand residents and these residents have been paid or credited prizes valued at \$140 million.

The operator’s offshore gambling profits for the return period are \$11.5 million (\$151.5 million minus \$140 million). The 12% offshore gambling duty applies to the offshore gambling profits.

The operator files a return and pays \$1.38 million of offshore gambling duty to Inland Revenue on or before 28 October 2024.

For the same three-month period, the operator files a GST return and pays GST of \$1.5 million (3/23rds of the \$11.5 million of consideration for the remote services of gambling by New Zealand residents) to Inland Revenue on or before 28 October 2028.

Example 2: Online gambling including sports betting

An offshore gambling operator conducts online casino games, tickets to instant prize competitions and sports betting.

In the three-month period between 1 July 2024 and 30 September 2024, it receives \$246 million from bets/ticket sales to New Zealand residents and these residents have been paid or credited prizes valued at \$200 million. These amounts include \$100 million of sports bets and \$70 million of prizes paid or credited on the sports bets. The operator is required to pay consumption charges to the Department of Internal Affairs on the \$30 million of offshore betting amounts (\$100 million minus \$70 million) from these sports bets.

The operator's offshore gambling profits for the return period are:

$$\$246 \text{ million} - \$200 \text{ million} - \$30 \text{ million} = \$16 \text{ million}$$

The 12% offshore gambling duty applies to the offshore gambling profits. The operator files a return and pays \$1.92 million of offshore gambling duty to Inland Revenue on or before 28 October 2024.

For the same three-month period, the operator files a GST return and pays GST of \$6 million (3/23rds of the \$46 million of consideration for the remote services of gambling by New Zealand residents) to Inland Revenue on or before 28 October 2028.

For the same three-month period, the operator will pay consumption charges of \$3 million (10% of the \$30 million of offshore betting amounts from the sports bets) to the Department of Internal Affairs.

If the only gambling products that an offshore gambling operator supplies to New Zealand residents (for a return period) are sports and/or racing bets on which they are required to pay consumption charges, their offshore gambling profits will be nil. They are still required to register for the offshore gambling duty and file a return including a nil value of offshore gambling profits for the relevant return period.

If the offshore gambling operator has a negative amount of offshore gambling profits for a return period (because it has a greater amount of prize money paid or payable to New Zealand residents than the amount of money it has received from residents), it will carry forward this negative amount to offset future offshore gambling profits in its next return periods.

Return periods and due dates for return filing and payment

The return periods and due dates for the offshore gambling duty are the same periods and due dates that already apply to non-resident suppliers of remote services in respect of their GST returns.

The return periods are the period of three consecutive calendar months ending on the last day of either March, June, September or December. In other words, they are for quarterly periods with the first period commencing on 1 July 2024 and ending on 30 September 2024.

Section 12V of the Gaming Duties Act requires that returns for offshore gambling duty must be filed on or before:

- 28 October for the return period and ending on 30 September
- 28 January for the return period ending 31 December
- 7 May for the return period ending 31 March, and
- 28 July for the return period ending 30 June.

Section 12W of the Gaming Duties Act requires that the offshore gambling duty must be paid to Inland Revenue no later than the relevant due date that the offshore gambling return must be filed for the corresponding return period.

Assessments, challenges, disputes process, penalties and interest

The rules for the Commissioner of Inland Revenue making an assessment of offshore gambling duty and for recovering any amount of unpaid gaming duty as a debt to the Crown, are identical to the existing rules that apply for casino duty.

This is provided for by section 12X of the Gaming Duties Act. Similar rules also apply for gaming machine duty, aside from existing section 12K(2) of the Gaming Duties Act, which sets out a joint and several liability rule that only applies to gaming machine duty. Section 12K(2) does not apply to casino duty and also does not apply to the offshore gambling duty.

The disputes process and challenges rules that are prescribed by Parts 4A and 8 of the Tax Administration Act 1994 (TAA) apply to the offshore gambling duty.

The tax penalties of the TAA also apply to gaming duties, including the offshore gambling duty. Existing section 15 of the Gaming Duties Act references the fact that Part 9 (Penalties) of the TAA applies to gaming duty.

Use of money interest applies to unpaid amounts of gaming duty under Part 7 (Interest) of the TAA. This is because the definition of "tax" in the TAA includes gaming duty.

About this document

Special reports are published shortly after new legislation is enacted to help affected taxpayers and their advisors understand the consequences of the changes. These are published in advance of an article in the *Tax Information Bulletin*.