

SUBSIDIARY LEGISLATION 583.10**GAMING TAX REGULATIONS**

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LEGAL NOTICE 248 of 2018

Arrangement of the Regulations

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Part I

Citation and Interpretation

1. The title of these regulations is the Gaming Tax Regulations. Citation.

2. (1) In these regulations, save as provided in sub-regulations (2) and (3), all words and phrases shall have the same meaning as prescribed in the Gaming Definitions Regulations. Interpretation.
S.L.583.04.

(2) In these regulations, unless the context otherwise requires -

"the Act" means the Gaming Act; Cap. 583.

"charge" means the actual revenue derived from the provision of either Type 3 gaming services or Type 4 gaming services, whether computed by way of commission or otherwise;

"gaming revenue" means the aggregate stakes and wagers, inclusive of any bonus or other player incentives which are comprised within any stake or wager, less an amount to be determined by summing up the aggregate player winnings to the aggregate of any bonus or other player incentives which are comprised within the amount of aggregate stakes and wagers, made under the terms of the mentioned licence in regulation 3(1) of the Gaming Licence Fees Regulations throughout the period of licence and with regards to Type 3 and Type 4 gaming services, gaming revenue means a charge, tournament fees and other such like elements of revenue; S.L. 583.03.

S.L.583.05. "qualifying activity" means any activity which consists of providing or carrying out a gaming service from Malta or to any person in Malta, subject to the requirement of a licence in terms of regulation 3 of the Gaming Authorisations Regulations, which for the avoidance of doubt shall include the persons mentioned in regulations 8 and 22, but not the persons mentioned in regulations 5, 7, 29, 30 and 31 of the Gaming Authorisations Regulations and the term "qualifying activities" shall be read and construed accordingly;

"tax period" means the financial year of the person conducting a qualifying activity.

(3) All other terms used in these regulations shall have the same meaning attributed to them in the Act.

Part II

Gaming Tax

Gaming tax. **3.** Any person offering any gaming service constituting a qualifying activity, whether through means of distance communication or in gaming premises or by any other means to any player who is physically present in Malta at the time when the gaming service is actually provided shall, in addition to the levy on gaming devices, if any, imposed in terms of regulation 4, pay to the Authority, for each tax period, gaming tax to be computed at the rate of five per cent (5%) of the gaming revenue generated from the said gaming services during the relevant tax period:

S.L.583.05. Provided that where the gaming service is provided by a corporate group holding a licence in terms of regulation 10(3) of the Gaming Authorisations Regulations, the entire corporate group shall be considered to be the "person" for the purposes of this regulation:

Provided further that where the gaming service is offered solely by means of distance communications, the determination of taxability shall not be whether the player is physically present in Malta, but whether the player is established, has his permanent address and, or usually resides in Malta.

Part III

Levy on Gaming Devices

Levy on gaming devices. **4.** There shall be due and payable to the Authority in each and every tax period a levy on gaming devices. The levy shall be computed in the manner stipulated in regulation 5 and shall be payable jointly and severally by the person or persons deploying any gaming device for the provision or conduct of any qualifying activity:

Provided that, for the purposes of these regulations, the person deploying the gaming device for the provision or conduct of a

qualifying activity shall be deemed to be the licensee under whose licence the qualifying activity is undertaken and, in the absence of a valid licence, it shall be each and every person directly or indirectly enjoying any economic benefit generated by, or as a result of, the deployment of the said gaming device.

5. (1) The levy on gaming devices payable by any person for each and every tax period in terms of regulation 4 shall be determined by aggregating the amounts resulting from the computational method prescribed in sub-regulation (2), (3), (4), (5) and, or (6). Levy rate.

(2) The levy on gaming devices payable in each and every tax period by reference to gaming devices deployed within gaming premises in the provision or conduct of Type 1 and, or Type 2 gaming services shall be thirty per cent (30%) of the aggregate gaming revenue generated during the tax period from all gaming devices deployed by that person in the provision or conduct of Type 1 and, or Type 2 gaming services.

(3) The levy on gaming devices payable in each and every tax period by reference to gaming devices deployed within gaming premises in the provision or conduct of Type 3 and, or Type 4 gaming services shall be twelve point five percent (12.5%) of the aggregate gaming revenue generated during the tax period from all gaming devices deployed by that person in the provision or conduct of Type 3 or Type 4 gaming services.

(4) The levy on gaming devices payable in each and every tax period by reference to gaming devices deployed within controlled gaming premises in the provision or conduct of Type 1, Type 2, Type 3 and, or Type 4 gaming services shall be fifteen percent (15%) of the aggregate gaming revenue generated during the tax period from all gaming devices deployed by that person in the provision or conduct of Type 1, Type 2, Type 3 or Type 4 gaming services.

(5) Notwithstanding anything contained in sub-regulations (2), (3) and (4), the levy on gaming devices payable in each and every tax period by reference to gaming devices deployed within gaming premises in the provision or conduct of Type 1, Type 2, Type 3 and, or Type 4 gaming services shall, instead of the amounts in regulations (2), (3), and (4), and if lawfully classified as a junket in terms of the applicable regulatory instrument, be two point five percent (2.5%) of the aggregate gaming revenue generated during the tax period from all gaming devices deployed by that person in the provision or conduct of Type 1, Type 2, Type 3 or Type 4 gaming services classified as a junket.

(6) Notwithstanding anything contained in sub-regulations (2), (3), and (4), the levy on gaming devices payable in each and every tax period by reference to gaming devices deployed within

gaming premises in the provision or conduct of Type 3 gaming services shall, instead of the amounts in sub-regulations (2), (3), and (4), and if lawfully classified as a junket event in terms of the applicable regulatory instrument, be two point five percent (2.5%) of the aggregate gaming revenue generated during the tax period from all gaming devices deployed by that person in the provision or conduct of Type 3 gaming services classified as a junket event.

(7) Notwithstanding anything contained in this regulation, any authorised person who uses premises as a studio to film, and, or broadcast a gaming service or a critical gaming supply, shall pay a fixed levy of five hundred euro (€500), in advance, for the following twelve (12) running months, and on every anniversary thereof:

Provided that no such one-time fixed levy shall be due if such person is already paying the levy due in terms of sub-regulation (2), (3), (4), (5) and, or (6).

Part IV

Payment

Method of
payment.

6. (1) The amounts payable in terms of these regulations for any given tax period shall be paid throughout the tax period by way of monthly payments to be calculated on the gaming revenue accrued during each and every month falling within a tax period, hereinafter referred to as the "reference month". The tax due shall be paid together with the submission of any return required in terms of regulation 7 on the twentieth day of that month next following the reference month, hereinafter referred to as the "settlement month".

(2) At the end of each reference month the gaming revenue generated from each type of gaming services during that month shall be determined and the corresponding amount of gaming tax as due in terms of regulation 3 and the levy on gaming devices as due in terms of regulations 4 and 5 shall be computed as prescribed in these regulations.

S.L. 372.28.

(3) Where any amount payable in terms of these regulations is not paid when due, interest shall be due and payable at the rate prescribed in rule 2 of the Income Tax (Interest Rate) Rules, which rate shall be applied to the unpaid amount for each month or part thereof for which the amount remains unpaid.

(4) In any circumstances in which the amount actually paid in terms of regulations 3, 4 or 5 exceeds the amount actually due by that person in terms of regulations 3, 4 or 5 for that tax period, the excess shall not be refundable and no interest shall accrue thereon in favour of the payor but the said excess shall be available for set-off against any amount payable by that person in terms of regulations 3, 4 and 5 in any tax period commencing after the termination of the tax period in which

or by reference to which the excess was paid.

(5) The Minister may by regulations prescribe rules allowing a credit of other turnover tax actually paid in Malta to the relevant local competent authority by the holder of a licence falling under paragraph 1(a) of the First Schedule to the Gaming Authorisations Regulations against all or any amount due and payable under these regulations, subject to such conditions as shall be prescribed.

S.L.583.05.

(7) The Authority may, with the consent of the Minister responsible for the gaming sector, by binding instrument, regulate the granting of any reduction, credit, set-off or other relief in respect of any amount payable under these regulations, which shall be granted either on a unilateral basis or pursuant to bilateral or multilateral treaties, agreements, memorandum of understanding or other arrangements entered into with any foreign government or any local or foreign authority or government agency.

Part V

Returns and Assessment

7. (1) Any person who undertakes any one or more qualifying activities shall furnish to the Authority a return in the form as shall be prescribed for every reference month falling within any tax period by not later than the twentieth (20th) day of the settlement month and any such other returns, statements, documents or information as may be requested or prescribed.

Returns and assessment.

(2) When any person who undertakes any one or more qualifying activities does not furnish a return when due in terms of these regulations or makes a return which in the opinion of the Authority is incorrect, the Authority may make an assessment of the amount payable under these regulations to which that person became liable and shall serve that assessment on that person at any time after the expiration of the time allowed in terms of these regulations for the furnishing of that return.

(3) When any return furnished by a person to the Authority contains an understatement of any amount payable under these regulations, that person shall become liable to an administrative penalty in an amount equivalent to twenty per cent (20%) of the understated amount:

Provided that where a person corrects an understatement as is referred to in this sub-regulation before he is served with an assessment by the Authority, that person shall only become liable to an administrative penalty in an amount equivalent to ten per cent (10%) of the understated amount.

(4) An assessment shall not relieve the person from his

obligation to furnish a return.

(5) When a return is furnished after an assessment has been made in accordance with sub-regulation (2), the Authority may at its discretion amend or cancel that assessment, as the case may be.

Part VI

Objections and Appeals

Objections and
appeals.

8. (1) Any person who undertakes any one or more qualifying activities who is issued with an assessment by the Authority may object to the assessment in writing within twenty (20) days of receipt of the assessment.

(2) Upon receipt of the objection referred to in sub-regulation (1), the Authority shall, within thirty (30) days of receipt thereof, either confirm the original assessment and provide reasons for the refusal of the objection made or shall communicate to the person making the objection a revised assessment which revised assessment shall constitute a new assessment of the purposes of sub-regulation (1):

Provided that the period referred to in this sub-regulation may be extended by a further thirty (30) days following a notice by the Authority to the relevant person.

(3) The person in receipt of the refusal of objection referred to in sub-regulation (2) may enter an appeal in terms of article 43 of the Act:

Provided that, without prejudice to articles 43 and 44 of the Act, an appeal against an assessment shall not be valid if:

(a) the return for the period to which the assessment refers has not been delivered to the Authority before the appeal is entered;

(b) any amount due by the person to the Authority which is not in dispute has not been paid;

(c) it is not made within twenty (20) days from the date of receipt of the refusal of objection referred to in sub-regulation (2);

(d) it is not made in such form and in such manner as may be prescribed under the Act, or the Administrative Justice Act.

Cap. 490.

(4) The onus of proving that any amount assessed by the Authority is incorrect shall lie on the appellant.

(5) The Tribunal shall deliver its decision in writing and shall

cause a copy of the decision to be given to the appellant.

(6) Any person who undertakes any one or more qualifying activities and who, having appealed to the Tribunal, feels aggrieved by the decision of the Tribunal, may appeal against that decision on a question of law only to the Court of Appeal in accordance with article 45 of the Act.

(7) Where no valid appeal against an assessment has been lodged within the time limits prescribed in these regulations, or where the appeal has been withdrawn or discontinued, or where the amount of tax payable has been determined on appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive as regards the amount payable in terms of regulations 3, 4 and 5 for the period or periods to which the assessment refers.

(8) Once an assessment is final and conclusive it shall constitute an executive title within the meaning and for the purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure. Cap. 12.

(9) Once an assessment is final and conclusive the Authority may request the payment of the amount payable by means of a demand note, and if payment is not made within fifteen (15) days from the date of the service of such demand note, the Authority may proceed to enforce payment in virtue of the executive title referred to in sub-regulation (6) after two (2) days from the service on the debtor of an intimation for payment made by means of a judicial act. Upon the lapse of the period of two days mentioned in this sub-regulation the Authority shall be entitled to register in the public registry or land registry, as the case may be, a note of privilege for the amount demanded in the judicial act which note of privilege shall be registered by any advocate or notary.

(10) The provisions of article 468 of the Code of Organization and Civil Procedure shall apply with respect to any warrant issued on the strength of the executive title mentioned in this regulation and to the paying out of the proceeds of the sale by auction of the property seized, and no opposition or reservation in the schedule of deposit shall stay the paying of any sum deposited in court following any such warrant as aforesaid. Cap. 12.

Part VII

Transitory Provisions

9. (1) The provisions of these regulations shall not apply to the holder of the National Lottery licence. Transitory provisions.

(2) The provisions of these regulations with respect to gaming services subject to a concession in accordance with article 11(3) of the Gaming Act or otherwise determined by means of a gaming Cap. 583.

device in gaming premises shall come into force on 1st January, 2019.
