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Taxation of Regulated Internet Gambling©

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INTRODUCTION

This Article surveys global licensing and taxation models applied to Internet gambling. Part II provides a categorical overview of Internet gambling licensing and taxation models, and summarize each model's apparent advantages and disadvantages. Part III surveys a broad sample of regulated online gambling licensing models, describing how particular models are implemented within each jurisdiction, and then comment on the strengths and shortcomings of each approach. Part IV then provides an overview of the current regulatory environment and emerging trends in the United States among jurisdictions considering legalization of Internet gambling. Part V concludes with recommendations, as well as a summary of the survey from Part III.

INTERNET GAMBLING LICENSING AND TAXATION MODELS

Internet gambling licensing and models generally can be described within the following categories: (1) monopoly models, such as lotteries operated by state, provincial, or national governments; (2) free market models, which have licensing fees with nominal up-front or ongoing costs and where there is no pre-set limit on the number of licenses that can be issued; (3) limited free market models where the total number of

^{1*} Mr. Millar wishes to thank James Steinmann, Esq. for his valuable contribution to this work.

licenses granted is determined in advance by legislation or regulation; (4) hybrid models involving combinations of the above, usually with splits among game types and/or local jurisdiction. Within these licensing models are taxation models. The taxation models are in the form of an ongoing licensing fee, which can be based upon (a) Gross Gaming Revenue (“GGR”); or (b) Gross deposits or “Net” deposits, or turnover, each of which are discussed below.

Monopoly Models

Monopoly models exist where state, regional (or provincial) or national governments operate online interactive gambling sites either directly or through a government sponsored entity (“GSE”). While a few exceptions exist, monopoly model jurisdictions generally prohibit competitive sites, including offshore gambling² sites.³ Monopoly models are used to regulate a wide variety of Internet gambling activities, from lotteries and fixed-odds games,⁴ to pari-mutuel betting⁵ and bookmaking,⁶ as well as peer-to-peer (“P2P”) and other traditional casino games.⁷

The primary regulatory advantage of a monopoly model is the amount of control it places in the hands of the relevant governing body. The governing body in these jurisdictions is either an operator itself (directly or through a government agency or GSE), or the governing body licenses a single operator. Because the governing jurisdiction is the sole

² “Offshore gambling” as used throughout this chapter is gaming activity by a customer geographically located within a particular jurisdiction through an operator based outside of that jurisdiction.

³ For example, the Austrian government enforces its monopoly over games of chance with respect to offshore operators, but does not criminalize offshore gambling by Austrian residents. See Federal Ministry of Finance, Regulation of Games of Chance, http://english.bmf.gv.at/Tax/RegulationofGamesofChance/_start.htm (last visited Mar. 5, 2012).

⁴ See *id.* (describing Österreichische Lotterien’s license for offering electronic lotteries via the Internet).

⁵ For example, the Hong Kong Jockey Club is the only entity licensed to offer online betting services to Hong Kong residents. UNITED STATES GENERAL ACCOUNTING OFFICE, INTERNET GAMBLING: AN OVERVIEW OF THE ISSUES (Dec. 2002), <http://www.gao.gov/new.items/d0389.pdf>.

⁶ See, e.g., GamingZion, Turkey, <http://gamingzion.com/turkey> (last visited Mar. 5, 2012) (describing the Turkish government’s ownership of the only legal Internet gambling operator there, IDDA, which provides sports betting only).

⁷ The Netherlands is proposing to offer online bingo, poker, casino games, and sports betting through a government-owned operator. *Dutch Government Paves the Way for Legalized Online Gambling*, CASINO PEOPLE, May 21, 2011, <http://www.casinopeople.com/news/dutch-government-paves-the-way-for-legalized-online-gambling.html>.

licensed operator, it faces little or no lawful competition. It may face competition, however, from unlicensed sites and from sites operating under an extraterritorial license.

As in any jurisdiction outlawing online gambling in general, monopoly models may encourage unlicensed competition, both from domestic and extraterritorial sites. That is, customers may seek gaming services from unlicensed operators either from within the jurisdiction or—perhaps more likely—from offshore operators located in jurisdictions that do not prohibit such operators from providing services extraterritorially, or even *only* grant extraterritorial licenses.⁸ Similarly, the revenue that might be enjoyed from multiple operators competing to attract customers could also be sacrificed. Monopoly model revenue could be further constrained if the monopoly has a limited product offering. Thus, under a monopoly regulatory model, a certain amount of operator revenue may be lost to competitive operators who have extraterritorial licenses. Furthermore, the regulatory control which is absolute as applied to the licensed operator does not offer consumer protection from competitive offshore operators.

Free Market Models

Jurisdictions intending to attract the maximum number of Internet gambling site operators (including those that offer extraterritorial licenses only) typically adopt free market regulatory models focused on the provision of licenses for fees. The specific structure of such licensing differs by jurisdiction, but most involve an application fee, initial license fee, subsequent renewal fees and on-going taxation, all of which might differ within the jurisdiction depending on the type and size of the operation. In free market jurisdictions, the number of licenses granted are unlimited and the types of games permitted are not constrained.

As the practical antithesis to a monopoly model, the free market models benefit from the number of operators they license, and how attractive the jurisdiction is to operators. In the competitive global marketplace of Internet gambling, operators may move to jurisdictions with favorable regulatory and taxation environments. The attraction to the jurisdiction of licensing more Internet gambling businesses is the revenue generated both directly from licensing, and indirectly through

⁸ For example, Alderney, Malta, and Kahnawake grant extraterritorial licenses permitting operators to solicit customers from only outside of their jurisdictions, and such licensees generally are not licensed in each jurisdiction in which such operators accept customers. *See infra* Part III.

ancillary businesses based in the jurisdiction (such as financial institutions, technology providers, and hosting services). The lower the license fees and the operating costs to the site operator, the more operators are attracted to the jurisdiction.

Finally, perhaps the greatest advantage from a regulatory perspective is that regulators can structure the licenses so that they receive flat fees up front (for each period of licensure). For example, the licensing body might require an advance deposit that it would credit against license fees in the ensuing years of operation. This is a “use it or lose it” approach, designed to minimize the revenue risk to the licensing body.⁹

Limited Free Market Models

Limited free market models attempt to address some of the disadvantages of the unlimited free market models by capping the number of licenses granted, offering a few licenses with higher probity standards or more stringent license applications, imposing stricter regulatory control over licensees, or by implementing any combination of these restrictions and limiting the services to within the jurisdiction.

Operating in a limited free market jurisdiction, however, can still be affected by competition from offshore operators who have extraterritorial licenses. Until the issuance of extraterritorial licenses is approached on a cooperative international basis, the recourse of each jurisdiction can be problematic.

Licensing Fee Models Based Upon Gross Gaming Revenue Tax

Under a Gross Gaming Revenue (“GGR”) tax model, operators pay a percentage of their revenues, calculated on the basis of the amount wagered by all of their customers minus the winnings returned to the players. This is often subject to additional deductions for certain expenses such as software licensing and development costs, chargebacks on credit cards, and other overhead, but deductions can be capped at a certain percentage of GGR.¹⁰ As illustrated in Parts III and IV, the GGR tax model is a method often used by some jurisdictions that li-

⁹ See, e.g., The Internet Gambling Consumer Protection and Public-Private Partnership Act of 2012, S.B. 1463, 2011-2012 Sess. (Cal. 2012) (proposing such a deposit in the amount of \$30 million).

¹⁰ In Antigua and Barbuda, for example, deductions for software licensing and development are capped at 40 percent of net win (GGR). SloGold, Antigua and Barbuda Gambling License, http://www.slogold.net/antigua_gambling_license_get_gambling_licence_on_antigua.html (last visited Mar. 5, 2012).

cense Internet gambling and also may be hosts for land-based casinos. GGR tax rates on Internet gambling generally range from 2-5 percent in the Caribbean to 15-30 percent in the European Union.¹¹ They are typically consistent across various types of gaming within a jurisdiction, but sometimes vary, with different games sometimes being subject to differing license fees.¹²

The most commonly cited advantage of a GGR model (as opposed to a turnover, deposit model or net deposit model) is that operators enjoy lower business risk as they are only taxed on their gaming profits, not on player bets or deposits. Jurisdictions often use the GGR model for Internet Gambling when the jurisdiction is already taxing land-based casinos using the GGR model.

While a GGR tax lowers the business risk operators face in Internet gambling in comparison to a deposit model, the primary disadvantage of a GGR model, however, is that taxes are collected in arrears—at the end of the year or customer life cycle—so regulators do not receive tax revenue in as timely or predictable a fashion. Furthermore, the interim period between an Internet gaming operator's initial gaming revenue (amount wagered) and payout of winnings is potentially indefinite because customers establish revolving accounts with these operators. This becomes an issue of special significance where operators are free to offer promotional credits, a common practice in the Internet gambling industry.

Therefore the GGR amount has to be calculated periodically, rendering the taxes more complex and somewhat variable even between periods of similar gaming activity. The alternative—waiting for a customer to close out his or her account before calculating GGR—would mean that taxes are never collected when accounts are left open, even while operators enjoy the benefits of the intervening float (for example, the ability to invest the money deposited in player accounts). Finally, the higher complexity of a GGR model in the context of Internet gaming—especially across multiple jurisdictions—increases transactional costs in general, and adds the risks of arrears tax collection (for example, operator insolvency) to the governing body's risk burden.

Licensing Fee Models with Deposit or a Turnover Tax

The chief alternative to a licensing model with GGR taxation is to base a tax on the funds the player deposits with an operator. Licensed

¹¹ See *infra* Part III.

¹² See *infra* Part III.

operators must pay a tax calculated by applying a stipulated percentage to the amounts deposited by players. The rate used under such a model is usually much lower than the GGR rate in a particular market—from less than 1 percent in free-market-oriented jurisdictions such as Malta and Belize to 5-7.5 percent in other European nations.¹³

A deposit tax model is more efficient to apply to online gambling than a GGR for the reasons outlined herein—the primary distinction being that it is collected in advance as opposed to collection “in arrears,” which reduces the revenue risk to the licensing jurisdictions. Furthermore, the deposit tax is game neutral, unlike the calculation of tax on GGR for an operator offering a variety of game types, thus simplifying the tax calculation, and remission processed, particularly in cases where the deposit tax is implemented across multiple jurisdictions. Finally, a deposit tax provides a mechanism for strengthening enforcement of gambling laws against unlicensed operators, whereby players might themselves incur liability for the deposit tax (plus penalties) if playing with unlicensed or otherwise “illegal” operators.

Some critics of the deposit tax model claim that such a regime deters the establishment of regulated gambling.¹⁴ These claims are overly simplistic, however, as an operator’s preference among jurisdictions is a function of the tax models, rates, and methods of collection—where the overall tax liability (primarily determined by rate) is the predominant factor. A deposit tax is more straightforward to calculate and enforce, reducing transactional costs and uncertainty in general. And the increased operator-side business risks involved with a deposit tax (mainly that funds might be deposited without being used for gaming, while still being taxed) can be mitigated by allowing operators to charge fees for early withdrawals, or by granting operators tax credits for customer account withdrawals.

Thus, the primary disadvantage of levying a deposit tax is that most established operators are accustomed to paying a GGR tax, which they perceive as less risky to themselves than being taxed on total gaming

¹³ *Infra* Part III(E).

¹⁴ See, e.g., REMOTE GAMBLING ASSOCIATION, *TURNOVER TAX PROPOSALS WILL PREVENT THE SUCCESSFUL DEVELOPMENT OF AN ONLINE GAMBLING INDUSTRY IN SPAIN* (Jan. 12, 2011), http://www.rga.eu.com/data/files/Pressrelease/final_spain_con_pr_jan_2011final.pdf (urging the Spanish government to adopt a tax regime based on gross profits); KPMG, *TAXATION OF ONLINE GAMBLING: THE CASE FOR A TAX REGIME BASED ON GROSS PROFITS (2010)* (on file with author) (arguing for the continued use of a GGR model in the United Kingdom, rather than reverting to the previously used turnover model).

volume. Also, while unlikely in the real world, competitors or other malicious persons could “deposit” funds in an account and immediately withdraw the funds without activity, with the goal of causing economic injury to the operator. Even if operators could impose fees on customers for early customer account liquidation, that possibility alone may have the effect of deterring potential legitimate customers from using those operators’ sites.

Operators and their associations lobby heavily to implement GGR tax models in countries proposing new online gambling legislation or already levying a turnover tax.¹⁵ But as discussed, a licensed operator could receive a full credit on the deposit tax for those funds withdrawn from player accounts at the end of each payment period. Such a method might thus be more accurately described as a “net deposit tax” model, and would mitigate the business risks and potential risks of unused or malicious deposits.

Hybrid Models

A few economically large jurisdictions such as Australia, Italy, and Spain use hybrids of the models described above.¹⁶ Typically such hybrids involve structuring the licensure and taxation schemes by game type, where certain games may be permitted under a monopoly model, others taxed on a GGR basis, others on deposit basis, and still others on a low-cost, license-only free market model. Different types of games flourish or suffer under different models. The primary advantage of creating a mixed approach to the regulation and taxation of online gambling is that it allows the regulator to mitigate these problems. For example, when the United Kingdom shifted from a turnover tax to a GGR tax to slow the movement of bookmakers to offshore locations, which was threatening gambling duty revenue as a whole, but the imposition of a gross profits tax caused reduced revenue in bingo and pools gambling.¹⁷

Thus, a jurisdiction can use carefully crafted hybrid models to maximize tax revenue according to the market dynamics of individual games, types of operators, or locality. It can then maximize the advan-

¹⁵ See *id.* In countries already using a GGR model, such lobbying tends to emphasize maintaining the existing model while, of course, lowering the tax rate.

¹⁶ See *infra* Part III.

¹⁷ HM CUSTOMS AND EXCISE, GAMBLING DUTIES: REPORT BY THE COMPTROLLER AND AUDITOR GENERAL 2 (Jan. 14, 2005), available at http://www.nao.org.uk/publications/0405/gambling_duties.aspx.

tages of each model incorporated into the hybrid. Of course, the higher transactional cost involved with a more complex hybrid model is the most obvious disadvantage. Furthermore, another detriment of adopting a highly complex hybrid model (especially one that may not adapt to changing market conditions flexibly enough) is that the jurisdiction's gaming industry as a whole may end up either more overburdened or under-taxed, cutting into overall potential license revenue.

Finally, the risks and disadvantages of each model also are potentially present in any hybrid system incorporating such a model. For example, a hybrid model incorporating a GGR tax will still require the regulator to collect at least some taxes in arrears, doing little to mitigate the problems outlined above in Section D. Ultimately, a model's structure should be crafted to balance these factors as the various market forces in a particular jurisdiction require.

APPLICATION OF REGULATORY AND TAXATION MODELS BY JURISDICTION

This Part of the Article provides a survey of certain jurisdictions' regulation and taxation of legalized Internet gambling, organized using the categorical approach described above. Monopoly models are used in Austria, Canada, Hong Kong, Hungary, Macau, the Netherlands, New Zealand, Sweden, and Turkey. Free market jurisdictions include Alderney, Costa Rica, the Isle of Man, Kahnawà:ke, and Panama. Belgium provides an illustration of a limited free market model jurisdiction with an emphasis on very limited licensure opportunities.

The surveyed jurisdictions using a GGR model include Antigua and Barbuda, Curaçao, the Dominican Republic, Estonia, Greece, the Philippines, and the United Kingdom. Belize, Cyprus, France, Malta, and Poland use turnover tax models. Finally, Australia (including Tasmania), Denmark, Gibraltar, Italy, Spain and Vanuatu round out the sampling as hybrid model jurisdictions.

Monopoly Models

Austria

Regulated online gambling in Austria comprises all games of chance, including via telecommunications services such as the Internet and telephone.¹⁸ The Ministry of Finance operates a state monopoly, *Österreichische Lotterien*, which is the only major licensed provider of online gaming services within Austrian territory, and is not permitted to provide extraterritorial services.¹⁹

A few exceptions from the state monopoly exist for low stakes betting and games of skill, but operators falling into the exceptions are regulated by the Federal States of Austria and their regional laws and can only accept Austrian players.²⁰ Interestingly, the supply of online gaming services by offshore operators is prohibited (as subject to the state monopoly). Offshore operators can not advertise or operate within Austria, but Austrian citizens are not subject to penalty for gambling on foreign sites and the government does not block or otherwise blacklist foreign online gambling sites.²¹

Canada

A few provinces in Canada have set up state-run online gambling sites, with others considering following suit. The British Columbia Lottery Corporation (“BCLC”) is the sole licensee in British Columbia to offer lotteries and other fixed odds games, casino gaming, and sports betting online.²² For the fiscal year 2010-11, BCLC distributed C\$1.104 billion to the provincial government.²³ Quebec provides similar offerings through Loto-Québec Corporation, generating C\$3.675 billion in gross revenue, of which C\$1.247 billion was paid directly to the provincial government.²⁴

¹⁸ Federal Ministry of Finance, Regulation of Games of Chance, http://english.bmf.gv.at/Tax/RegulationofGamesofChance/_start.htm (last visited Mar. 6, 2012).

¹⁹ Viaden Gaming, Austria Online Gambling License, http://www.viaden.com/products/austria_license.html (last visited Mar. 6, 2012).

²⁰ Federal Ministry of Finance, *supra* note 17.

²¹ GamingZion, Online Gambling Sites in Austria, <http://gamingzion.com/Austria> (last visited Mar. 6, 2012).

²² British Columbia Lottery Corporation, <http://www.bclc.com> (last visited Mar. 6, 2012); British Columbia Lottery Corporation, BCLC Online, <http://www.playnow.com> (last visited Mar. 6, 2012).

²³ British Columbia Lottery Corporation, Benefiting BC, <http://www.bclc.com/cm/benefitingbc/home.htm> (last visited Mar. 6, 2012).

²⁴ Loto-Québec, Social Responsibility, <http://lotoquebec.com/corporatif/nav/en/social-responsibility> (last visited Mar. 6, 2012). *See also* Loto-Québec, Espacejeux, <http://www.espacejeux.com> (last visited Mar. 6, 2012).

Likewise, Ontario is establishing an online casino offering a comprehensive assortment of games.²⁵ A private company will operate the casino under strict regulation by the provincial government. As of this writing, the Ontario Lottery & Gaming Corporation is considering bids and will assess which operator is the most well-suited to deal with everything from design to financial transfers and all other aspects related to both lottery and online casino products.²⁶ Ontario regulators anticipate provincial revenue of about C\$100 million per year within five years, to add to the roughly C\$2 billion it receives through land-based casinos, lotteries, and bingos.²⁷

Hong Kong

Only pari-mutuel betting and the government lottery are permitted in the Hong Kong Special Administrative Region of the People's Republic of China.²⁸ The Hong Kong Jockey Club is the only operator licensed to provide online gaming services to Hong Kong residents, and the betting duty paid by the Jockey Club accounts for about 10 percent of government revenues.²⁹

Besides live racetracks in Hong Kong, covered events include foreign horse racing and soccer. All other gambling is illegal in Hong Kong, and both operators and customers face stiff criminal penalties if convicted.³⁰

Hungary

Hungary's state-owned Szerencsejáték has exclusive rights to provide lottery, sports betting, and prize draw ticket games—all of which

²⁵ Casino People, *A Look at Online Gambling in Ontario*, Canada, Dec. 18, 2011, <http://www.casinopeople.com/news/a-look-at-online-gambling-in-ontario-canada.html>.

²⁶ *Ontario Should Have Online Gambling by Mid 2012*, OFF SHORE GAMING ASSOCIATION, Dec. 17, 2011, http://www.osga.com/artman/publish/article_9865.shtml.

²⁷ *Ontario to Gamble on Lotteries, Online Gaming*, CTV NEWS (Feb. 6, 2012), <http://toronto.ctv.ca/servlet/an/local/CTVNews/20120206/olg-online-tickets-120206/20120206/?hub=TorontoNewHome&cid=top>.

²⁸ UNITED STATES GENERAL ACCOUNTING OFFICE REPORT TO CONGRESSIONAL REQUESTERS, *INTERNET GAMBLING: AN OVERVIEW OF THE ISSUES 47-48* (Dec. 2002), <http://www.gao.gov/new.items/d0389.pdf> (hereinafter "GAO Report").

²⁹ *Id.*

³⁰ *Id.*

are available online.³¹ All other forms of Internet gambling are treated somewhat similarly to online gambling under the Unlawful Internet Gambling Enforcement Act (“UIGEA”)³² in the United States—that is, Hungary prohibits financial institutions from conducting transactions with offshore providers for the purpose of online gambling, but Hungarians do not face personal penalties for gambling online through offshore providers.³³

Macau

Despite (or perhaps because of) its robust land-based gaming industry (with revenues over \$33 billion in 2011³⁴), Macau does not license online casino gambling.³⁵ But Macau permits pari-mutuel horse betting online through the only licensed online operator, the Macau Jockey Club, which pays a 35 percent tax on gross revenue. However, horse racing as a whole only accounts for slightly more than 0.5 percent of Macau’s total gaming revenue.³⁶

The Netherlands

The Netherlands is proposing to legalize online gambling fairly liberally, but operates online casinos, bingo, poker, and sports books under a government monopoly.³⁷ Its attitude towards offshore operators is quite negative, as illustrated by its implementation in 2008 of a blacklist of foreign internet sites with which Dutch banks are forbidden from doing business. This restriction is being challenged, with the European Union pressuring the Netherlands to move away from its state-operated mo-

³¹ GamingZion, Online Gambling Sites in Hungary, <http://gamingzion.com/hungary> (last visited Mar. 6, 2012).

³² Unlawful Internet Gambling Enforcement Act of 2006, Pub. L. No. 109-347, § 801, 120 STAT. 1952 (codified at 31 U.S.C. §§ 5361-67 (2006)). UIGEA prohibits the acceptance of any financial instrument in connection with unlawful Internet gambling, and it puts a burden on financial institutions to identify and block restricted transactions according to regulations implemented by the Federal Reserve System. *Id.* §§ 5363-64.

³³ GamingZion, Online Gambling Sites in Hungary, *supra* note 30.

³⁴ Except where otherwise indicated, “\$” denotes amounts in U.S. Dollars.

³⁵ University of Nevada Las Vegas Center for Gaming Research, Macau Gaming Summary, <http://gaming.unlv.edu/abstract/macau.html> (last visited Mar. 6, 2012).

³⁶ *Id.*

³⁷ *Dutch Government Seeks to Allow Online Gambling*, REUTERS, Mar. 19, 2011, <http://www.reuters.com/article/2011/03/19/us-netherlands-gambling-idUSTRE72I20F20110319>; *Dutch Government Paves the Way for Legalized Online Gambling*, CASINO PEOPLE, May 21, 2011, <http://www.casinopeople.com/news/dutch-government-paves-the-way-for-legalized-online-gambling.html>.

nopoly.³⁸

New Zealand

The Totalizator Agency Board (“TAB”) and New Zealand Lotteries Commission are the only entities allowed to offer online gambling in New Zealand.³⁹ For the fiscal year 2010-11, the Lotteries Commission’s online sales channel, MyLotto, generated about 5 percent of its NZ\$925.9 million total sales (of which nearly 20 percent was returned to the Lottery Grants Board which oversees distribution of funds to various community causes).⁴⁰ TAB’s website saw a total turnover of approximately NZ\$340 million in 2009-10.⁴¹

Sweden

The wholly government-owned Svenska Spel holds a monopoly over all gambling in Sweden, including online gambling—a policy which has survived criticism from the European Union as well as various challenges including a high-profile legal battle between the Swedish government and British bookmaker Ladbrokes.⁴² But the government is rumored to be considering breaking the monopoly nevertheless, at which point Sweden would likely become a huge area of interest for offshore operators.⁴³

Turkey

The state-owned IDDAA is the only Turkish entity permitted to offer online gambling services, and it only offers sports betting. As in many Middle Eastern countries, other gambling is strictly proscribed, both

³⁸ GamingZion, Dutch Gambling Laws, <http://gamingzion.com/Netherlands> (last visited Mar. 6, 2012).

³⁹ GamingZion, Online Gambling Sites in New Zealand, <http://gamingzion.com/new-zealand> (last visited Mar. 6, 2012).

⁴⁰ NZ LOTTERIES, BRIEFING FOR INCOMING MINISTER 1 (Dec. 2011), <http://www.nzlotteries.co.nz/wps/wcm/myconnect/lotteries2/nzlotteries/resources/ce471b804a1bd4cca29df7a90e10a990/Incoming+ministers+briefing+paper+2011.pdf>.

⁴¹ NEW ZEALAND RACING BOARD, ANNUAL REPORT 2010 at 15 (2011), http://static.tab.co.nz/control/data/nzrb-annual-reports/NZRB_Annual_Report_2010updated_graph.pdf.

⁴² Brian K. Trembath, *Legal Update: Sweden*, CASINOAFFILIATEPROGRAMS.COM (Feb. 9, 2012), <http://www.casinoaffiliateprograms.com/blog/legal-update-sweden>.

⁴³ GamingZion, Online Gambling Sites in Sweden, <http://gamingzion.com/Sweden> (last visited Mar. 6, 2012).

online and in land-based establishments.⁴⁴

Free Market Jurisdictions

Alderney

Part of the British Channel Islands, Alderney offers several categories of licenses for remote gambling and extraterritorial Internet gambling servers.⁴⁵ Rather than taxing gaming deposits or revenue directly, it has two categories of license, with fees depending on the business type and size.

Category One licenses are for business-to-consumer operations, and the fee depends on the operator's annualized net gaming yield: for a license with no previous licensable activity in Alderney, the fee is £35,000; a renewal by a licensee whose annualized net gaming yield is less than £1 million costs £35,000; where yield falls between £1 million and £5 million, the renewal fee is £70,000; where it is between £5 million and £7.5 million, the renewal fee is £100,000; and a renewal by a licensee whose annualized net gaming yield equals or exceeds £7.5 million costs £140,000.⁴⁶

Category Two licenses are £35,000 per year and enable business-to-business gambling transactions, such as the operational management of the gambling platform.⁴⁷ Both forms of license provide tax-exempt status for the licensee, including from VAT or other sales taxes.⁴⁸ Temporary licenses are available for £10,000 per year, and carry the same obligations and privileges as a full license, but can be used for no more than 29 days continuously or 59 total days within a six-month period.⁴⁹

Alderney asserts that “its regulatory and supervisory approach meets the very highest of international standards”⁵⁰ but the jurisdiction—like

⁴⁴ GamingZion, Online Gambling Sites in Turkey, <http://gamingzion.com/turkey> (last visited Mar. 6, 2012).

⁴⁵ Viaden Gaming, Alderney Online Gambling Legislation, http://www.viaden.com/products/alderney_license.html (last visited Mar. 6, 2012).

⁴⁶ Alderney Gambling Control Commission, Fees, <http://www.gamblingcontrol.org/applicants9.php> (last visited Mar. 6, 2012).

⁴⁷ Viaden Gaming, Alderney Online Gambling Legislation, *supra* note 44.

⁴⁸ *Id.*

⁴⁹ Alderney Gambling Control Commission, A Temporary eGambling License, <http://www.gamblingcontrol.org/applicants5.php> (last visited Mar. 6, 2012).

⁵⁰ Alderney Gambling Control Commission, Home, <http://www.gamblingcontrol.org> (last visited Mar. 6, 2012).

others offering extraterritorial licenses—has not been free from controversy. In April 2011, the U.S. Department of Justice directed the Federal Bureau of Investigation to seize the domain of Full Tilt Poker, operating under an extraterritorial license issued in Alderney at the time, calling it “a global Ponzi scheme.”⁵¹ Alderney responded by revoking Full Tilt Poker’s license the following September.⁵²

Costa Rica

Over two hundred Internet gambling sites base their operations in Costa Rica, which is popular for its permissive regulatory environment, robust infrastructure, and growing economy.⁵³ Because Costa Rica does not have a licensing regime specifically for online gambling, the jurisdiction merely requires a \$15,000 corporate license fee with \$1,500 quarterly renewals.⁵⁴

Recently elected President Laura Chinchilla attempted a Fiscal Reform plan which would have imposed a 15 percent GGR tax on Free Trade Zone businesses (including Internet gambling operators),⁵⁵ but the plan was abandoned due to resistance from the Minister of the Pres-

⁵¹ Press Release, United States Attorney Southern District of New York, Manhattan U.S. Attorney Moves to Amend Civil Complaint Alleging That Full Tilt Poker and Its Board of Directors Operated Company as a Massive Ponzi Scheme Against Its Own Players (Sept. 20, 2011), available at <http://www.justice.gov/usao/nys/pressreleases/September11/amendedfulltiltpokercomplaintpr.pdf>. The sites of PokerStars (based in Isle of Man) and Absolute Poker (licensed by the Kahnawake Gaming Commission) were also seized at that time. Jacqui Cheng, *FBI: Online Poker Sites ‘Bet the House’ on Money Laundering, Fraud*, ARS TECHNICA (Apr. 2011), <http://arstechnica.com/tech-policy/news/2011/04/major-online-poker-sites-seized-charged-with-money-laundering.ars>.

After reaching an agreement with the Department of Justice, PokerStars continues to operate and has become the world’s largest poker room with licenses in Malta, Belgium, Italy, France, Denmark, Estonia, and the Isle of Man. *PokerStars.eu Launched After Acquiring Malta License*, POKERNEWSREPORT (Feb. 14, 2012), <http://www.pokernewsreport.com/pokerstars-eu-launched-after-acquiring-malta-licence-7484>. The site remains closed to U.S. customers except for the purpose of withdrawals from U.S.-owned accounts. See *PokerStars Statement on the Blocking of Players from the United States*, <http://www.pokerstars.com> (last visited Mar. 6, 2012).

⁵² Nathan Vardi, *Full Tilt Poker’s License Revoked*, FORBES (Sept. 29, 2011), <http://www.forbes.com/sites/nathanvardi/2011/09/29/full-tilt-pokers-license-revoked>.

⁵³ Viaden Gaming, *Online Gambling Licensing in Costa Rica*, http://www.viaden.com/products/costarica_license.html (last visited Mar. 6, 2012).

⁵⁴ *Id.*

⁵⁵ Mike Godfrey, *Costa Rican Tax Reform Needed, Says IMF*, TAX-NEWS.COM (Apr. 15, 2011), http://www.tax-news.com/news/Costa_Rican_Tax_Reform_Needed_Says_IMF___48819.html.

idency, the Costa Rican Association of Casinos, the Association of Call Center Employees, and the political opposition party.⁵⁶

Isle of Man

Like Alderney, the Isle of Man is a Crown Dependency of the United Kingdom and a popular jurisdiction for locating extraterritorial Internet gambling operations, with offerings including sports books, betting exchanges, online casino games, live dealing, peer-to-peer (“P2P”) games, mobile phone betting, fantasy football (and similar games), pari-mutuel and pool betting, network gaming, lotteries, certain “spot-the-ball” style games, and network services.⁵⁷

Isle of Man’s regulatory framework was established under the Online Gambling Regulation Act of 2001 (“OGRA”), which requires a license for included games, with some activities being exempt from licensure.⁵⁸ Fees include a £5,000 application fee and £35,000 for an annual license, which is granted for five-year terms.⁵⁹

Exempted activities include the U.K. National Lottery, gambling covered by a Betting Office or Casino license, spread betting, exempted activities defined by the Insurance Act of 1986,⁶⁰ free-to-play games, and ancillary services such as marketing, administration, information technology services, customer support, and disaster recovery facilities.⁶¹

Kahnawà:ke

Located in Quebec, Canada, the Kahnawà:ke Mohawk Territory provides a home to online casinos and poker rooms regulated by the Kahnawà:ke Gaming Commission.⁶² The Commission issues four cate-

⁵⁶ Jaime Lopez, *Taxation and Fiscal Reform Legislative Plans Back in the Oven*, THE COSTA RICA STAR (Jan. 13, 2012), <http://news.co.cr/business/taxation-and-fiscal-reform-legislative-plans-back-in-the-oven/13/01/2012>.

⁵⁷ ISLE OF MAN GAMBLING SUPERVISION COMMISSION, GUIDANCE FOR ON-LINE GAMBLING 6-7 (Dec. 14, 2011), available at <http://www.gov.im/lib/docs/gambling//externalguidancev61.doc>.

⁵⁸ See *id.* at 6.

⁵⁹ *Id.* at 13-14.

⁶⁰ Available at <http://www.gov.im/lib/docs/ipa/insurance/InsuranceAct1986.pdf>.

⁶¹ Online Gambling Regulation Act 2001 § 3, available at <http://www.gov.im/lib/docs/infocentre/acts/ogra2001.pdf>.

⁶² CasinoMan.net, Kahnawake, <http://www.casinoman.net/reviews/gambling-jurisdictions/kahnawake.asp> (last visited Mar. 6, 2012); Viaden Gaming, Online Gambling Licensing in Kahnawake, http://www.viaden.com/products/kahnawake_license.html (last visited Mar. 6, 2012).

gories of license: an Interactive Gaming License awarded to a single data center within the Territory; Client Provider Authorizations (“CPAs”) allowing each operator to use the single licensed data center; Secondary Client Provider Authorizations for operations located in another jurisdiction; and Key Person Licenses for managers of the Client entities.⁶³

Application fees are C\$25,000 for each CPA and C\$5,000 for each Key Person, with annual licenses costing C\$10,000 and C\$1,000-C\$2,500 respectively, plus a C\$5,000 renewal fee being imposed every two years for CPAs.⁶⁴ 34 licensees are listed with the Gaming Commission, operating a total of 139 gaming sites.⁶⁵

Panama

The operation of Internet gambling businesses in Panama is free of deposit or revenue taxes if the operator only accepts extraterritorial wagers—licensees may not accept business from Panamanians.⁶⁶ Furthermore, the Panama Gaming Control Board requires payment of a master license fee of \$40,000, which is valid for up to seven years. Then an annual license fee of \$20,000 applies, though master licensees may grant sub-licenses subject only to this annual fee.⁶⁷

Limited Free Market Jurisdictions

Belgium provides a good illustration of the implementation of a limited free market model. Before 2012, the Belgian national lottery had an exclusive monopoly right to offer remote games. Enacted in 2011 and implemented January 1, 2012, the new Belgian Gaming Act permits very limited licensure of third-party operators.⁶⁸ Only three Internet

⁶³ Kahnawake Gaming Commission, Permit Holders, <http://www.gamingcommission.ca/permitholders.asp> (last visited Mar. 6, 2012).

⁶⁴ Kahnawake Gaming Commission, Fees—Interactive, <http://www.gamingcommission.ca/docs/ApplicationRelatedCosts.pdf> (last visited Mar. 6, 2012). Fees are listed in Canadian Dollars.

⁶⁵ Kahnawake Gaming Commission, Interactive Permit Holders List (by URL), <http://www.gamingcommission.ca/interactiveURL.asp> (last visited Mar. 6, 2012).

⁶⁶ CASINO CITY, GLOBAL GAMING ALMANAC 177 (2011), available at http://www.casinocitypress.com/common/gga_panama.pdf.

⁶⁷ *Id.* See also Viaden Gaming, Panama Internet Gaming License, http://www.viaden.com/products/panama_license.html (last visited Mar. 6, 2012).

⁶⁸ Steven De Schrijver & Pieter Paepe, *Online Gambling Law in Belgium: Some Recent Developments*, WHO’S WHO LEGAL (Oct. 2011), <http://www.whoswholegal.com/news/features/article/29234/online-gambling-law-belgium-recent-development>.

gaming licenses have been granted so far—to PokerStars.be, Partouche.be, and Casino777.be.⁶⁹ Each operator's tax rate differs by region, but as of late 2010 the Walloon government reportedly announced a flat tax of 11 percent on all online gaming volume.⁷⁰ The Gaming Act also criminalizes any participation in, advertising for, or recruiting for unlicensed games of chance—in effect, compelling internet service providers to block Belgians from accessing unlicensed gambling sites appearing on a regularly updated blacklist.⁷¹

Greece and Poland also are in the process of licensing online gaming, and will likely issue only a limited number of casino licenses. Greece applies a fairly high GGR tax in addition to basic license fees,⁷² and Poland has licensed a single operator subject to a variable turnover tax (depending on the game offered).⁷³ Spain, a hybrid model jurisdiction, has limited the licensure of cross-sports betting and horseracing *mutuel* betting, which are subject to a variable GGR tax depending on the game.⁷⁴

Licensing Fee Models with Gross Gaming Revenue Tax

Antigua and Barbuda

Now home to only ten licensees,⁷⁵ the twin-island nation of Antigua and Barbuda saw a peak in online gambling revenues of nearly \$2.4 billion in 2001 from 59 licensees—representing about 60 percent of the

⁶⁹ *Controversial Belgian Gambling Law Enters Into Force*, ONLINECASINOADVICE.COM (Jan. 4, 2012), <http://www.onlinecasinoadvice.com/news/controversial-belgian-gambling-law-enters-into-force>.

⁷⁰ Koen Platteau, *Controversial New Gambling Legislation in Belgium*, OLSWANG (Sept. 1, 2010), <http://www.olswang.com/newsarticle.asp?sid=110&aid=3115>.

⁷¹ *Id.* See also Joe Valentino, *Online Gambling News from Belgium, Greece and Georgia*, CASINO ADVISOR (Dec. 15, 2011), <http://www.casinoadvisor.com/online-gambling-news-from-belgium-greece-and-georgia-news-item.html> (discussing Belgium and Greece's challenges with regard to offshore operators); Maggie B., *Pokerstars is Granted Belgium License While Others Are Blacklisted*, CASINO SCAM REPORT (Feb. 10, 2012), <http://www.casinoscamreport.com/2012/02/10/pokerstars-is-granted-belgium-license-while-others-are-blacklisted> (describing blacklist, including operators such as Chilipoker.com, 888.com, Titanpoker.be, and Everestpoker.be).

⁷² See Section D, *infra*.

⁷³ See Section E, *infra*.

⁷⁴ See Section F, *infra*.

⁷⁵ Antigua and Barbuda Financial Services Regulatory Authority Directorate of Offshore Gaming, *Active Licensees*, <http://www.antiguagaming.gov.ag/licensees%20active.asp> (last visited Mar. 6, 2012).

global online gambling market at the time.⁷⁶ This activity has since dramatically declined, in large part owing to the passage of UIGEA⁷⁷ in the United States and a subsequent dispute between the nations before the World Trade Organization.⁷⁸

Antigua and Barbuda uses a GGR tax model at a rate of 3 percent of “net win” (synonymous with GGR), with operators being entitled to a maximum cap of \$50,000 per month on taxes.⁷⁹ Additionally, operators can deduct software licensing and development costs up to 40 percent of their GGR, as well as charge backs on credit cards for up to 18 months after the original charge. Operators must maintain financial records and provide ready access to them to authorized government agencies. Gaming licensee fees are \$75,000 annually and wagering licenses are \$50,000 per year.⁸⁰

Curaçao

Curaçao, a constituent country of the Dutch Kingdom since the dissolution of the Netherlands Antilles in October 2010, has adopted a fairly straightforward approach to online gambling regulation. Curaçao issues one type of license to cover a comprehensive assortment of gaming services, including all games of skill, chance, and sports betting. Company formation in Curaçao enables application for an “Ezone permit” to avail the operator of Curaçao’s low 2 percent GGR tax and to qualify for exemption from VAT.⁸¹

Dominican Republic

The Dominican Republic offers Internet casino and sports betting

⁷⁶ Antigua WTO, Antigua Economic and Gambling Data, http://www.antiguawto.com/WTO_Economic_gambling_data.html (last visited Mar. 6, 2012) (citing GLOBAL BETTING AND GAMING CONSULTANTS, QUARTERLY eGAMING STATISTICS REPORT (May 2007)).

⁷⁷ Unlawful Internet Gambling Enforcement Act of 2006, *supra* note 32.

⁷⁸ See Antigua WTO, Antigua-United States WTO Internet Gambling Case, <http://www.antiguawto.com/WTODispPg.html> (last visited Mar. 6, 2012) (summarizing the dispute).

⁷⁹ Antigua and Barbuda, Offshore Financial Sector: Internet Gaming, http://www.antigua-barbuda.com/finance_investment/offshore_sector.asp (last visited Mar. 6, 2012).

⁸⁰ *Id.*

⁸¹ CURACAO eGAMING, GUIDANCE NOTES: OPERATING UNDER A CURACAO eGAMING LICENSE 1 (Aug. 1, 2011), available at http://www.curacao-egaming.com/pdf/Curacao_eGaming_Guidance_Notes_2011.pdf.

licenses.⁸² Licensure requires a one-time payment of \$15,000 in addition to a \$15,000 application fee (or \$10,000 if it is the second or third application), and the country imposes a 5 percent GGR tax with a \$50,000 annual minimum thereafter.⁸³ While land-based casinos in the Dominican pay the corporate tax of 25 percent -29 percent plus fees based on the number of tables in operation and a gross tax on slot machine sales, offshore licensees are exempt from these taxes and levies as long as their revenue is not Dominica-sourced.⁸⁴

Estonia

A relative newcomer to Internet gambling despite its robust land-based gambling industry, Estonia licenses operators to provide games of chance, games of skill, and pari-mutuel betting services.⁸⁵ The jurisdiction imposes a 5 percent sales tax that excludes player winnings.⁸⁶ Operators require two licenses: an activity license and an operating license, the issuance of which is the responsibility of the Estonian Tax and Customs Board.⁸⁷

Estonian regulations require the country's internet service providers to block offshore gambling sites that do not have an Estonian gambling license.⁸⁸ Although this policy runs counter to European Union policy, Estonian regulators claim that the situation is temporary, and only necessary in these early stages of online gambling development.⁸⁹

⁸² SloGold, Dominica Internet Gaming Licenses, http://www.slogold.net/dominica_gambling_license_get_gaming_sportbook_licence_in_dominica.html (last visited Mar. 6, 2012).

⁸³ *Id.*

⁸⁴ Viaden Gaming, Online Gambling License in the Dominican Republic, <http://www.viaden.com/products/online-gambling-license-in-dominican-republic.html> (last visited Mar. 6, 2012).

⁸⁵ Viaden Gaming, Online Gambling License in Estonia, <http://www.viaden.com/products/estonia-gambling-license.html> (last visited Mar. 6, 2012). Estonia's Gambling Tax Act, passed April 22, 2009, lays out taxes imposed on Internet gambling as the "amounts received as stakes in games of chance and games of skill . . . from which the winnings have been deducted." Gambling Tax Act § 1(1)(5), available at <http://www.emta.ee/index.php?id=980> (last visited Mar. 6, 2012).

⁸⁶ *Estonia Regulating Online Gambling, One Step at a Time*, GAMBLING RESULTS (Dec. 19, 2011), <http://gamblingresults.com/internet-gambling-facts/20111219-estonia-regulating-online-gambling-one-step-at-a-time>.

⁸⁷ See Estonian Tax and Customs Board, <http://www.emta.ee/index.php?lang=en> (last visited Mar. 6, 2012).

⁸⁸ *Gambling News: Estonia Begins Blocking "Unlicensed" Gambling Sites*, OLSWANG (Mar. 24, 2010), <http://www.olswang.be/newsarticle.asp?sid=110&aid=2926>.

⁸⁹ Viaden Gaming, *supra* note 84.

Greece

The online casino industry in Greece is reportedly worth over €2 billion, a fact which, combined with Greece's current economic hard times, has deterred the nation from banning Internet gambling as it originally considered. Instead, it is working toward a license-and-tax approach.⁹⁰ License fees have not been entirely settled upon, but legislation passed in August permits licensure of Video Lottery Terminals ("VLTs") and 10-50 online casinos, with rumors that fees will be approximately €15,000 per VLT and somewhere "in the order of €1-5 million" for five-year casino licenses.⁹¹

The Greek Finance Ministry originally intended to levy a 6 percent deposit tax on Internet operations, but has instead decided to implement a 30 percent GGR tax, which is toward the higher end of the scale for E.U. countries.⁹² While the Remote Gaming Association was reportedly pleased with the switch, it subsequently turned its energies toward convincing the Greek government to lower the GGR tax rate "to be more into line with other countries that have licensed remote gambling."⁹³

Philippines

Previously the Philippine Amusement and Gaming Corporation ("PAGCOR") held sole rights to all Internet gaming activities in the Philippines and issued an exclusive license to one company—Philweb—until the year 2032. Legislation passed in 1995 allowed the creation of the Cagayan Economic Zone Authority ("CEZA").⁹⁴ CEZA, also known as Cagayan Freeport, is a Philippines Tax Incentive Zone created with the goal of turning the Philippine province of Cagayan into a self-sus-

⁹⁰ *Greek Online Gambling Taxation Scheme*, CASINO PEOPLE (Mar. 29, 2011), <http://www.casinopeople.com/news/greek-online-gambling-taxation-scheme.html>.

⁹¹ Konstantinos Veletas, *What to Know About the New Greek Gaming Law*, CASINO AFFILIATE PROGRAMS.COM (Sept. 26, 2011), <http://www.casinoaffiliateprograms.com/blog/what-to-know-about-the-new-greek-gaming-law>.

⁹² *Greek Online Gambling Taxation Scheme*, *supra* note 89.

⁹³ *Id.* (quoting "a spokesperson from the RGA"). See also John W., *EGBA Challenges Greek Online Gambling Law*, ONLINE CASINO REPORTS (Dec. 6, 2011), <http://www.onlinecasinoreports.com/news/theheadlines/2011/12/6/egba-challenges-greek-online-gambling-law.php> (describing expanded criticism and challenges by the RGA and European Gaming and Betting Association over Greece's online gambling legislation under E.U. law).

⁹⁴ Triple i Consulting, *Online Gambling License Philippines*, <http://www.tripleiconsulting.com/main/philippines-business-guides-tips-and-news-blog/179-online-gambling-license-philippines> (last visited Mar. 6, 2012).

taining economic center.⁹⁵ Online casinos and sports books domiciled in the Economic Zone pay CEZA's special 5 percent gross income tax rate,⁹⁶ an Interactive Gaming License fee of \$40,000, and a low 2 percent GGR tax.⁹⁷

United Kingdom

The United Kingdom is the largest economy regulating Internet gambling under a GGR tax model.⁹⁸ Previously taxing turnover at 6.75 percent, which reportedly led a lot of bookmakers to move their telephone and Internet operations offshore, the British regulatory model imposes a 15 percent GGR tax on top of basic licensing fees.⁹⁹ Despite an 11 percent decrease versus the prior year due to operators moving offshore, gross online gambling yield in the United Kingdom was approximately \$1.027 billion for the year ended March 31, 2010.¹⁰⁰

Online gambling, which is regulated by the U.K. Gambling Commission, includes remote casinos (providing games such as American roulette and blackjack, as well as P2P games like poker), remote betting, remote bingo, and remote lotteries.¹⁰¹ Rather than offering a single Internet gambling permit, licenses are issued by game type and are either

⁹⁵ Triple i Consulting, Cagayan Economic Zone Authority, <http://www.tripleiconsulting.com/main/philippines-tax-incentive-programs/cagayan-economic-zone-authority> (last visited Mar. 6, 2012).

⁹⁶ Triple i Consulting, Online Gambling License Philippines, *supra* note 93.

⁹⁷ Vegas 365, Philippines, <http://www.vegas365.com/philippines> (last visited Mar. 6, 2012).

⁹⁸ Of the surveyed countries, only France's gross domestic product ("GDP") is larger—the World Bank puts France's GDP at \$2.560 trillion in 2010 vs. the United Kingdom's at \$2.246 trillion; France uses a turnover tax model, as discussed *infra* Section E. World Bank, Gross Domestic Product 2010, <http://siteresources.worldbank.org/DAT-ASTATISTICS/Resources/GDP.pdf>.

⁹⁹ Malta-Tax, British Online Gambling Laws, <http://www.malta-tax.com/betting/malta-online-gaming.htm> (last visited Mar. 6, 2012). *See also* HM CUSTOMS AND EXCISE, *supra* note 16, at 2.

¹⁰⁰ ERNST & YOUNG, MARKET OVERVIEW: THE 2011 GLOBAL GAMING BULLETIN 69 (2011), available at [http://www.ey.com/Publication/vwLUAssets/2011_global_gaming_bulletin/\\$FILE/2011%20Global%20Gaming%20Bulletin.pdf](http://www.ey.com/Publication/vwLUAssets/2011_global_gaming_bulletin/$FILE/2011%20Global%20Gaming%20Bulletin.pdf). British residents are not prohibited from gambling with offshore providers, but a bill is being considered that would require all Internet gambling sites operating in the United Kingdom to be licensed by the U.K. Gambling Commission. *UK Parliament Discusses Controversial Online Gambling Law*, ONLINECASINOADVICE.COM (Feb. 10, 2012), <http://www.onlinecasinoadvice.com/news/uk-parliament-discusses-controversial-online-gambling-law>.

¹⁰¹ Gambling Commission, About Remote Gambling (Including Online Gambling), http://www.gamblingcommission.gov.uk/gambling_sectors/remote/about_the_remote_gambling_indu/about_remote_gambling.aspx (last visited Mar. 6, 2012).

non-remote (that is, in-person) only, or allow remote operations from land-based premises.¹⁰²

For example, operators wishing to provide general betting on virtual or real events via the Internet must pay an application fee from about £3,000 up to about £64,000 based on annual gross gambling yield (where for general betting, an annual gross yield of less than £500,000 qualifies the operator for the lowest rate, and the highest of seven tiers is represented by those operators generating an annual gross yield of over £500 million).¹⁰³ The annual remote betting license then costs from about £3,000 up to about £160,000 per year depending on annual gross gambling yield.¹⁰⁴ Remote casinos pay similar license application and annual fees, but remote lottery operators pay much less.¹⁰⁵

Licensing Fee Models with Deposit/Turnover Tax

Belize

Belize licenses online operators to provide any type of gambling in compliance with the extraterritorial market being served.¹⁰⁶ The jurisdiction applies a turnover tax of 0.75 percent.¹⁰⁷ Extraterritorial licenses cost between \$50,000 and \$100,000,¹⁰⁸ and require being an Internation-

¹⁰² Gambling Commission, Do I Need a License, http://www.gamblingcommission.gov.uk/gambling_sectors/remote/getting_a_licence-_what_you_ne/do_i_need_a_licence.aspx (last visited Mar. 6, 2012).

¹⁰³ Gambling Commission, How Much Will My Operating License Application Cost—Betting?, http://www.gamblingcommission.gov.uk/gambling_sectors/betting/getting_a_licence_what_you_ne/applying_for_a_licence_-_betting/apply_for_an_operating_licence/how_much_-_application_fee.aspx (last visited Mar. 6, 2012).

¹⁰⁴ Gambling Commission, How Much Will My Operating License Annual Fees Cost—Betting?, http://www.gamblingcommission.gov.uk/gambling_sectors/betting/getting_a_licence_what_you_ne/applying_for_a_licence_-_betting/apply_for_an_operating_licence/how_much_-_annual_fees.aspx (last visited Mar. 6, 2012).

¹⁰⁵ See Gambling Commission, Apply for an Operating License—Casinos, http://www.gamblingcommission.gov.uk/gambling_sectors/casinos/getting_a_licence_what_you_ne/applying_for_a_licence_-_casin/apply_for_an_operating_licence.aspx (last visited Mar. 6, 2012) (describing casino license fees); Gambling Commission, Applying for a License—Lotteries, http://www.gamblingcommission.gov.uk/gambling_sectors/lotteries/getting_a_licence-what_you_n/applying_for_a_licence_-_lotte.aspx (last visited Mar. 6, 2012) (describing lottery license fees).

¹⁰⁶ LowTax Network International, Gambling License Belize, http://www.etc-lowtax.net/english/gambling_license_belize.htm (last visited Mar. 6, 2012).

¹⁰⁷ *Id.*

¹⁰⁸ Online Casino City, Belize, <http://online.casinocity.com/jurisdictions/belize> (last visited Mar. 6, 2012).

al Business Company with incorporation in Belize, adequate capitalization, subjectivity to government audits, and appropriate identity verification.¹⁰⁹ Furthermore, operators may not accept wagers from residents of Belize—that is, operators are granted extraterritorial licenses only.¹¹⁰

Cyprus

Previously a haven for online casino operators paying a relatively low 10 percent GGR tax, the Cypriot government has approved a bill that proposes to ban online gambling with the exceptions of sports betting and lotteries, which will be subject to a 3 percent turnover tax.¹¹¹ As in Belize, licenses require compliance with various criteria such as adequate capitalization and customer identity and age verification.¹¹²

France

The largest nation by GDP with regulated online gambling,¹¹³ France imposes a 7.5 percent turnover tax on general gambling, horse racing, and sports betting, and taxes online poker at 2 percent of the amount wagered.¹¹⁴ According to critics, these tax rates are “considered some of the highest in Europe.”¹¹⁵ For example, KPMG argues that France’s adoption of a relatively high turnover tax and limited licensure model is overly burdensome on operators—decreasing competition and market value, as well as choice for consumers and tax revenue.¹¹⁶ With reference to Italy’s 20 percent GGR tax, KPMG estimated two years ago that by the end of 2012, Italy’s gambling turnover will be approximately four times that of France, rendering France’s gambling market “immaterial”

¹⁰⁹ LowTax, *supra* note 106; SloGold, Belize Gambling License, http://www.slogold.net/belize_gambling_license_get_gambling_licence_in_belize.html (last visited Mar. 6, 2012).

¹¹⁰ Online Casino City, *supra* note 107.

¹¹¹ *Cyprus Approves Online Casino Ban*, DUROCHER (Mar. 9, 2011), <http://www.durocher.org/gambling-news/cyprus-online-casino-ban>.

¹¹² *Id.* See also N. Pirilides & Associates, Gambling Law in Cyprus, <http://www.pirilides.com/en/cyprus/publications/gambling-law-in-cyprus/70> (last visited Mar. 6, 2012) (describing pending legislation as well as operator application requirements).

¹¹³ See *supra* note 98 (comparing France’s GDP with that of the United Kingdom).

¹¹⁴ *France Passes Bill to End State Monopoly on Online Gambling*, THE TELEGRAPH (Apr. 6, 2010), available at <http://www.telegraph.co.uk/news/worldnews/7561071/France-passes-bill-to-end-state-monopoly-on-online-gambling.html>.

¹¹⁵ *French Online Gambling Operators Lobby for Taxation Reforms*, ONLINE-CASINOS.COM (May 20, 2011), <http://www.online-casinos.com/news/news2010637.asp>.

¹¹⁶ KPMG, TAXATION OF ONLINE GAMBLING: THE CASE FOR A TAX REGIME BASED ON GROSS PROFITS 13 (2010) (on file with author).

by comparison.¹¹⁷

As predicted by critics of the French system, the French online gaming market has seen a recent decline in gambling revenue, as well as loss of market share in the European Union.¹¹⁸ In response, and specifically in an effort to limit French gaming through offshore providers (and thus mitigate the associated loss of French gambling tax revenue), the French government has directed Internet service providers to block sites not licensed by the French online gaming regulatory authority (“ARJEL”).¹¹⁹ Furthermore, ARJEL expanded the number of licensed operators to 34 as of February 7, 2012.¹²⁰ And one of the reasons France legalized online sports betting in 2010—the FIFA World Cup—may have been a significant factor in the decline of sports betting in 2011, a possibility that critics tend to avoid highlighting.

Malta

Malta was the first member of the European Union to legalize and regulate online gambling through its Lotteries and Gaming Authority (“LGA”).¹²¹ For all practical purposes, Malta is a free-market jurisdiction with its low 0.5 percent turnover tax rate (with an annual cap, described below), low-tax onshore tax regime, and broad network of double-taxation agreements.¹²² It licenses a comprehensive assortment of games under a four-tiered classification system: Class 1 licenses cover casinos; Class 2 licenses apply to fixed odds, pool, and spread betting; Class 3 includes P2P games (such as poker and betting exchanges); and Class 4 licenses are for operations managers and ancillary companies such as software vendors.¹²³

¹¹⁷ *Id.* at 13-14.

¹¹⁸ *French Online Gambling Market Slows*, CASINOS ONLINE (Feb. 8, 2012), <http://www.casinos-online.co.uk/news/20120208/french-online-gambling-market-slows>.

¹¹⁹ Emilis Pakenas, *Online Poker Regulations Take Effect in France and Belgium*, POKER WORKS (Jan. 5, 2012), <http://pokerworks.com/poker-news/2012/01/05/online-poker-regulations-take-effect-in-france-and-belgium.html>. The operators licensed in France are among the most prominent: PokerStars, PartyPoker, iPoker network, 888, Everest, as well as two French operators, Partouche and Winamax. *Id.*

¹²⁰ CASINOS ONLINE, *supra* note 117.

¹²¹ Viaden Gaming, Malta Online Gambling Legislation, http://www.viaden.com/products/malta_license.html (last visited Mar. 6, 2012).

¹²² Malta-Tax, Malta Online Gaming Licenses, <http://www.malta-tax.com/betting/malta-online-gaming.htm> (last visited Mar. 6, 2012). *See also* Malta-Tax, Maltese Tax Vehicles, <http://www.malta-tax.com/tax-vehicles/index.htm> (last visited Mar. 6, 2012) (describing onshore tax regime).

¹²³ Viaden Gaming, *supra* note 120.

After the costs of incorporating in Malta and a €2,330 application fee, a license of any of the four types only costs €7,000 per year for a five-year term, with a five-year renewal fee of €1,165.¹²⁴ Furthermore, the already low annual gaming tax is capped at €460,000. But casino licenses are subject to a “differential gaming tax” of €4,660 for each of the first six months, then €7,000 per month, and P2P operators are subject to an additional 5 percent tax on real income.¹²⁵

Poland

Despite its well-established land-based casino industry, Poland has taken a very restrictive approach to online gambling, outlawing all gambling except sports betting sites, which pay a high 12 percent turnover tax.¹²⁶ Furthermore, though Poland does not characterize its model as a monopoly, Czech bookmaker Fortuna Entertainment Group is the only licensed operator to date.¹²⁷

Hybrid Models

Australia

Australia’s approach to Internet gambling is complex, particularly because each state and territory—like each of the United States—regulates its own gaming activities, subject to a few national restrictions. The Interactive Gambling Act (“IGA”) generally restricts online gambling, making it unlawful for Australia-based operators to offer casino-style games such as roulette, poker, craps, or blackjack to anyone located in designated countries (that is, Australian jurisdiction), but excluding

¹²⁴ Viaden Gaming, Malta Online Gambling Licensing Procedures, http://www.viaden.com/products/malta_procedures.html (last visited Mar. 6, 2012).

¹²⁵ *Id.* See also Malta Lotteries & Gaming Authority, Remote Gaming, <http://www.lga.org.mt/lga/content.aspx?id=86949> (last visited Mar. 6, 2012) (describing online gaming sector with links to specific game and license type descriptions as well as lists of licensees in each Class).

¹²⁶ *Poland Forbids Online Gambling While Praising Sportsbooks*, GAMINGZION (Apr. 11, 2011), <http://gamingzion.com/gamblingnews/poland-forbids-online-gambling-while-praising-internet-sportsbooks-2000>.

¹²⁷ Krystof Chamonikolas, *Fortuna Jumps to 3-Month High on Poland Expansion*, BLOOMBERG (Jan 25, 2012), <http://www.bloomberg.com/news/2012-01-25/fortuna-jumps-to-3-month-high-on-poland-expansion-prague-mover.html>. See also FORTUNA ENT. GROUP, REGULATORY ANNOUNCEMENT (Jan. 24, 2012), available at http://www.afm.nl/registers/kgi_documents/201201240000000009_2011-01-24%20Fortuna%20-%2020%20000%20subscribers%20for%20on-line%20bets_ENG.pdf.

from the Act specific sports and race wagering, lotteries, and keno.¹²⁸ Thus, the IGA does not prohibit Australians from gambling with off-shore providers, nor does it prohibit Australian operators from providing gambling services to extraterritorial customers.¹²⁹ Operators in Australian states and territories offer the activities excluded from the IGA—online sports betting, keno, and lotteries—to varying degrees, and subject to different regulatory models.

The Australian state of New South Wales adopted a monopoly model for its regulated lottery, and a license fee model with graduated GGR tax for sports betting and keno. The state granted a forty-year exclusive lottery license to New South Wales Lotteries Corporation Pty Ltd., a subsidiary of Tatts Group Ltd., which pays 66.1 percent of player loss in taxes.¹³⁰ Wagering on racing and sports is conducted by TAB Limited and licensed bookmakers, whose remote betting authorities are granted under New South Wales's Racing Administration Act.¹³¹ Replacing the previously applied bookmakers' turnover tax, pari-mutuel sports betting is subject to a 19.11 percent tax on player loss, and fixed odds sports betting is subject to a 10.91 percent GGR tax.¹³² Keno is taxed at 8.91 percent for the first A\$86.5 million in player loss, and 14.91 percent thereafter.¹³³

The Northern Territory accepts applications—without a fee—for an unlimited number of extraterritorial licenses to provide online gaming to offshore customers, subject to a low 4 percent GGR tax rate.¹³⁴ Book-

¹²⁸ Interactive Gambling Act 2001 §§ 6, 8A-D, 15 (as amended Oct. 19, 2011), available at <http://www.comlaw.gov.au/Details/C2011C00840>.

¹²⁹ Australian Policy Online, Review of the Interactive Gambling Act 2001, <http://apo.org.au/node/26111> (last visited Mar. 6, 2012).

¹³⁰ New South Wales Government Office of Liquor, Gaming & Racing, Public Lotteries, http://www.olgr.nsw.gov.au/public_lotteries_home.asp#top (last visited Mar. 6, 2012); NEW SOUTH WALES GOVERNMENT, THE TREASURY, OFFICE OF FINANCIAL MANAGEMENT, INTERSTATE COMPARISON OF TAXES 2010-11 at 37 (2011) (hereinafter INTERSTATE COMPARISON OF TAXES), available at http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0018/19242/TRP10-02_dnd.pdf.

¹³¹ Racing Administration Act 1998, available at <http://www.legislation.nsw.gov.au/sessionalview/sessional/act/1998-114.pdf>; New South Wales Government Office of Liquor, Gaming & Racing, Sports Betting, http://www.olgr.nsw.gov.au/racing_sports_betting.asp (last visited Mar. 6, 2012).

¹³² INTERSTATE COMPARISON OF TAXES, *supra* note 129, at 32.

¹³³ *Id.* at 39.

¹³⁴ Northern Territory Government Department of Justice, Licensing, Regulation and Alcohol Strategy: Internet Gaming—FAQ No. 1, http://www.nt.gov.au/justice/licenreg/documents/gaming/fs_ig_faq.pdf (last visited Mar. 6, 2012); Mary Swire, *Australian Online Gaming Operation Wins 50% Tax Cut*, TAX-NEWS (Nov. 21, 2001), <http://>

makers are taxed at 10 percent of gross monthly profit (replacing a turnover tax as of January 2010), which is capped at A\$250,000 per year.¹³⁵ Online keno is subject to a 20 percent tax on gross profit.¹³⁶

Adopting a monopoly model for remote gambling across the board, Queensland has granted a sole keno license to Jupiters Gaming Pty Ltd., a sole lottery license to Golden Casket Lottery Corporation, Ltd., and a sole wagering license to Tattsbet Ltd.¹³⁷ The government taxes at 20 percent of monthly commission on totalizators and fixed odds betting, 29.4 percent of monthly gross revenue after commissions from Jupiters (in addition to a A\$195,900 quarterly license fee), 45 percent of monthly gross profit from Golden Casket (in addition to its A\$195,900 quarterly license fee), 55 percent from instant scratch-offs, and 59 percent from soccer pools—all collected in arrears.

As is the case in each Australian jurisdiction, the only lawful online gambling is that which the federal Interactive Gambling Act does not prohibit. However, in South Australia, if there is no State law license, permit or authorization for the gambling, both the gambler and the gambling provider will commit an offence. So, not only can there not be any lawful Australian licensed internet casinos in this State, neither can there be any lawful off-shore internet gambling. The gambler in South Australia commits an offence and (to the extent that South Australian law can apply extra-territorially) so does the internet casino.¹³⁸

The state of South Australia takes a more free-market approach, permitting anyone to apply for inexpensive lottery and bookmaker licenses. Bookmakers' licenses are available at relatively little cost. However, the licenses can only be granted to natural persons or to companies made up entirely of individual licensees. Commercial lotteries are a monopoly vested in a State-owned statutory corporation (the Lotteries Commission), which will begin its online sales activity mid-year 2012.

Taxes on totalizators and sports betting by South Australians will have been phased out by mid-2012.¹³⁹ Sports betting involving wagers accepted from extraterritorial customers is taxed at 0.25 percent of

www.tax-news.com/news/Australian_Online_Gaming_Operation_Wins_50_Tax_Cut___6349.html.

¹³⁵ INTERSTATE COMPARISON OF TAXES, *supra* note 129, at 32.

¹³⁶ *Id.* at 39.

¹³⁷ Queensland Government Office of Liquor and Gaming Regulation, Major Gaming License Holders, http://www.olgr.qld.gov.au/industry/gaming_licensing/major_licence_holders/index.shtml (last visited Mar. 6, 2012).

¹³⁸ INTERSTATE COMPARISON OF TAXES, *supra* note 129, at 32-40.

¹³⁹ *Id.* at 31.

turnover.¹⁴⁰ The state lotteries, soccer pools, and keno operators pay 41 percent of net gambling revenue to South Australia's Hospitals Fund. However, each of these has to pay product fees to the racing industry of 10 percent of net wagering revenue, (NWR) except for SA TAB, which has to pay 40 percent of NWR. (It should be noted that they all pay federal goods and services tax of one-eleventh of net wagering revenue, less product fees).¹⁴¹

The Australian island state of Tasmania authorizes the operation of race and sports betting, simulated (casino) games, lotteries, betting exchanges, and pari-mutuel wagering via telecommunications devices (including the Internet).¹⁴² License costs are based on "fee units," where one unit is valued at A\$1.40.¹⁴³ The application for a Tasmanian Gaming License is 30,000 fee units (unless reasonable costs exceed 30,000 units, in which case the Tasmanian Gaming Commission can charge the applicant the excess amount).¹⁴⁴ License fees vary by gaming activity: for sports and race wagering, they cost 200,000 fee units; for lotteries and simulated gaming, they cost 300,000 fee units; and for betting exchanges and totalizators, they cost 350,000 fee units.¹⁴⁵

Taxation of Tasmanian operators also depends on the gaming activity. There is no taxation on sports betting or race wagering operators after the initial license fee. Lotteries (the main outliers in an otherwise mostly GGR-oriented scheme) are taxed at 35.55 percent of turnover. Simulated gaming is taxed according to gross annual profit: the first A\$10 million of gross profit is taxed at 20 percent; gross profit between A\$10 million and A\$20 million is taxed at 17.5 percent; and gross profit exceeding A\$20 million is taxed at 15 percent. Additionally, gross profit relating to wagers made by residents outside of Australian territory is taxed at 4 percent. Betting exchanges pay 5 percent of commission received, and tote board operators pay a flat levy of 4.7 million fee units.¹⁴⁶

¹⁴⁰ *Id.* at 32.

¹⁴¹ *Id.* at 37-39.

¹⁴² TASMANIA DEPARTMENT OF TREASURY AND FINANCE, TASMANIAN GAMING LICENSE GUIDE TO APPLICANTS 6 (May 2009), available at [http://www.tenders.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/TasmanianGamingLicenceGuide.pdf/\\$file/TasmanianGamingLicenceGuide.pdf](http://www.tenders.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/TasmanianGamingLicenceGuide.pdf/$file/TasmanianGamingLicenceGuide.pdf).

¹⁴³ Fee units are adjusted each year according to a formula based on consumer price index changes. See Department of Treasury and Finance, Fee Units, <http://www.tenders.tas.gov.au/domino/DTF/DTF.nsf/v-ecopol/5D8E36BF957730DDCA2578880019C068> (last visited Mar. 6, 2012).

¹⁴⁴ TASMANIAN GAMING LICENSE GUIDE TO APPLICANTS, *supra* note 141, at 8.

¹⁴⁵ *Id.* at 9.

¹⁴⁶ *Id.*

For the fiscal year 2010-11, Tasmania collected less than A\$2.5 million in Internet gaming and wagering taxes, a significant drop from previous years (about A\$6.72 million in 2009-10 and nearly A\$8 million for the previous year), mainly because of legislation lowering the betting exchange tax from 15 percent to 5 percent. But the state collected Internet gaming and wagering license fees of approximately A\$1.5 million, a three-fold increase over previous years.¹⁴⁷ Lotteries (available online, but including land-based retailers) generated nearly A\$84 million in tax revenue on slightly more than A\$290 million in player expenditures.¹⁴⁸

In Victoria, only Tabcorp has a license to conduct online wagering.¹⁴⁹ Tabcorp and Tatts Group Ltd. formed a joint venture to oversee Club Keno, which is operated by Tatts Group and pays 24.24 percent of player loss in taxes, subject to a minimum player return of 75 percent.¹⁵⁰ Separately, ten-year lottery licenses were awarded to Tatts Group and Intralot (each offering different lottery products), which both pay 79.4 percent of player loss (and are subject to a 60 percent player return requirement).¹⁵¹ Sports betting is taxed at the same rates as in New South Wales.¹⁵²

Finally, Western Australia's Lottery West operates the online lottery, which pays 40 percent of net subscriptions (sales less commission and prizes) to hospitals, 5 percent to the arts, 5 percent to sports, and 12.5 percent to eligible organizations.¹⁵³ Racing bet servicers have a choice between two methods of taxation: (1) a 1.5 percent turnover tax, or (2) the greater of a 20 percent gross profit or 0.2 percent turnover tax.¹⁵⁴

Denmark

¹⁴⁷ TASMANIAN GAMING COMMISSION, 2010-11 ANNUAL REPORT 16, available at [http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/TGCAnnualReport2010-11.PDF/\\$file/TGCAnnualReport2010-11.PDF](http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/LookupFiles/TGCAnnualReport2010-11.PDF/$file/TGCAnnualReport2010-11.PDF).

¹⁴⁸ *Id.*

¹⁴⁹ Department of Justice, Victoria, Australia, About Wagering License, <http://www.gamblinglicences.vic.gov.au/wagering-licence/about-wagering-licence.html> (last visited Mar. 6, 2012).

¹⁵⁰ INTERSTATE COMPARISON OF TAXES, *supra* note 129, at 39.

¹⁵¹ *Id.* at 37; Department of Justice, Victoria, Australia, Lotteries Licences Review, <http://www.gamblinglicences.vic.gov.au/lotteries-licences.html> (last visited Mar. 6, 2012).

¹⁵² See INTERSTATE COMPARISON OF TAXES, *supra* note 129, at 32.

¹⁵³ *Id.* at 37.

¹⁵⁴ Government of Western Australia Department of Racing, Gaming and Liquor, Western Australian Race Fields: Racing Bets Levy, <http://www.rgl.wa.gov.au/Default.aspx?NodeId=74> (last visited Mar. 6, 2012).

In contrast to Australia, Denmark's hybrid model is relatively simple. Denmark's state-owned operator, Danske Spil, holds a monopoly on online gambling licenses for horse racing and online bingo.¹⁵⁵ Other online sports betting and online casinos pay a 20 percent GGR tax, which prompted negative reactions from land-based operators, who pay between 45 percent and 71 percent GGR tax.¹⁵⁶ The lower tax rate for online operators was justified by the highly competitive nature of the international market in which they participate, compared to land-based operators' lower competition (being geographically restricted to Danish territory).¹⁵⁷

Gibraltar

Gibraltar's regulatory model is divided between bookmakers and internet casinos. Bookmakers are subject to limited and strict licensing, and are taxed at 1 percent of turnover with an £85,000 annual minimum and £425,000 maximum. Licenses are renewable for only £2,000.¹⁵⁸ Internet casinos, on the other hand, are only subject to a 1 percent GGR tax (with the same minimum, maximum, renewal fee, and limited licensing as bookmakers).¹⁵⁹ The jurisdiction is generally not licensing new entrants, so along with strict prerequisites for licensure, online gambling licenses are very hard to come by. Extraterritorial services can only be directed at jurisdictions where such activities are not illegal.¹⁶⁰

Italy

The third-largest surveyed nation by GDP, Italy had originally entered the online gambling market with a turnover tax ranging from

¹⁵⁵ *Denmark Online Gambling Tax Approved by E.C.*, CASINO PEOPLE (Sept. 22, 2011), <http://www.casinopeople.com/news/denmark-online-gambling-tax-approved-by-ec.html>.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ SloGold, Gibraltar Remote Gambling License, Betting Gaming License, Offshore Poker Licenses, http://www.slogold.net/gibraltar_gambling_license_get_gaming_sportbook_licence_in_gibraltar.html (last visited Mar. 6, 2012).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* Furthermore, licensees must be controlled and managed from Gibraltar; must submit lists of key personnel including shareholders, directors, and executives to the regulatory authority; and may not maintain any bank accounts outside of Gibraltar. *Id.*

2.5 percent to 5 percent across the board.¹⁶¹ Reacting to concerns from gambling operators and associations about competition in the European Union online gaming market, Italy introduced a GGR tax in 2010 at a rate of 20 percent for online casinos (after an initial license fee of €300,000 with lower renewals after each year of operation), and expects substantial growth as a result.¹⁶² Despite this shift towards a GGR model, however, electronic lottery terminals, sports and horse race wagering, bingo, other lotteries, and games of skill are still taxed at a rate of 3 percent of total turnover.¹⁶³

Spain

New regulation in Spain applies varying tax models and rates according to the type of gaming activity. Mutuel sports betting, sports betting exchanges, horse racing counterpart betting, other mutuel or counterpart betting, raffles, contests, and random combinations are regulated by a highly competitive bidding for licenses, and subject to a turnover tax varying from 10 percent to 35 percent depending on the game category.¹⁶⁴ However, cross-sports betting, horse racing mutual betting, and other games are taxed at 15 percent to 20 percent of GGR (or commission, in the case of P2P games), depending on the type of game.¹⁶⁵

Generally speaking, Spain's newly enacted hybrid model emphasizes turnover tax as a method for regulating Internet gambling. The authors at KPMG point out that this runs counter to most European Union members such as the United Kingdom, Italy, and Denmark, as well as some Autonomous Communities within Spain itself, such as the Community of Madrid and Basque Country.¹⁶⁶

Vanuatu

Providing an illustration of a relatively straightforward free-market-oriented hybrid tax model, the small island nation of Vanuatu also divides its model by game type. For general gaming, operators are subject to a 2.5 percent GGR tax with two licensing regimes: sports books

¹⁶¹ KPMG, TAXATION OF ONLINE GAMBLING: THE CASE FOR A TAX REGIME BASED ON GROSS PROFITS 14 (2010) (on file with author).

¹⁶² *Id.* Viaden Gaming, Online Gambling Regulation in Italy, http://www.viaden.com/products/italy_license.html (last visited Mar. 6, 2012).

¹⁶³ *Id.*

¹⁶⁴ KPMG, *supra* note 14, at 5.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

pay an application fee of \$35,000 and annual payments of \$30,000; and other operators pay a \$75,000 application fee and \$50,000 annually. Fixed odds wagering is effectively free market, subject merely to the above licensing fees and a very low 0.1 percent turnover tax.¹⁶⁷

REGULATED ONLINE GAMBLING IN THE UNITED STATES

Current Regulation of Gambling in the United States

Of the fifty states and District of Columbia, only Hawaii and Utah outlaw all forms of gambling.¹⁶⁸ The U.S. gambling industry as a whole generated more than \$92 billion in revenue in 2007 through commercial casinos, Indian casinos, state lotteries, and racetrack casinos.¹⁶⁹ According to the American Gaming Association, commercial casinos operate in twenty-two states, generating a total gross casino gaming revenue of about \$34.6 billion in 2010.¹⁷⁰ The twenty-two states with commercial casinos generally tax on GGR, from a low in Nevada of 6.75 percent,¹⁷¹ up to 50 percent in Illinois and 55 percent on slot machines in Pennsylvania.¹⁷² The exception is Maine, which applies a 1 percent turnover tax in addition to a 42 percent GGR tax.¹⁷³ A handful of states also apply a per-person, per-visit admission tax of \$2 to \$3, and South Dakota charges a \$2,000 annual per-machine tax on gaming devices.¹⁷⁴ As a result of commercial casino revenue alone, these twenty-two states enjoyed a tax revenue in 2010 of more than \$7.5 billion.¹⁷⁵

¹⁶⁷ LowTax, Vanuatu: Offshore Business Sectors (Vanuatu Electronic Gaming), <http://www.lowtax.net/lowtax/html/jvaobs.html> (last visited Mar. 6, 2012). See also GamblingLicenses.com, Interview with Geoff Sheehan of Interactive Gaming Consultants, Dec. 10, 2001, available at http://www.gamblinglicenses.com/PDF/Vanuatu_interview_Geoff_Sheehan.pdf (describing regulatory environment in Vanuatu).

¹⁶⁸ Joint Committee on Taxation, *Overview of Federal Tax Laws and Reporting Requirements Relating to Gambling in the United States 2* (JCX-28-10), May 17, 2010, available at <http://www.jct.gov/publications.html?func=startdown&id=3683>.

¹⁶⁹ *Id.* at 1.

¹⁷⁰ Data compiled from American Gaming Association, State Information, <http://www.americangaming.org/industry-resources/state-information> (last visited Mar. 6, 2012).

¹⁷¹ Nevada employs a graduated tax on GGR of up to 6.75% plus up to an additional 1% to local jurisdictions, and taxes in the state can actually be as low as 3.5%.

¹⁷² *Id.*

¹⁷³ See *id.* at <http://www.americangaming.org/industry-resources/state-information/maine>.

¹⁷⁴ See *id.* (describing South Dakota's tax regime, and Illinois, Indiana, and Missouri's imposition of admission taxes).

¹⁷⁵ *Id.*

Although traditional (land-based, dockside, or riverboat) gambling activities are governed by the states, Internet gambling implicates federal law. Applicable federal legislation is primarily found in the Wire Act¹⁷⁶ and Unlawful Internet Gambling Enforcement Act (“UIGEA”), although other federal and state statutes may also apply.¹⁷⁷ Specifically, the Wire Act provides:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.¹⁷⁸

Although some have long held that this section broadly prohibits Internet gambling,¹⁷⁹ a recent memorandum by the U.S. Department of Justice opines that the Wire Act is only applicable to betting in relation to sporting events or contests and does not prohibit states from operating lotteries online.¹⁸⁰ By extension, activities such as online poker and other games of skill, as well as casino games not involving sporting events, can be viewed as similarly outside the Wire Act’s prohibitions.

On the other hand, UIGEA targets operators of gambling sites (as well as financial intermediaries) by prohibiting the acceptance of any financial instrument in connection with unlawful Internet gambling, which it defines as the interstate transmission of bets or wagers contrary to state or federal law.¹⁸¹ Furthermore, several bills have been introduced in Congress that would authorize and provide for the licensure and taxation of online gambling operators.¹⁸² Of note, the taxing schemes provided for in the proposed Internet Gambling Regulation

¹⁷⁶ 18 U.S.C. § 1084 (2006).

¹⁷⁷ 31 U.S.C. §§ 5361-5367 (2006).

¹⁷⁸ 18 U.S.C. § 1084(a).

¹⁷⁹ See, e.g., Joint Committee on Taxation, *supra* note 168, at 11.

¹⁸⁰ Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act, Op. Off. Legal Counsel Vol. 35 (Sept. 20, 2011), available at <http://www.justice.gov/olc/2011/state-lotteries-opinion.pdf>.

¹⁸¹ 31 U.S.C. §§ 5363, 5362(10).

¹⁸² Linda J. Shorey et al., *Taxing Schemes Proposed in Connection with Federal Bills That Would License Internet Gambling Operators*, K&L GATES (May 2010), available at <http://www.klgates.com/taxing-schemes-proposed-in-connection-with-federal-bills-that-would-license-internet-gambling-operators-05-24-2010>.

and Tax Enforcement Act of 2010,¹⁸³ Internet Poker and Games of Skill Regulation, Consumer Protection, and Enforcement Act of 2009,¹⁸⁴ and Bipartisan Tax Fairness and Simplification Act of 2010¹⁸⁵ all provided for tax schemes (at various rates) based on “deposited funds”—that is, a license fee with deposit tax model.¹⁸⁶ Whether or not regulated online gambling becomes widespread in the United States may ultimately be dependent on state action and not federal action.

The Trend Toward Internet Gambling

Perhaps ironically, then, the first jurisdiction in the United States that moved to legalize online gambling was not a state, but the District of Columbia. Its program “iGaming” was to offer online poker, blackjack and bingo through Greece-based Intralot, but the program was repealed before it launched, reportedly due to a lack of opportunity for public scrutiny.¹⁸⁷

Of the states, Nevada appears to be leading the charge in legalizing online gambling by fast-tracking legislation to permit and regulate online poker between players. Proposed Nevada Gaming Commission regulation 5A.170¹⁸⁸ provides that gross revenue received by an establishment from the operation of interactive gaming is subject to the same license fee provisions as the games and gaming devices of the establishment, unless federal law otherwise provides for a similar fee or tax.¹⁸⁹ Specifically, operators would pay a license fee and monthly taxes based

¹⁸³ H.R. 4976, 111th Cong. (2009).

¹⁸⁴ S. 1597, 111th Cong. (2009).

¹⁸⁵ S. 3018, 111th Cong. (2009).

¹⁸⁶ *Id.* (All three bills were referred to committee with no further action during the 2009-10 session.)

¹⁸⁷ Theo Emery, *Disputes in Washington End Online Gambling Program*, N.Y. TIMES (Feb. 16, 2012), available at <http://www.nytimes.com/2012/02/16/us/disputes-end-online-gambling-deal-in-washington-dc.html?pagewanted=all>; Tom Howell Jr., *Online-Gambling Bill's Future Uncertain*, WASH. TIMES (Feb. 12, 2012), available at <http://www.washingtontimes.com/news/2012/feb/12/online-gambling-bills-future-uncertain>. See also Justin Jouvenal & Michael Laris, *'Hot Spots' Part of D.C. Officials' Plan to Allow Internet-based Gambling In City*, THE WASH. POST (Apr. 13, 2011), available at http://www.washingtonpost.com/local/politics/dc-officials-plan-to-allow-internet-based-gambling-at-hot-spots-in-city/2011/04/13/AFbTRHZD_story.html (describing practical implementation of the envisioned program more fully).

¹⁸⁸ Available at http://gaming.nv.gov/documents/pdf/reg5A_proposed_v11_11dec13.pdf.

¹⁸⁹ *Id.*

on gross revenue as in current land-based operation: 3.5 percent of the first \$50,000 of monthly revenue; 4.5 percent of the next \$84,000 of monthly revenue; and 6.75 percent of revenue exceeding \$134,000 per month.¹⁹⁰

In Florida, initially fervent attempts to legalize gambling in general and create a state Gaming Control Commission (primarily for the establishment of three large land-based casinos, but also through a set of regulations that would allow online gaming from internet cafes) have slowed, and the bill will not be seen again until the 2013 session, at the earliest.¹⁹¹

New Jersey's bill to allow for the operation of online casinos—as long as their servers were located in Atlantic City—passed easily through the state legislature but was vetoed by Governor Chris Christie last year; Christie reportedly rejected the theory that server location restrictions would pass New Jersey's constitutional muster.¹⁹² Meanwhile in Iowa, State Senator Jeff Danielson plans to introduce a bill that would legalize online poker.¹⁹³

And in California, lawmakers are considering legalizing online gambling for its claimed significant revenue potential, estimated by supporters at \$100 million to \$250 million per year.¹⁹⁴ The recently introduced “Internet Gambling Consumer Protection and Public-Private Partnership Act of 2012” proposes legalization of intrastate gambling in California, with operators being required to make a \$30 million up-front “use-it-or-lose-it” deposit against which subsequent monthly gross gaming revenue taxes would be drawn.¹⁹⁵

¹⁹⁰ Nevada Gaming Commission and State Gaming Control Board, Gaming License Fees and Tax Rate Schedule, <http://gaming.nv.gov/taxfees.htm> (last visited Mar. 6, 2012).

¹⁹¹ *Florida En-Route to Allow Online Gambling in the State*, GAMINGZION (Jan. 10, 2012), <http://gamingzion.com/gamblingnews/florida-en-route-to-allow-online-gambling-in-the-state-2420>; Lizette Alvarez, *Florida Mega-Casino Bill Is Withdrawn*, N.Y. TIMES (Feb. 3, 2012), available at <http://www.nytimes.com/2012/02/04/us/florida-lawmaker-withdraws-casino-bill.html>.

¹⁹² Lisa Fleisher, *Christie Vetoes Online Gambling Bill*, WALL ST. J. (Mar. 3, 2011), available at <http://blogs.wsj.com/metropolis/2011/03/03/christie-vetoes-online-gambling-bill>.

¹⁹³ Lynn Campbell, *Iowa Will Attempt to Follow Lead of Nevada, D.C. in Legalizing Online Poker*, IOWAPOLITICS.COM (Feb. 1, 2012), <http://www.iowapolitics.com/index.iml?Article=259831>.

¹⁹⁴ Penelope Lemov, *The Pros and Cons of Internet Gambling*, GOVERNING (Feb. 16, 2012), available at <http://www.governing.com/columns/public-finance/col-pros-cons-gambling-internet-online-poker.html>.

¹⁹⁵ S.B. 1463, 2011-2012 Sess. (Cal. 2012).

RECOMMENDATIONS AND SURVEY SUMMARY

Perhaps the most obvious policy goals of legalizing and regulating online gambling are to provide consumer protection and to generate tax revenue. Furthermore, the regulation of online gambling may reduce the prevalence of unlicensed or extraterritorially licensed operators. Jurisdictions considering the legalization and regulation of online gambling must structure their licensing and taxation models in such a way as to best achieve these goals. It seems likely that, whether at the federal or local level, or across multiple jurisdictions, regulators will have to choose whether to adopt licensing fee regimes with a tax on either volume or profit—that is, a deposit tax or GGR tax. In addition, a high initial license fee, which should be credited as a deposit on taxes for a stated period of time, would help ensure the licensing jurisdiction has limited its financial risk through collections of taxes up-front. The central tax issue is therefore whether a deposit tax or GGR tax model would be more appropriate. As shown, a tension exists between the gaming industry preference for a GGR tax model and the regulatory preference for a deposit tax. While a GGR tax model seemingly tends to lower the business risk borne by operators, the timing of a deposit tax—as customers establish online accounts, as opposed to periodically calculated and collected in arrears—is preferable from a regulatory standpoint, and might make more sense in the context of online gambling.

A deposit tax also is more efficient because it is game neutral, as opposed to the calculation of GGR for operators offering a variety of game types. In the case of multi-jurisdictional regulation, a deposit tax is a tax on player funds where the place of residence or location of the player is readily identifiable, thus providing accountability and auditability advantages for the relevant locale. Calculations for operators are easy and transparent, as is verifying that they have paid the correct amount—reducing costs for both operators and regulators. Finally, a deposit model creates additional enforcement mechanisms by enabling regulators to impose the deposit tax liability (plus penalties) on players using unlicensed sites.

The “net deposit” model offers a neat compromise between pure volume-based and profit-based tax models. As discussed in Part II, operator concerns regarding a deposit tax are mitigated by giving tax credits for withdrawals from customer accounts (or customer withdrawals from accounts—for example, in the event that the customer has not played at all). This method lowers the perceived operator-side business risk and still allows regulators to collect fees as deposits are made, simplifying

the regulatory system and lowering the costs involved for all parties. Alternatively, operators could charge a penalty for early customer account withdrawal or closure, but this may deter some customers from participating and could diminish the overall market to the detriment of operators and regulating jurisdictions alike.

On the other hand, a hybrid model might be developed—as illustrated by the large economies of Australia, Italy, and Spain. Certain gambling activities such as online casinos might be taxed according to a GGR model at a moderate rate, while others such as lotteries, bookmakers, and games of skill would not be inhibited by a net deposit model at a competitive rate. Despite their complexities, hybrid models could also be tailored for each specific jurisdiction. Different states have very different existing gambling markets, so each could adopt a model that suits its regulatory, economic, and social needs.

The five largest economies surveyed above in Part III have adopted different approaches to regulated Internet gambling. The largest, France, has adopted a turnover model at a rate of 7.5 percent across the board, but is arguably losing market share to other jurisdictions such as Italy and Spain. The United Kingdom has treated its online gambling market similarly to its land-based market through the application of a 15 percent GGR tax on top of a somewhat complex licensing regime. Canada (ranked fourth) prefers a monopoly model, where each Province operates its own gaming sites. Finally, Italy (ranked third) and Spain (ranked fifth) both utilize hybrid models with turnover and GGR taxes based on game category.

The following chart summarizes the survey:

Nation / State	GDP Rank*	Online Categories	Game	Tax Model Summary
<i>A. Monopoly Models</i>				
Austria	12	Games of chance.		Government operator.
Canada	4	Provincial governments operate online lotteries, fixed odds, and casino games.		Government operator.
Hong Kong	15	Pari-mutuel and lottery.	betting	Exclusive rights in Hong Kong Jockey Club.

Hungary	17	Lottery, sports betting, and prize draw ticket games.	Government operator.
Macau	21	Horse Racing.	Exclusive operator paying 35 percent GGR tax.
Netherlands	7	Online casinos, bingo, poker, and sports.	Government operator.
New Zealand	18	Totalizators and Lotteries only.	Government operator.
Sweden	11	Comprehensive.	Government operator.
Turkey	8	Sports betting.	Government operator.
<i>B. Free Market Jurisdictions</i>			
Alderney	N/A	Comprehensive.	License fees vary from £35,000 to £140,000 depending on revenue tier.
Costa Rica	20	Comprehensive.	\$15,000 corporate and license fee with \$1500 quarterly renewals; no additional taxation.
Isle of Man	27	Comprehensive.	£5,000 application, £35,000 per year (for 5-year terms).
Kahnawake	N/A	Online casinos and poker rooms.	License fees only, no taxation.
Panama	22	Comprehensive.	Seven-year master license is \$40,000; additional annual fee of \$20,000.
<i>C. Limited Free Market Model</i>			

*GDP rank is relative to other surveyed jurisdictions using data from World Bank, Gross Domestic Product 2010, <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf>. “N/A” indicates data is either unavailable or not applicable.

Belgium	10	Comprehensive.	Taxation (a reported 11 percent flat tax) per individual licensing agreements, very limited on a per-game basis.
<i>D. Licensing Fee with GGR Tax</i>			
Antigua and Barbuda	30	Comprehensive.	3 percent GGR tax (with a cap of \$50,000 per month); gaming license is \$75,000 annually and wagering license is \$50,000 annually.
Curacao	26	Comprehensive.	2 percent GGR tax; monthly fee of about \$5,000 for 2 years.
Dominican Republic	19	Comprehensive.	5 percent GGR tax with a \$50,000 minimum, plus \$15,000 license fee.
Estonia	24	Chance, skill, pari-mutuel betting.	5 percent sales tax plus licenses at the rates of: €48,000 for games of chance; €32,000 for games of skill; and €3,200 for tote boards.
Greece	14	Comprehensive.	30 percent GGR tax. VLT licenses are about €15,000 ea.; and limited online gaming licenses will be somewhere in the order of €1-5 million for a five-year term.
Philippines	16	Casinos, sports books, sports betting.	5 percent corporate tax and 2% GGR tax, plus a range of licensing fees.
United Kingdom	2	General betting, bingo, pools (licensed brick and mortar operators).	15 percent GGR tax.
<i>E. Licensing Fee with Turnover Tax</i>			

Belize	28	Comprehensive.	0.75 percent turnover tax.
Cyprus	23	Sports betting and lotteries.	3 percent turnover tax.
France	1	Comprehensive.	7.5 percent turnover tax.
Malta	25	Comprehensive.	0.5% percent turnover tax.
Poland	9	Casino games by Fortuna.	2-45 percent turnover tax, depending on the game (only one licensee so far).
<i>F. Hybrid Models</i>			
Australia	6	Online wagering, lotteries, and keno.	Complex hybrid model with differing models and rates by states and territories.
Denmark	13	The state-owned monopoly, Danske Spil, holds the sole online gambling licenses for horse racing and online bingo. Online sports betting and casinos licensed on limited basis.	Hybrid 20 percent GGR tax for online casinos and online sports betting, and state monopoly over horse racing and bingo.
Gibraltar	29	Bookmakers:	1 percent turnover tax capped at £425,000 annually; minimum gaming tax £85,000 annually. Licenses renewable annually for £2,000.
		Internet casinos:	1 percent GGR tax; similar caps and fees.

Italy	3	Online gambling, with exceptions below:	20 percent GGR tax.
		VLTs, sports and horse racing, bingo, lotteries, and games of skill:	3 percent turnover tax.
Spain	5	Mutual sports betting, sports betting exchange, horseracing counterpart betting, other mutual betting, other counterpart betting, raffles, contests, random combinations:	10-35 percent turnover tax depending on the game; limited licensure.
		Cross-sports betting, horseracing mutual betting, other games:	15-20 percent GGR tax depending on the game; limited licensure.
Vanuatu	31	General gaming:	2.5 percent GGR tax. \$35,000 application plus \$30,000 annually for sports books; other operators pay \$75,000 application plus \$50K annually.
		Fixed odds wagering:	0.1 percent turnover tax, plus above license fees.

