



# A re-regulated gambling market

**Summary and initial observations of  
Sweden's new proposed draft legislation**

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**February 5, 2018**

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# Introduction

In this report the Swedish Government's proposal for a new gambling regulation in Sweden, submitted for the Swedish Council on Legislation on January 9, 2018, is summarized and KPMG provides some initial comments on the regulation. According to the proposal, the Swedish gambling rules are in need of modernization and adaptation to the digital world we live in today. The rules must be sustainable in the long run and designed to balance the various interests acting in the gambling market. The bill will bring a variety of consequences for those who operate in the Swedish gambling market, or are interested in doing so.

The purpose of the proposed new Gambling Act is to regulate the gambling market and strengthen the protection of the players. The national gambling monopoly will cease, and instead the gambling market will be divided into three sectors; a competitive sector mainly including online gaming and betting, a sector reserved for public purposes, and a sector reserved for the Swedish State.

The new rules consists of a framework and a licensing system. Furthermore, a new excise duty of 18% is proposed to be introduced. Applications for license can be submitted after July 1, 2018 and the new Gambling Act is proposed to enter into force on January 1, 2019.



# Licenses, sanctions and the protection of the players



# License will be required to provide gambling services in Sweden

## The licensing system

Anyone providing gambling services on the Swedish market will be required to do so under a license, and non-licensed operators targeting the Swedish market will be prosecuted. The rules shall apply on all games provided in Sweden, including games provided online targeting the Swedish market. The rules does not apply to parlor games, games for amusement, computer games or games in general. Furthermore, games dependent on the player's skills are excluded from the license requirement.

The gaming authority shall decide on licenses and exercise supervision under the proposed rules. The Lottery Inspection is proposed to be appointed as the gaming authority. There are six different types of licenses that gambling providers can apply for, some associated with special conditions:

- Commercial online games
- Betting
- Land-based commercial games
- Games on ships in international traffic
- Games reserved for the State
- Games reserved for public purposes

When applying for a license, an assessment of the gambling provider's competence and eligibility is conducted by the gaming authority, whereby the applicants' knowledge, experience and organization is reviewed among other things. When granting license for online games, access to technical personnel that can ensure a safe gaming environment for the customers is an important factor. The license is granted for a fixed period of no more than 5 years at a time and the gaming authority shall in its decision state which games the license covers. When the license has expired, the Licensee has the possibility to obtain a new license, provided that the requirements are still fulfilled.

The Licensee can be both a legal person as well as a physical person. Licensees established outside of the EEA (European Economic Area) are however required to appoint a representative with the authority to act on behalf of the Licensee in all matters related to the licensed business. The representative must be a resident in Sweden.

## Certain exceptions

There are a few exceptions to the license requirement. For instance, game agents do not need to have a license when providing games to a Licensee. Companies that manufacture, provides installation and modification of gaming software do not currently need to obtain a license either. License is not required when providing games where participation does not require any stakes (e.g. lotteries on social media where participation occurs by "liking" or "sharing" a post). Gambling that takes place under private forms with close community and lacks organizational/professional characteristics is also excluded. Games that nonprofit organizations and municipalities provide under certain forms do not require license either. License may also not be granted for any pyramid schemes.

# Tightened sanctions and enhanced protection for the players

## **Tightened penalty- and sanction system**

To keep unlicensed operators out of the Swedish gambling market, the penalty and sanction system will be tightened. It's proposed that anyone who intentionally or through gross negligence provides illegal gambling or gambling in Sweden without the necessary license may be sentenced for unlawful gambling to fines or jail for a maximum of two years.

It will also be possible to block payment transactions between players and unlicensed gambling providers. The gaming authority may also oblige internet service providers to display warning messages when visitors attempt to play on illegal sites.

## **Enhanced protection for the players**

Licensees shall protect players from excessive gambling and help players to reduce their gambling when there is reason (duty of care). Licensees shall offer visitors the opportunity to self-test their online gambling behavior and the possibility to self-shutdown.

Furthermore, it is not allowed for a Licensee to offer or give credits on stakes, nor give bonuses such as reload bonuses, except when the player participates in a game for the first time (welcome bonus). A Licensee that is providing online gambling must establish a game account for each registered player and ensure that the player is identified satisfactorily. All financial transactions to and from the game account must be registered.

**KPMG:s observations:** The offer of bonuses can be an important part of a gambling service provider's business model, especially for online games. A limitation to the number of bonuses that can be offered after the welcome bonus, or a limitation of the bonus amount may impact the competitiveness of licensed gambling providers compared to other unlicensed gambling providers. This may cause the channeling of players from licensed gambling providers, risking the Swedish Government's goal of channeling players towards licensed providers, and may also require the licensed gambling providers to review their business model targeting the Swedish market and players.



# A new excise duty is introduced



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## A new excise duty

According to current rules, games and lotteries are subject to excise duty under three different acts. In the Government's proposal, these are proposed to be replaced by a new Gambling Tax Act, which stipulates that profits from taxable gambling will be taxed with a new excise duty of 18%. All licensed gambling provided by commercial operators are proposed to be subject to tax and the previous exception of income taxation for Svenska Spel and ATG will be abolished. Hence, they will compete on the same terms as commercial gambling providers. Income from games provided by Licensees for public purposes is however exempted from taxation.

It is the Licensee who is liable for the tax. The tax liability arises when stakes are received for licensed gambling. The excise duty of 18% is calculated on the difference between the total stakes and the total payouts to the player's game account during a tax period, please see simplified example below:

Total stakes	Total payouts	Total tax base	Tax to be paid
200	100	100 (200-100 = 100)	18 (0,18x100 = 18)

## Definitions

The definitions of stake, payout and tax period are as follows:

- *stake* refers to the total value received by the Licensee that players or other pay for their participation in a licensed game according to the proposed Gambling Act.
- *Payout* refers to the total value that the Licensee or its agent pays to the players by depositing money to the player's game account or through other transactions. The term value may refer to both cash and other assets. Bonuses are included in the calculation of the payout.
- A *tax period* is equal to one calendar month and only stakes and payouts attributable to participation in gambling provided in/targeting Sweden shall be considered.



# A new excise duty is introduced cont.

## Definitions

Only stakes and payouts attributable to *Swedish gambling participation* shall be considered when calculating the tax base. What's considered to be Swedish gambling participation differs depending on whether the game is provided online or physically. If the game is provided online, it is considered Swedish gambling participation when the player is a resident or is considered to have habitual abode in Sweden. Even if the player is abroad when playing the game online, Swedish gambling participation would be fulfilled if the player meets the requirements of Swedish residence as laid down in the Registration Act (Sw: folkbokföringslagen) or is considered to have habitual abode in Sweden in accordance with the Income Taxation Act (Sw: inkomstskattelagen).

In regards of physical Swedish gambling participation, gambling in a physical location within the Swedish territory, such as at a casino or on a vending machine is included. Gambling that takes place on Swedish ships and foreign ships in international traffic within the Swedish economic zone is also included. As long as the gambling takes place in a physical location within the Swedish borders, it does not matter whether the player is resident, has habitual abode or is only visiting Sweden temporarily.

# A new excise duty is introduced cont.

## The tax procedure

The Tax Procedures Act (Sw: skatteförfarandelagen), “SFL”, is proposed to be applicable on the new Gambling Tax Act. Tax liable Licensees shall be registered with the Swedish Tax Agency and the tax shall be reported monthly under the general rule. Tax returns should be submitted for each tax period, even if no tax liable gambling occurred during the period.

There is no proposed possibility to use a negative tax base against a positive one for a later period of time. Licensees who are expected to report excise duties with a net amount of no more than SEK 50 000 during a tax year can apply for a decision from the Swedish Tax Agency that will enable the tax be reported one time per year, instead of per month.

**KPMG:s observations:** When new excise duties are introduced in Sweden, the Swedish Tax Agency usually develops a completely new tax return designed for this tax. According to SFL, the registered person (Licensees) must provide a tax return of the excise duty each accounting period. In this case, this would mean that a tax return must be submitted once a month regardless of whether any taxable stakes were received or not.

The due date for filing the tax return and also the payment of the tax should be the 12th in the second month following the end of the taxable period. The payment will most likely be settled via the taxable persons Swedish tax account. This could, in turn, require foreign companies to apply for a Swedish tax identification number to which a Swedish tax account is linked.

# A new excise duty is introduced cont.

**KPMG:s observations:** Since the new tax on gambling is designed as an excise duty, this means that the tax constitutes an additional cost for the Licensees, in addition to the income tax that the Licensees business's may be subject to in Sweden. In other words, the effect of the proposed legislation may be that Licensees could be subject to both gambling excise tax as well as regular corporate income tax in Sweden. If this would be the case, the gambling tax should normally be treated as a deductible expense in relation to the income taxation. However, full relief is not offered since the gambling tax base is not excluded from the income tax base nor can the gambling tax be credited against the income tax.

Many commercial gambling providers operate in the Swedish market through foreign establishments and are therefore not necessarily subject to Swedish corporate income taxation. However, it is important also for these gambling providers to consider the consequences of the proposed legislation. Can the Swedish gambling excise tax, for example, be deducted or credited from foreign corporate taxes? What effects will the proposal actually have from a Swedish corporate income tax perspective? Are there additional risks associated with Swedish corporate income tax for the gambling providers as a result of the new Gambling Tax Act?

In light of the above, we recommend that all commercial gambling providers, including those operating in the Swedish market through foreign establishments, review their business activities from a legal, operational and fiscal perspective. For example, transfer pricing models should be reviewed and possibly adjusted.



# Consequences and evaluation



# Consequences and evaluation

## Consequences with regards to the proposal

The new regulatory framework brings a number of consequences, impacting both gambling providers in the Swedish gambling market who will need to adapt their business to the new requirements for a license. The proposal will also bring economic consequences due to the new gambling tax as well as the introduction of a number of preventive actions with the purpose to enhance the protection of the players.

The Licensee must obtain a certificate from an accredited test institute stating that the technical equipment which the applicant intends to use complies with the prescribed requirements. The cost of testing varies and depends on how extensive the applicant's game system is, what types of games that's applied for and which test institute performs the testing. Estimated cost are approximately 5,000 - 35,000 EUR. In addition, fees for licensing and supervision as well as excise duty shall be paid.

The reform means enhanced protection for players against offers of illegal and unregulated gambling. Preventive actions such as warning messages and payment blocking are expected to reduce gambling with unlicensed operators. Winnings from gambling provided by companies without the necessary license is suggested to be taxable capital income for the player, regardless of who provides the game. Winnings from gambling provided by a licensed company is, however, proposed to under normal circumstances be tax exempt for the player, regardless of where the gambling provider's company is domiciled. This is further expected to be an incentive for players to turn to licensed companies.

## Evaluation

It's stated in the proposal that the reform should be monitored and evaluated considering, among other things, its effect on the gambling market, channeling of players to licensed providers, consumer protection, public health, personal integrity and cost development for the relevant authorities as well as tax revenues.

Additional studies within the gambling field is required according to the proposal. The possibility to decide on IP blocking and any other necessary actions to exclude unlicensed operators from the Swedish market shall be reviewed with the goal of such regulations to be introduced by year 2022. In addition, gambling problems for players from gambling on vending machines and online will be further studied.

## The next step

As of the date of this report, the proposal is currently with the Swedish Council on Legislation for their scrutiny. The government intend to submit a proposition to the parliament by March 20th, 2018 the latest.

One of the parliamentary committees will then prepare the proposal for the parliament's decision (committee report) and the parliament will then vote on the proposal.

The new rules are proposed to be effective as of January 1, 2019. Application for license may be submitted after July 1, 2018.



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