



# A re-regulated gambling market

**KPMG:s summary and observations of the  
Swedish government's bill 2017/18:220**

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**25 April 2018**

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KPMG has in a previous report commented and summarized the proposal for a re-regulated gambling market, submitted for the Swedish Council on Legislation on January 9, 2018. The proposal has now been further processed, and on April 5, 2018 the Swedish government published the draft bill. A complimentary draft gambling regulation (Sw: "Spelförordning") has also been proposed by the Swedish government (March 29, 2018). KPMG has therefore updated and extended our initial report, focusing on the demands for licensing, the enhanced protection of the players and the new proposed gambling tax.

According to the bill, 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 on the Swedish gambling market. The bill will bring a variety of consequences for those who operate on 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.

## **Next steps**

As of the date of this report, the bill has been submitted for the Swedish parliament by the Swedish government. Voting on the bill is scheduled to take place on June 7, 2018. Applications for license can be submitted after August 1, 2018 and the new Gambling Act is proposed to enter into force on January 1, 2019.



# Licenses



# License will be required to provide gambling services in Sweden

## The licensing system

Anyone providing gambling services in 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. Furthermore, games dependent on the player's skills fall outside the acts scope.

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, and will therefore change their name to "Spelinspektionen". 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

According to the proposed gambling regulations, the license application is to be submitted in writing and in Swedish. When granting licenses 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 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 natural 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 of Sweden.

**KPMG:s observation:** According to KPMG:s interpretation, the demands placed on Licensees outside of EEA will dramatically increase the risk for these operators to be considered to have created permanent establishments in Sweden. There is a generally increased focus on permanent establishment issues, both in terms of the proposed Gambling Act but also from the OECD and the EU with regards to the digital economy. It is therefore important for foreign Licensees to consider the risks for creating permanent establishment in Sweden, which would trigger additional tax liabilities.

# Certain exceptions

## 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 on behalf of a Licensee. Companies that manufacture, provide installation and modification of gaming software do not currently need to obtain a license either. License is also 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.

# Fees in relation to the licensing procedure

## Fees

According to the proposed draft gambling regulation, the following fees will be applicable when applying for a license:

License	Fee in SEK
1. License for commercial online games	400 000
2. License for betting	400 000
3. License for 1 and 2	700 000
4. Renewal of license according to 1–3	300 000
5. Amendment of license according to 1–3	150 000
6. License for public lottery or lottery for public purposes	
a) Sales, up to 5 million SEK	60 000
b) Sales, more than 5 million SEK up to 15 million SEK	75 000
c) Sales, more than 15 million SEK	150 000
7. Amendment of license according to 6	40 000
8. License for bingo	30 000
9. Amendment of license according to 8	5 000
10. License for local pool games on horses	3 600
11. License for money-, value machine or merchandiser, per slot	2 800
12. Permit to possess money-, value machine or merchandiser	3 600
13. License for land based commercial casino game, per table	3 600
14. License for casino, per casino	70 000
15. Amendment of license according to 14, per casino	15 000
16. Card game in tournament form	
a) license, up to 10 tournaments	4 000
b) license, more than 10 tournaments	15 000
c) license for single tournaments with more than 48 players	25 000

Fees may not be charged for amendment of an application involving a change of postal address, or a reduction in the number of gambling tables or slot machines. In addition, according to the proposed gambling regulation, the gaming authority shall charge a fee for applications for registration of gambling agents in accordance with Chapter 11. Section 2 of the Act. The fee will be SEK 800 for each gambling agent.

A supervisory fee is also added in addition to the license fee. The gaming authority shall charge a Licensee for the supervision exercised by the gaming authority in accordance with the Act. The fee shall be calculated to achieve full cost coverage for the supervisory activities.

# Other legal requirements

## The suitability of the Licensee

To provide gambling services in Sweden, the gambling operator is required to have a Swedish gambling license. In order to be granted the license, the applicant must have sufficient knowledge, experience and an organization to conduct the business as well as be appropriate in other regards.

Applicants that do not have legal capacity or are convicted of certain crimes cannot be granted a license. All licensed operators will be covered by the Money Laundering and Terrorist Financing (Prevention) Act (SFS 2017: 630) (the AML Act). Applicants that operates businesses previously covered by the AML Act, cannot have any infringements of the AML Act in order to be able to be granted the license.

Furthermore, it is important that the applicant operates its business in accordance with applicable law. This means that the Licensee must have internal documents compliant with Chapter 2 and 6 of the AML Act. Other internal regulation, for example appropriateness, internal management, consumer due diligence, processing of the personal data, monitoring of transactions and risk management should also be in place. The Licensee shall ensure compliance with the AML Act.

## Game accounts, processing of personal data and supervision

The Licensee must take necessary actions with regards to consumer due diligence, in addition to what is specified in the AML Act. The proposed Gambling Act requires registration of the players and that the players submit some specific information for this purpose. The Licensee shall also open a game account for each registered player. This will limit the possibilities for so called "single transactions".

Transfers of value between game accounts are not allowed. The Licensee can only receive payments to a game account from a payment service provider that is covered by the Payment Services Act (SFS 2010: 751).

The proposed Gambling Act also contains some additions to GDPR. For example, the Licensees may conduct searches with the purpose of finding individuals, based on specific categories of personal data or data about crime.

The gaming authority will exercise supervision to control compliance with the Gambling Act. The gaming authority will also supervise compliance with the AML Act. The gaming authority is entitled to revoke licenses in case of serious nature, for example in the event of insufficient actions for preventing money laundering or terrorist financing or other infringements of the Gambling Act.

**KPMG:s observation:** The gambling operators who wish to apply for any license should be prepared to be able to show their work with anti-money laundering and terrorist financing and that their internal management is satisfactorily. The anti money laundering issues will also be of importance in the ongoing business, since the Licensee may lose the license in case of serious infringements of the AML Act.





# Sanctions and enhanced protection of the players



# Player protection and responsible gaming

## Player protection and responsible gaming

The Licensees are proposed to have a legal obligation (duty of care) to protect players from excessive gambling and help players reduce their gambling if needed. The Licensees shall also offer players an online self-test tool to assess the player's gambling behavior.

Licensees shall also have a system with the possibility to self-shutdown for a specific period of time or until further notice. It shall be possible for the player to immediately self-shutdown for 24 hours. In addition to the Licensees' system, a central system for self-shutdown will be set up meaning that a player through notification to the gaming authority can activate a self-shutdown for all games which require registration of the player.

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). These prohibitions are motivated by protection of the players' health since the offering and provision of credit and bonuses can attract and retain players who already have an unhealthy gaming behavior.

A Licensee will also continuously need to educate management and employees in positions exposed to players, such as marketing, game monitoring, sales, product development and customer support. The education should aim at creating awareness and understanding of gaming-related risks and factors affecting the player's gaming behavior.

## Marketing

Moderation is to be considered for consumer marketing. Advertisement in radio or on TV for games provided by an unlicensed operator is prohibited.

**KPMG's observation:** Licensees need to review and adapt internal routines, policies and training schemes for their employees related to player protection and responsible gaming in order to ensure compliance with the duty of care requirement.

The offer of bonuses can be an important part of the companies' business models, especially for online games. Regulations in this area might impact the competitiveness of licensed operators compared to other unlicensed operators, risking the Swedish Government's channeling goals and may also require the licensed gambling operators to review their business models targeting the Swedish market and players.

Further, given that the Swedish gambling monopoly will cease, advertising in, for example, social medias will now be possible for all licensed operators.

# Tightened penalties and sanctions system

## **Tightened penalties and sanctions system**

In connection with the introduction of the new Gambling Act, the penalty and sanctions systems will be tightened, in order to exclude non-serious operators from the Swedish gambling market.

Anyone who intentionally or through gross negligence provides illegal gambling or gambling in Sweden without the necessary license, may be sentenced for unlawful gambling. Penalties range from fines to imprisonment for a maximum of two years. In case of serious crimes, the sentence may be imprisonment for a maximum of six years.

The gaming authority may decide on sanction fees, following a decision on issuing a warning or remarks related to breaches of the gaming operator's obligations under the Gambling Act. The amount of sanction fees will be a minimum of 5,000 SEK and no more than ten percent of the Licensee's turnover in the previous fiscal year. The gaming authority may also revoke the license if the breach is deemed to be of serious nature.

Furthermore, a possibility to block payment transactions between players and unlicensed gaming operators will be introduced. The gaming authority may also oblige internet service providers to display warning messages when visitors attempt to play on illegal sites.

### **KPMG's observation:**

The proposed Gambling Act requires Licensees to establish internal processes and controls, including necessary policies, related to anti-money laundering and terrorist financing, processing of personal data according to GDPR, enforcement of responsible gaming initiatives as well as education for employees and board members. Licensees will need to review their business activities with respect to compliance with internal and external regulations, and to ensure adequate education for employees and board members in relevant areas.



# A new excise duty is introduced



# A new excise duty is introduced

## A new excise duty

According to current rules, games and lotteries are subject to excise duty under three different acts. In the Government's bill, 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)

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 to be reported one time per year, instead of per month.

**KPMG:s observation:** It will not be possible to use a negative tax base against a positive tax base another month, hence there is no possibility to offset the tax base and corresponding tax liabilities. This means that the tax to pay can vary from one month to another depending on the amount of stakes and payouts each month.

## Definitions

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

- *stake* refers to the total value received by the Licensee that player or others 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.

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 3§ of the Registration Act (Sw: folkbokföringslagen) or is considered to have habitual abode in Sweden in accordance with chapter 3, 3§ 2 of 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 in a restaurant or on a merchandiser 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.

# The tax procedure

## 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.

**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.

**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 bill 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 bill

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 bill 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 bill that the reform should be monitored and evaluated considering, among other things, its effect on the gambling market, the channeling goal, 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 bill. 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 merchandiser and online will be further studied.

## Next steps

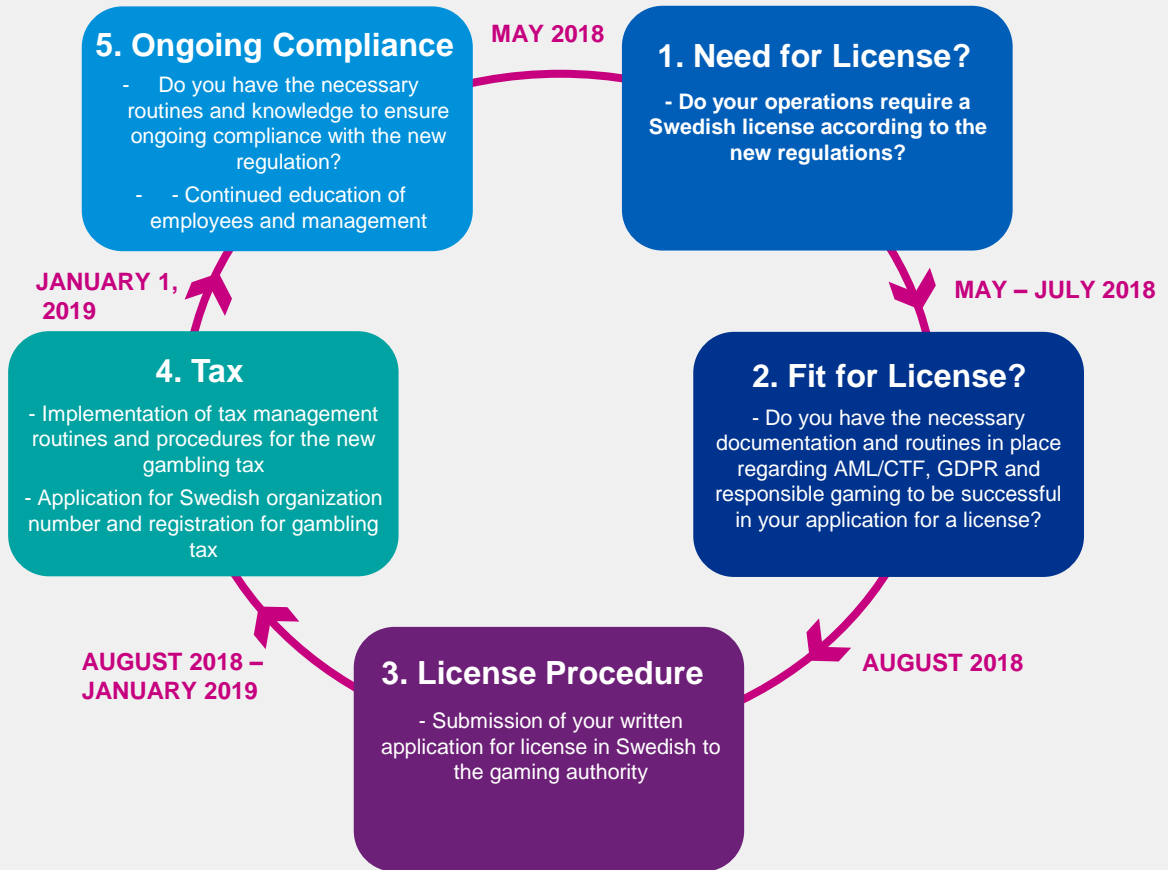
As of the date of this report, the bill has been submitted for the Swedish parliament by the government. Voting on the bill is scheduled to take place on June 7, 2018.

Applications for license can be submitted after August 1, 2018 and the new Gambling Act is proposed to enter into force on January 1, 2019.

# KPMG:s Gaming Group

KPMG Sweden's Gaming Group is comprised of experienced advisers with special insights and knowledge of the gambling industry, and is part of KPMG's wider Global Gaming Group. With joint expertise in all areas of tax, issues regarding implementation, regulations and compliance, AML/CTF, GDPR and the new proposed Swedish gambling legislation, KPMG's Gaming Group helps to ensure compliance with increasing regulatory- and tax issues.

## Preparations checklist, Sweden's new gambling regulation



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