



HM TREASURY



HM Revenue
& Customs

Implementing a Machine Games Duty:

consultation on policy design

May 2011



HM TREASURY



HM Revenue
& Customs

Implementing a Machine Games Duty:

consultation on policy design

May 2011



Official versions of this document are printed on 100% recycled paper. When you have finished with it please recycle it again.

If using an electronic version of the document, please consider the environment and only print the pages which you need and recycle them when you have finished.

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

ISBN 978-1-84532-878-8
PU1177

Subject of this consultation	The implementation of a new Machine Games Duty (MGD), to be charged on the net takings from the playing of machine games. MGD will replace both Amusement Machine Licence Duty (AML) and VAT.
Scope of this consultation	This consultation concerns design characteristics of the proposed new tax, and the practicalities of the draft legislation (Annex B).
Who should read this	Operators, manufacturers and suppliers of machine games in the UK, trade bodies and all other stakeholders who have an interest in machine games taxation.
Duration	The consultation will run from 24 May 2011 to 26 July 2011.
Enquiries	For general enquiries regarding this consultation please contact May Smith at HM Treasury on 020 7270 5489, or May.Smith@hmtreasury.gsi.gov.uk . People with enquiries regarding the technical nature of tax administration and compliance should contact Katherine Mansfield in HM Revenue and Customs on 0161 827 0308, or Katherine.Mansfield@hmrc.gsi.gov.uk .
How to respond	Responses to this consultation should be sent either by email to: MGDconsultation@hmtreasury.gsi.gov.uk or by post to: Machine Games Duty: Consultation Excise and Enterprise Tax Team Business and International Tax Directorate HM Treasury 1 Horse Guards Road London SW1A 2HQ
Additional ways to be involved	Please contact May Smith (contact details above) if you would like to discuss your response.
After the consultation	Considering the responses to this consultation, the Government will take a decision on whether amendments to the draft legislation are required before a second draft of the legislation is published in the autumn of 2011.
Getting to this stage	This consultation document reflects joint work carried out by HM Treasury and HM Revenue & Customs.
Previous engagement	Formal consultation on the taxation of gaming machines and whether to move to a gross profits tax was held in 2009. Subsequent discussions with industry have led to the development of the approach outlined in this document.

Contents

	Page
Foreword	3
Chapter 1 The consultation process	5
Chapter 2 Introduction	7
Chapter 3 Design of Machine Games Duty	9
Chapter 4 Administration of Machine Games Duty	15
Chapter 5 Tax Impact Assessment	17
Chapter 6 Summary of consultation questions	21
Annex A The Code of Practice on Consultation	25
Annex B Draft Legislation	27

Foreword

The gaming machine industry is constantly evolving. Over recent years, technological advances have seen a wide variety of new machines entering the market, and the implementation of the Gambling Act in 2007 changed the regulatory environment for all gambling firms. In this changing environment, it is vital that the tax regime remains effective.

In December 2010, the Government announced reform of the taxation of gaming machines through the introduction of Machine Games Duty (MGD). MGD will be charged on the net takings from the playing of machine games. These are games played on a machine where customers hope to win more than they stake. Where MGD is payable, it will replace both Amusement Machine Licence Duty (AMLD) and VAT.

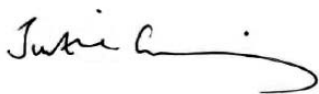
MGD will improve the future predictability and sustainability of the tax regime by making it more resilient to technological progress, regulatory changes and to inflation. Exempting the takings from machine games from VAT will also increase the stability of the tax regime as the playing of machine games will then receive the same VAT treatment as other gambling activities.

MGD also supports the Government's objective of a fairer tax system by ensuring the taxation of machine games will be more closely linked to machine profits. Under the current AMLD system, for machines of a given category, AMLD liability is the same regardless of profit.

By improving fairness within the industry, this measure will particularly help support businesses with less profitable machines and low VAT recovery rates. We appreciate that there will be a wide range of views on this duty and want to hear from all interested parties.

This consultation presents an opportunity for the industry to work with the Government to ensure that the new duty works effectively. The design of MGD needs careful consideration, and by working together we can ensure that the legislation is delivered in a way which minimises administrative burdens and realises the long-term benefits of increased predictability, stability and fairness.

I hope that all interested parties will be able to respond fully to this consultation, to help ensure a fairer and more stable tax regime in the future.



Justine Greening

Economic Secretary to the Treasury

May 2011

1

The consultation process

About the consultation process

1.1 This consultation is being conducted in accordance with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

1.2 This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

1.3 This consultation also welcomes views on the attached draft legislation at Annex B in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended consequences. However, this is only a first draft of the legislation and should be considered for the purposes of this consultation only. The focus of this consultation is on the detailed policy design. Although draft legislation has been included in order to provide stakeholders with early sight of the draft clause, the draft legislation may potentially be subject to significant revision or change in light of the comments made during the consultation. It is intended that a revised draft of the legislation will be published in the autumn, as part of the wider consultation on draft legislation for Finance Bill 2012 (stage 3).

How to Respond

1.4 A summary of the questions in this consultation is included at Chapter 6. Responses should be sent by 26 July 2011, by e-mail to MGDconsultation@hmtreasury.gsi.gov.uk, or by post to:

Machine Games Duty: Consultation
Excise and Enterprise Tax Team
Business and International Tax Group
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ

1.5 Telephone enquiries should be directed to May Smith at HM Treasury (HMT), or Katherine Mansfield at HM Revenue and Customs (HMRC):

May Smith 020 7270 5489
Katherine Mansfield 0161 827 0308

1.6 Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMT Internet site at http://www.hm-treasury.gov.uk/consult_machine_games_duty.htm.

1.7 All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations. If you are willing and able to provide data on the impact of taxation on your business then please do so. Responses will be shared between HMT and HMRC.

1.8 When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

1.9 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

1.10 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HMT or HMRC.

1.11 HMT and HMRC will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The Code of Practice on Consultation

1.12 This consultation is being run in accordance with the Code of Practice although it has been necessary for it to run for 9 weeks only. The draft legislation published in Annex B has been produced following discussions with stakeholders. It is intended that a further draft will be published as part of the wider publication of draft clauses for Finance Bill 2012 in the autumn. To allow for proper consideration of all consultation responses ahead of the upcoming consultation in the autumn, the response time has been slightly shortened. To ensure that stakeholders are nevertheless able to contribute as fully as possible to this consultation, HMT and HMRC will be holding meetings with industry groups and individual companies. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

2

Introduction

Background

2.1 On 9 December 2010, the Government announced its intention to reform the taxation of gaming machines and introduce a gross profits tax (GPT) under the name “Machine Games Duty” (MGD). MGD will be charged on the net takings from the playing of machine games. These are games where customers pay to play a game on a machine in the hope of winning a prize which is greater than the cost to play. Where MGD is payable, it will replace both Amusement Machine Licence Duty (AMLD) and VAT.

2.2 Budget 2011 confirmed the intention to introduce MGD and announced that a consultation would be held on the design of the new duty in May 2011. The intention is for legislation to be included in Finance Bill 2012, with implementation in early 2013.

2.3 The taxation reform can be separated into three parts: (i) the introduction of MGD, (ii) the phasing out of AMLD, and (iii) the exemption of takings from machine games from VAT. This consultation focuses primarily on the introduction of MGD. It outlines the design of the duty and seeks comments on certain design characteristics, including: the scope of the duty, who will be liable to pay the duty, on which income, and based on what rate structure. This consultation also seeks comments on the proposed transitional arrangements when AMLD is phased out, and on the implications for businesses of VAT exemption. Draft primary legislation has been provided to support the outline of the policy design. Draft secondary legislation will be published in the autumn together with a revised draft of the primary legislation.

2.4 The aim is to achieve a tax design which is broadly revenue neutral, minimises administrative burdens as far as possible and realises the long-term benefits of increased predictability, stability and fairness for both the industry and the Government.

Policy Rationale

2.5 MGD will improve the future predictability and sustainability of the tax regime by making it more resilient to technological progress, regulatory changes and to inflation. For example, under the current AMLD regime, rates are revised regularly to take account of factors such as inflation. Under MGD, the need for taxation changes to take account of such external factors will be reduced.

2.6 The Government believes that exempting the takings from machine games from VAT will also increase the stability of the tax regime as the playing of machine games will then have the same VAT treatment as other gambling activities. Product developments are increasingly blurring the boundary between different forms of gambling. Equal VAT treatment will therefore be a more sustainable approach in the long run.

2.7 MGD also supports the Government’s objective of a fairer tax system by ensuring the taxation of machine games will be more closely linked to machine profits. Under the current AMLD system, for machines of a given category, AMLD liability is the same regardless of profit. This results in a wide range of effective tax rates, with the most profitable machines having the lowest rates. A GPT will link tax liability directly to machine profits, meaning the least profitable machines will pay the least tax.

Previous consultations

2.8 The previous Government launched a consultation on the taxation of gaming machines in July 2009. That consultation focused on the costs and benefits of replacing the AMLD regime with a GPT for gaming machines. It also covered broad design characteristics of a possible GPT such as scope, VAT treatment, and whether there should be one or two rates of GPT.

2.9 A summary of responses to the 2009 consultation was published in December 2010. At the same time, the Government announced its intention to proceed with reform. Since then, the Government has continued to liaise informally with industry on design characteristics of MGD to inform the development of the draft legislation. Questions were sent out in December to stakeholders who responded to the previous consultation, and meetings have subsequently been held with a number of trade associations and some individual companies. We are grateful to participants who have taken the time to engage with us so far.

Scope of this consultation

2.10 This consultation is seeking views on certain design characteristics of MGD. The Government would welcome general views on the proposed policy design, and also seeks answers to some specific questions summarised in Chapter 6. The Government would also welcome comments on the summary of impacts provided in Chapter 5.

2.11 Views on the draft legislation would also be welcome in order to confirm, as far as possible, that it will achieve the intended policy effect outlined in Chapters 3 and 4. However, as the design characteristics of the legislation may change following this consultation, there will also be a further opportunity to comment on a revised draft of the legislation in the autumn as part of the wider consultation on draft legislation for Finance Bill 2012.

2.12 Following the 2009 consultation, the Government has decided on certain design characteristics, which are therefore outside the scope of this consultation. These design characteristics include:

- That MGD will apply to the playing of all “machine games”. These are games where customers pay to play a game on a machine in the hope of winning a prize which is greater than the cost to play.
- That takings from machine games subject to MGD will become exempt from VAT.
- That there will be two rates of duty.

2.13 The Government understands that a diverse range of the businesses will be affected by these changes and are very keen to encourage as many interested parties as possible to fully engage with the consultation. The Government will take all responses into account before finalising the policy design. A summary of responses will be published in the autumn.

3

Design of Machine Games Duty

Introduction

3.1 This chapter provides an outline of the proposed new duty covering scope, liability for paying MGD, the definition of “net takings” and the rate structure. It also covers arrangements for transition from AMLD to MGD and the VAT exemption. Questions are posed in regards to specific design characteristics of the new duty.

Scope of Machine Games Duty

3.2 The Government has given careful consideration to the scope of the new duty, and a discussion of the scope was included as part of the 2009 consultation.

3.3 As technology has progressed within the machines industry, there is no longer a clear dividing line between gaming machines currently subject to AMLD and certain other machines. For example, modern machines often rely on computer technology and differences between games of chance and games of skill are slight and difficult to verify. To enhance the stability of the new regime, the scope of MGD will therefore go beyond the current scope of AMLD.

3.4 MGD will be due on the net takings from the playing of “machine games”. These are games where customers pay to play a game on a machine in the hope of winning a prize which is greater than the cost to play. AMLD will be brought to an end and all machine games subject to MGD will become exempt from VAT.

3.5 MGD will include certain machines not currently subject to AMLD. It will cover exempted machines (low stake/ prize gaming machines that are regulated as category D machines), as well as certain machines not classified as “gaming machines” for regulatory purposes (for example so called “Skill With Prizes” machines).

3.6 It is envisaged that there will be exemptions from MGD in relation to charities and to domestic (or private) play. The domestic exemption is outlined in the draft legislation in Annex B. Provisions for charities will be set out in secondary legislation, to be published in the autumn alongside the revised primary legislation.

3.7 For most types of machine play, it is relatively clear what the introduction of MGD will mean in practice, and how the draft legislation will apply. However, two categories which raise specific questions are tournaments and redemption machines. Both of these categories involve an added dimension to a person playing a game on a machine to win a prize. Tournaments involve players competing against each other to win a prize. Redemption machines issue tickets or vouchers which break the direct link between the stake and the prize. These two are therefore discussed in more detail below.

Question 1: Two types of machine play which raise specific issues in regards to MGD are tournaments and redemption machines. Are there any other categories of machines, or machine play, for which the legislation will raise specific issues?

Tournaments

3.8 Tournament play on a machine involves players competing against each other to win a single prize pot. In tournament play, the “normal” functionality of the machine is typically turned off, and the outcome is determined by the participants’ relative scores.

3.9 It is envisaged that tournament play will be excluded from MGD. (This will be achieved by secondary legislation, and is therefore not included in the draft primary legislation in Annex B.) Any income received from tournament play (in the form of, for example, a participation fee or machine hire) will instead continue to be subject to VAT. Likewise, any winnings paid out cannot be offset against MGD.

Question 2: It is envisaged that tournament play on machines will be excluded from MGD and that any income received from such play will continue to be subject to VAT. (i) What, if any, problems would distinguishing between tournament play and non tournament play pose? (ii) Would it be preferable to include tournament play in MGD?

Redemption machines

3.10 Redemption machines are machines which pay out tickets which may be exchanged, or redeemed, for a choice of prizes.

3.11 Under the draft legislation, a redemption machine will be subject to MGD if the value of the biggest prize that can be obtained in exchange for tickets won on a single play is more than the stake. If this is not the case, the redemption machine will instead be subject to VAT. This approach is consistent with the overarching principle of MGD.

3.12 In calculating the “net takings” for MGD purposes, the value of prizes given out in exchange for tickets can be deducted from the stakes. If an operator has several different redemption machines, some of which are subject to MGD and others to VAT, the operator will need to account separately for the stakes from redemption machines subject to MGD and VAT. Where it is not possible to calculate exactly the value of prizes given out in respect of machines subject to MGD, this will need to be done on just and reasonable basis. It is proposed that the operator can then deduct from the stakes subject to MGD a proportion of spend on prizes given out in respect of all redemption machines equivalent to the proportion of stakes from redemption machines subject to MGD. (This is not covered in the primary legislation attached to the consultation document)

Question 3: Under the suggested approach for redemption machines, it is the value of prizes and the number of tickets for which they can be redeemed that are used to determine MGD liability. The tickets themselves will not be treated as having a specific value for the purposes of MGD. (i) What administrative issues or burdens would the suggested approach impose? (ii) Would it be preferable if MGD liability was calculated based on valuing the tickets themselves? If so, how should the value of the tickets be determined? (iii) Do you have any suggestions for a simplified approach to redemption tickets? Any approach will need to provide a fair result, and ensure that similar machines are treated the same. We would be interested in seeing worked step by step examples of how any suggested approach would be applied for redemption machines, in particular, looking at the interaction with the VAT partial exemption calculation.

Liability for the duty

3.13 Liability for the duty was originally discussed as part of the 2009 consultation. The Government has taken into account responses from that consultation as well as views expressed during informal discussions with industry when developing the proposal for duty liability.

3.14 It is proposed that there will be a register of persons liable to pay the duty. Registration is discussed further in Chapter 4.

3.15 Where a licence or permit is held for the premises (for example a premises licence issued under the Gambling Act) it is anticipated that the person holding that licence will register and pay the duty.

3.16 Where no regulatory licence is required, it is envisaged that the person with primary liability to register and pay MGD will be a “responsible person”. This concept already exists for AMLD, and is in most cases either the owner or the tenant of the premises where the machine is located. The draft legislation in Annex B provides a full list of those deemed to be a “responsible person”.

Question 4: The draft legislation outlines who should have primary liability for MGD for different types of premises. Are there any commercial arrangements where the proposed approach would pose a problem? If so, how could the legislation be altered to alleviate these problems?

3.17 Premises where machines are provided on the basis of an alcohol licence present particular questions in regards to the duty liability. For these premises, it would normally be the person holding the on-premises alcohol licence who would register to pay the duty since it is the alcohol licence which entitles pubs to hold certain machines. In the case of tenanted pubs, it could be either the landlord or the tenant that hold the alcohol licence. If the landlord was liable to pay the duty, this would limit the number of persons paying the duty. On the other hand, the tenant is typically a freestanding legal entity separately paying other taxes, such as VAT and corporation tax. As such, it could be argued that either the tenant or the landlord should be liable to pay the duty. The current draft legislation provides an option for premises where machines are provided on the basis of an alcohol licence, whereby either the tenant or the landlord can register for MGD.

Question 5: For premises where machines are provided on the basis of an alcohol licence, the draft legislation envisages that tenants and landlords can choose who should register for MGD. (i) What, if any, problems would this pose? (ii) Would you prefer if the legislation specified where the primary liability will lie? (iii) In the absence of a choice, do you think the primary liability to pay the duty should lie with the tenant, or with the landlord?

3.18 In the event of a default by the person with primary liability for the duty it is proposed that in some limited circumstances, a secondary liability will fall on any person entitled to a share in the takings (a “profit sharer”), but only to the extent of the duty on that share. An example of circumstances where a secondary liability could arise would be where a machine supplier provided machines to someone who was not registered with HMRC for MGD. In this case, if no one registered in respect of the premises, and HMRC could not identify a person liable for MGD, the machine supplier would be at risk of being liable to pay MGD on its share of the profit. It is also envisaged that assessments may be for an earlier period of the profit share.

Net takings from a machine

3.19 MGD will be charged as a percentage of the total net takings from the playing of machine games. In this context, “net takings” is calculated as the stakes due from games played, less the winnings paid out. Where non-cash prizes are paid out, the value of the prizes paid out can be deducted from the stakes.

Question 6: Some machines may be able to provide both machine games and non machine game activities. Where that is the case, it is envisaged that only the net takings from the machine games will be subject to MGD. The takings from non machine game activities will continue to be subject to VAT. (i) Do you have machines which have both machine games and non machine game activities on them? (ii) If so, what, if any, problems would identifying the net takings from each pose? (iii) If identifying the exact net takings from each is not possible, the

draft legislation allows for apportionment on a “just and reasonable” basis. Do you have any suggestions for a method of apportionment which would be “just and reasonable”?

Freeplays

3.20 Free plays are essentially stakes which are given to customers for “free”. For machine games, free plays fall into two broad categories:

- “Genuine free plays”, which a player receives without having to meet any prequalification conditions. These include offers aimed at encouraging player familiarity with new machines.
- “Earned free plays”, which the player only receives if they have met some form of prequalification condition, for example through a loyalty point scheme.

3.21 Under the draft legislation, “genuine free plays” will be excluded from the calculation of net takings. However, what are in effect “earned free plays” will be included. As such, for “earned free plays”, operators will have to pay duty on the amount the player would be required to pay if no free plays were offered. In effect, this means that the takings for earned free plays should be imputed for duty purposes. However, free plays offered by a bookmaker following a bet will be excluded from the calculation of duty receipts, as the bookmaker cannot deduct the value of the free play from general betting duty.

3.22 For both genuine and earned free plays, it is envisaged that prizes won in respect of free plays can be offset against MGD.

3.23 An alternative approach to free plays was previously discussed informally with stakeholders whereby all free plays would count towards dutiable income. The Government has listened to stakeholders who are opposed to that suggestion on the basis that it would penalise genuine promotional business activities. As a consequence the approach now suggested of differentiating between “genuine” and “earned” free plays is intended to strike a balance between allowing businesses to undertake such promotional activities and managing avoidance risks. However, the Government recognises that this could increase the administrative burden for businesses.

Question 7: Under the draft legislation, “genuine” and “earned” free plays will be treated differently. (i) What, if any, administrative issues or burdens would this impose? (ii) Would you prefer the alternative proposal of counting all free plays towards dutiable takings, or do you have any other suggestions for how free plays could be treated?

The rate structure

3.24 As outlined in the Summary of Responses to the 2009 consultation, there will be two rates of duty, with the lower rate set for machines with machine games below certain thresholds of stakes and prizes. The lower rate is introduced to decrease the tax burden on machines below certain thresholds of stakes and prizes, compared to if only one rate of duty had been introduced. This will help ensure that low stake and prize machines that tend to be less profitable will be more financially viable. The Government recognises that those machines are likely to be in smaller businesses, for example seaside arcades.

3.25 The introduction of MGD is not intended to be a revenue raising measure. However, the rates themselves, and the thresholds for the lower rate, will be set by the Chancellor as part of the Budget process.

3.26 It is not the policy of HMT to consult on the rates of taxation. However, to fully understand the impact of MGD, it is important for us to understand how taxation currently impacts upon the sector.

Data to help determine the rates

3.27 The current effective tax rate, estimated as a proportion of net takings, varies across the machine industry. The effective tax rate for a machine depends on the AMLD rate paid, and the net takings generated by that machine. It also depends on the extent to which the operator can recover VAT paid on inputs.

3.28 The Government will take into consideration information provided during the previous consultation in assessing the current effective tax rates. It will also use the information available from the Gambling Commission Industry Statistics 2009/10 on machine numbers and profitability for different sectors¹. To ensure the Government has the most up-to-date information and enabling the widest possible data set to be considered, any further data from the industry would be welcome.

Question 8: (i) What are your current net takings, per machine and category? (ii) What is the current ratio of recoverable to output VAT? (iii) What would the rate of MGD have to be to leave your business no worse off (taking into account reduced input VAT recoverability)? (iv) Would you consider that the information available from the Gambling Commission Industry Statistics 2009/10 on machine numbers and profitability is representative for the industry as a whole?

Thresholds for the lower rate of MGD

3.29 As discussed above, there will be a lower rate of MGD where the maximum stakes and prizes are below certain thresholds. To help determine the threshold for the lower rate, information on the current distribution of stake and prize limits would be very helpful.

Question 9: (i) What stakes and prize limits do your machines currently have? Do they typically reflect the maximum stake and prize limits allowed under social regulation for each category of machine? (ii) If you have machines which will be subject to MGD but which are not classified as “gaming machines”, what are the stakes and prize limits on these machines? (iii) If the limits on some of your machines were just above the threshold set for the lower rate, would it be possible or desirable to adapt the limits on existing machines to take advantage of the lower rate?

Applying the rate threshold per machine or per game

3.30 Some machines can host several games, with different levels of stakes and prizes. The draft legislation envisages that all machine games on a single machine will be subject to the same rate of duty, determined by the highest stake and prize offered on that machine.

3.31 An alternative approach was previously considered and discussed with stakeholders. Under that approach, rates would be determined at the level of the *game* rather than at the level of the *machine*. This would result in the takings from some machines being taxable at two different rates. While views were mixed, a number of operators were opposed to this approach since trying to differentiate the net takings from different games on the same machine would be administratively very burdensome.

¹ <http://www.gamblingcommission.gov.uk/pdf/Gambling%20Industry%20Statistics%202009%202010%20WEB%20-%20January%202011.pdf>

Question 10: Under the draft legislation, it is envisaged that the rate of duty for each machine will be determined by the highest stake and prize offered on that machine. (i) Would you prefer this approach to the alternative where the rates would be determined at the level of each game, so that some machines could be subject to the two different rates of duty? (ii) Would it be possible to account for two different rates of duty on the same machine? What administrative issues, or burdens, would that impose?

Ensuring a smooth transition from AMLD to MGD

3.32 AMLD licences can only be issued for a number of whole months. This means that transitional arrangements will need to be introduced, as all AMLD licences will not expire on the day before MGD implementation.

3.33 After the MGD legislation receives Royal Assent, it will no longer be possible in practice to take out AMLD licences which go beyond MGD implementation. Instead, “cash licences” will continue to be issued in whole months until AMLD has less than one month to run. Where licences are paid for by direct debit, licences will expire in the final month and HMRC will stop taking payments on the relevant payment date.

3.34 Where an AMLD licence expires in the month before MGD implementation, a transitional AMLD payment will be charged for the final days of AMLD. This will be calculated based on a daily rate for each machine category.

3.35 Where an AMLD licence which has been taken out before Royal Assent expires after MGD comes into force, a repayment will be made of the portion of the licence that spans the implementation date. This will also be calculated based on a daily rate.

VAT exemption

3.36 Following the 2009 consultation, the Government decided that takings from machine games subjected to MGD will become exempt from VAT. This will increase the stability of the tax regime as machine games will then have the same VAT treatment as other forms of gambling.

3.37 VAT will remain chargeable on other taxable supplies a business makes. In respect of input tax (the amount of VAT claimed back on taxable expenditure), businesses will only be able to claim in respect of expenditure relating solely to taxable supplies. No input tax can be claimed in respect of expenditure directly relating to exempt supplies, including those machines on which MGD is payable.

3.38 Where expenditure is incurred in respect of both taxable and exempt supplies, e.g. electricity, then a proportion of the VAT paid can be claimed - that which relates to the taxable supply – in accordance with normal partial exemption practice.

4

Administration of Machine Games Duty

Introduction

4.1 This chapter outlines how HMRC intends to administer MGD. It covers registration, accounting periods, returns and payments, record keeping and accounting for losses. Specific questions are asked on the proposed accounting periods.

Registration

4.2 Persons liable to pay duty will need to register with HMRC for MGD in advance of the MGD implementation date. After that date a person attracting a duty liability for the first time will need to register with HMRC in advance of making machines available for play by others.

4.3 In line with wider HMRC policy, it is envisaged that the registration process will be electronic, and will be completed on-line. Details of what will need to be included in the register will be set out in secondary legislation, which will be published in the autumn.

4.4 Under the draft legislation, registration will take place “in respect of the premises where the machine is located”. It is envisaged that persons operating under a licence or permit will not have to list the individual premises for which they register. For such persons, the registration will automatically be made in respect of all the premises covered by the licence or permit. In contrast, for premises where no licence or permit exists, details of the individual premises need to be provided to HMRC.

4.5 Entitlement to a share of the profits from machine games would not in itself create a liability to register. However, if a profit sharer received takings from a machine for which no one was registered, the profit sharer may be liable to MGD on their share of the profits.

4.6 The register will be publically available, to enable profit sharers, or any other interested party, to verify whether someone has registered.

Question 11: Under the draft legislation, persons with primary liability to pay the duty will need to register with HMRC for MGD. (i) For premises where no licence or permit exists, details of the individual premises need to be provided to HMRC. What administrative issues or burdens would this impose? (ii) If a profit sharer received takings from a machine for which no one was registered, and HMRC could not identify a person liable to MGD, any profit sharer would be at risk of being liable to MGD on their share of the profits. What administrative issues or burdens would verifying whether someone is registered impose? Do you have any suggestions for how these might be minimised?

Accounting periods

4.7 As standard, accounting periods for MGD will cover three calendar months. This is in accordance with the preference expressed by industry representatives during informal discussions with HMT and HMRC.

Question 12: In informal discussions with HMT and HMRC, industry representatives have expressed a preference for quarterly accounting periods. Do you agree with this view? If not, what accounting periods would you prefer?

Question 13: The current draft legislation envisages that accounting periods can in general span any three consecutive months. What, if any, problems would it cause if HMRC instead introduced fixed return periods, say March, June, September and December?

Question 14: HMRC intends to provide a facility for special accounting periods so that the MGD accounting periods can have start and end dates which coincide with businesses' own accounting periods, for example ending on the last Sunday of the month and starting the following day. What benefits would such a facility provide and what administrative issues, or burdens, would arise if such a facility was not available?

Returns and payments

4.8 It is envisaged that MGD returns will be made electronically, within one month of the end of the accounting period, and that no paper alternative will be available. This will make MGD more cost effective for HMRC to manage and reduce costs to businesses.

4.9 Payments may be made by direct debit, BACS and CHAPS faster payments.

Record keeping

4.10 Under the existing law applying to excise duties, any records which are created for a business purpose must be maintained and be made available for inspection. As such, many of the MGD requirements in this area will be governed by existing law. But, for the purposes of MGD it is envisaged that the law will require records of individual machines to be kept, even if this is not the case at the moment. In some circumstances, HMRC might grant a dispensation from this requirement.

Question 15: It is envisaged that there will be a requirement to keep records of individual machines for the purposes of MGD, but that in some circumstances, HMRC might grant a dispensation from this requirement. Do you have any views on the circumstances in which a dispensation ought to be granted?

Accounting for losses

4.11 Any losses can be netted off across all machines for which a person is responsible. Where the net duty liability across all machines is negative for an accounting period, the negative liability can be carried forward to the next accounting period. No duty refunds will be made in respect of losses, as is the case for all other gambling taxes. If the business is sold or otherwise disposed of to a separate legal person, the negative liability will not transfer with it.

5

Tax Impact Assessment

Summary of Impacts

5.1 This chapter summarises the expected impacts from MGD. The Government would welcome any comments on the assessment of the impacts. Information received during the consultation will be used to refine the analysis of the impacts and a Tax Information and Impact Note will be published together with the revised draft of the legislation in the autumn.

Table 5.A: Summary of Impacts

Exchequer impact (£m)	The introduction of Machine Gaming Duty (MGD), in place of Amusement Machine Licence Duty (AML) and Value Added Tax (VAT) on machines, is not intended to be a revenue raising measure. However, the exact Exchequer impact will depend on the rates and thresholds of MGD, which are to be set at Budget 2012.
Economic impact	The measure is not expected to have a significant impact on the economy. Some smaller businesses may be better off as a result of the implementation of MGD.
Impact on individuals and households	The impact on individuals and households is expected to be negligible as this measure is not expected to have a significant impact on the availability, price and payouts of machine games. A comparatively small proportion of the population play machine games. According to the Gambling Commission's British Gambling Prevalence Survey 2010, 13% of over 16s gambled on slot machines and 4% on fixed odds betting terminals.
Equalities impacts	This measure is not expected to have different impacts on any equality groups.
Impact on business including civil society organisations	Different businesses will be impacted in different ways by this measure. On average, operators with less profitable machines and low VAT recovery rates will benefit. The tax impact on specific sectors, such as Licensed Betting Offices, Bingo Halls and Family Entertainment Centres, cannot be estimated until MGD rates and thresholds are set. There is also likely to be an impact on business compliance costs. The total estimated compliance cost impact of all the changes is an increase of around £30m to £75m over 10 years. Abolition of AMLD will result in an estimated compliance cost saving of around £20m over 10 years. The compliance cost of MGD will depend on certain design characteristics. Industry representatives have said that they prefer quarterly returns for MGD. On this basis, the introduction of MGD will lead to an estimated compliance cost of £35m to £80m over 10 years. Per business, the administrative burden arising from MGD are expected to be lower than from many other gambling duties, such as general betting duty. Exempting the takings from machine games from VAT will change the VAT status of some businesses. A small number of businesses are expected to become fully VAT exempt, reducing their compliance costs. However, some other businesses, in particular pubs and clubs, will become partially exempt, increasing their compliance costs. Small pubs and clubs which are either below the VAT threshold or the <i>de minimis</i> limit for partial exemption will not see an increase in their compliance cost in this way. Overall, VAT-related compliance costs are anticipated to increase by around £15m over 10 years. The Government is committed to minimising administrative burdens to the extent possible, and would welcome proposals from the industry to achieve this. Overall the Government believes that the benefits from implementing MGD outweigh the small increase in administrative burdens to business. <i>These figures are not final and are subject to changes following the consultation process. The MGD and overall costs are shown as a distribution since where the MGD liability will lie with tenanted pubs is uncertain. Totals do not add up due to rounding.</i>

		Cost	Time Period (yrs)
Compliance Costs			
One-off Costs		£1m to £2m	1
Average Annual Costs		£5m to £9m	10
Total Costs (PV)		£50m to £95m	10
Compliance Benefits			
One-off Benefit		0	1
Average Annual Benefit		£2m	10
Total Benefit (PV)		£20m	10
Net Benefit (NPV)		-£30m to -£75m	10
Impact on Administrative Burden			
	Increase	Decrease	Net Impact
	£5m to £9m	£2m	£3m to £7m
Impact on public sector	HMRC will develop a new accounting system for MGD. This will cost between £1.45m and £7.75m depending on the balance between higher upfront costs and lower long-term maintenance costs. HMRC is considering which option represents the best value for money. The processing of final AMLD licences and payments will create some additional work for HMRC.		
Other impacts	The measure is not expected to have any other significant impacts.		

5.2 As discussed in Chapter 4, in accordance with views expressed by industry representatives, it is envisaged that MGD will require the completion of quarterly returns. In contrast, AMLD allows for annual licences to be taken out. This difference contributes to the compliance cost of MGD being larger than the compliance cost of AMLD.

Question 16: It is estimated that the cost of completing an MGD return will be approximately £50, equating to an annual cost of £200 per business. This cost per return is broadly similar to the cost of completing other gambling taxes returns, such as general betting duty and pool betting duty returns. (However, as betting duties require monthly returns, the overall administrative burden of these duties per business is estimated to be higher than for MGD.) Do you agree with the assessment of compliance costs for MGD?

Question 17: Exempting the takings from machine games from VAT will change the “VAT status” of some businesses (i.e. whether businesses are fully VAT-able, partially exempt or fully exempt). The nature, and extent, of these changes will affect the estimation of compliance costs and administrative burdens. The impact assessment assumes that¹:

- All **Bingo Halls** and **Casinos** will remain partially exempt.
- Medium and large **Licensed Betting Offices (LBOs)** will remain partially exempt, whereas nano, micro and small LBOs will become fully exempt.
- All medium and large **Adult Gaming Centres (AGCs)** and half of the nano, micro and small AGCs will become partially exempt. The other half of nano, micro and small AGCs will become fully exempt.
- Small, medium and large **Family Entertainment Centres (FECs)** will become partially exempt, whereas micro FECs will become fully exempt. Nano FECs are expected to remain fully exempt.

¹ Assumptions on VAT status are affected by the size of a business. Businesses are divided into different size categories, based on number of employees. These numbers apply to the group as a whole, rather than individual businesses. The numbers of employees for the different size categories are: Nano 0, Micro 1-9, Small 10-49, Medium 50-249 and Large 250+.

- Nano and micro **Pubs and Clubs** will remain fully VATable as they will be below the *de minimis* limit for partial exemption. Half of all small pubs and clubs will also be below the *de minimis* limit for partial exemption, whereas the other half will become partially exempt. All medium and large pubs will become partially exempt.

(i) Do you agree with the overall assumptions on changes in VAT status? (ii) If you are a machine operator, would you expect your VAT status to change? If so, how?

Question 18: Do you agree with the overall assessment of the impacts of this change as outlined in the table above?

5.3 The Government recognises that the introduction of MGD, together with the VAT exemption, will result in increased administrative burdens for certain operators. To minimise adjustment costs and help businesses understand the new tax requirements, HMRC will engage with the industry to provide information and guidance.

6

Summary of consultation questions

General Questions

6.1 The Government would welcome general views on the proposed policy design of MGD. Views on the draft legislation would also be welcome in order to confirm, as far as possible, that it will achieve the intended policy effect outlined in Chapters 3 and 4. However, as design characteristics of the legislation may change following this consultation, there will also be a further opportunity to comment on a revised draft of the legislation which will be published in the autumn as part of the wider consultation on draft legislation for Finance Bill 2012.

6.2 The Government would also welcome any views on the summary of impacts provided in Chapter 5. Information received during the consultation will be used to refine the analysis of the impacts and produce a Tax Information and Impact Note.

Specific Questions

6.3 This consultation seeks answer to the following specific questions:

Scope of Machine Games Duty

Question 1: Two types of machine play which raise specific issues in regards to MGD are tournaments and redemption machines. Are there any other categories of machines, or machine play, for which the legislation will raise specific issues?

Question 2: It is envisaged that tournament play on machines will be excluded from MGD and that any income received from such play will continue to be subject to VAT. (i) What, if any, problems would distinguishing between tournament play and non tournament play pose? (ii) Would it be preferable to include tournament play in MGD?

Question 3: Under the suggested approach for redemption machines, it is the value of prizes and the number of tickets for which they can be redeemed that are used to determine MGD liability. The tickets themselves will not be treated as having a specific value for the purposes of MGD. (i) What administrative issues or burdens would the suggested approach impose? (ii) Would you prefer if MGD liability was calculated based on valuing the tickets themselves? If so, how should the value of the tickets be determined? (iii) Do you have any suggestions for a simplified approach to redemption tickets? Any approach will need to provide a fair result, and ensure that similar machines are treated the same. We would be interested in seeing worked step by step examples of how any suggested approach would be applied for redemption machines, in particular, looking at the interaction with the VAT partial exemption calculation.

Liability for the duty

Question 4: The draft legislation outlines who should have primary liability for MGD for different types of premises. Are there any commercial arrangements where the proposed approach would pose a problem? If so, how could the legislation be altered to alleviate these problems?

Question 5: For premises where machines are provided on the basis of an alcohol licence, the draft legislation envisages that tenants and landlords can choose who should register for MGD. (i) What, if any, problems would this pose? (ii) Would you prefer if the legislation specified

where the primary liability will lie? (iii) In the absence of a choice, do you think the primary liability to pay the duty should lie with the tenant, or with the landlord?

Net takings from a machine

Question 6: Some machines may be able to provide both machine games and non machine game activities. Where that is the case, it is envisaged that only the net takings from the machine games will be subject to MGD. The takings from non machine game activities will continue to be subject to VAT. (i) Do you have machines which have both machine games and non machine game activities on them? (ii) If so, what, if any, problems would identifying the net takings from each pose? (iii) If identifying the exact net takings from each is not possible, the draft legislation allows for apportionment on a “just and reasonable” basis. Do you have any suggestions for a method of apportionment which would be “just and reasonable”?

Question 7: Under the draft legislation, “genuine” and “earned” free plays will be treated differently. (i) What, if any, administrative issues or burdens would this impose? (ii) Would you prefer the alternative proposal of counting all free plays towards dutiable takings, or do you have any other suggestions for how free plays could be treated?

The rate structure

Question 8: (i) What are your current net takings, per machine and category? (ii) What is the current ratio of recoverable to output VAT? (iii) What would the rate of MGD have to be to leave your business no worse off (taking into account reduced input VAT recoverability)? (iv) Would you consider that the information available from the Gambling Commission Industry Statistics 2009/10 on machine numbers and profitability is representative for the industry as a whole?

Question 9: (i) What stakes and prize limits do your machines currently have? Do they typically reflect the maximum stake and prize limits allowed under social regulation for each category of machine? (ii) If you have machines which will be subject to MGD but which are not classified as “gaming machines”, what are the stakes and prize limits on these machines? (iii) If the limits on some of your machines were just above the threshold set for the lower rate, would it be possible or desirable to adapt the limits on existing machines to take advantage of the lower rate?

Question 10: Under the draft legislation, it is envisaged that the rate of duty for each machine will be determined by the highest stake and prize offered on that machine. (i) Would you prefer this approach to the alternative where the rates would be determined at the level of each game, so that some machines could be subject to the two different rates of duty? (ii) Would it be possible to account for two different rates of duty on the same machine? What administrative issues, or burdens, would that impose?

Accounting Periods

Question 11: Under the draft legislation, persons with primary liability to pay the duty will need to register with HMRC for MGD. (i) For premises where no licence or permit exists, details of the individual premises need to be provided to HMRC. What administrative issues or burdens would this impose? (ii) If a profit sharer received takings from a machine for which no one was registered, and HMRC could not identify a person liable to MGD, any profit sharer would be at risk of being liable to MGD on their share of the profits. What administrative issues or burdens would verifying whether someone is registered impose? Do you have any suggestions for how these might be minimised?

Question 12: In informal discussions with HMT and HMRC, industry representatives have expressed a preference for quarterly accounting periods. Do you agree with this view? If not, what accounting periods would you prefer?

Question 13: The current draft legislation envisages that accounting periods can in general span any three consecutive months. What, if any, problems would it cause if HMRC instead introduced fixed return periods, say March, June, September and December?

Question 14: HMRC intends to provide a facility for special accounting periods so that the MGD accounting periods can have start and end dates which coincide with businesses' own accounting periods, for example ending on the last Sunday of the month and starting the following day. What benefits would such a facility provide and what administrative issues, or burdens, would arise if such a facility was not available?

Question 15: It is envisaged that there will be a requirement to keep records of individual machines for the purposes of MGD, but that in some circumstances, HMRC might grant a dispensation from this requirement. Do you have any views on the circumstances in which a dispensation ought to be granted?

Tax Impact Assessment

Question 16: It is estimated that the cost of completing an MGD return will be approximately £50, equating to an annual cost of £200 per business. This cost per return is broadly similar to the cost of completing other gambling taxes returns, such as general betting duty and pool betting duty returns. (However, as betting duties require monthly returns, the overall administrative burden of these duties per business is estimated to be higher than for MGD.) Do you agree with the assessment of compliance costs for MGD?

Question 17: Exempting the takings from machine games from VAT will change the "VAT status" of some businesses (i.e. whether businesses are fully VAT-able, partially exempt or fully exempt). The nature, and extent, of these changes will affect the estimation of compliance costs and administrative burdens. (i) Do you agree with the overall assumptions on changes in VAT status as outlined in Chapter 5? (ii) If you are a machine operator, would you expect your VAT status to change? If so, how?

Question 18: Do you agree with the overall assessment of the impacts of this change as outlined in the table in Chapter 5?

A

The Code of Practice on Consultation

About the consultation process

A.1 This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

- 1 When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- 2 Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- 3 Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- 4 Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- 5 The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- 6 Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- 7 Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A.2 If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer, Consultation Coordinator, Better Regulation and Policy Team, H M Revenue & Customs, Room 3E13, 100 Parliament Street, London, SWA 2BQ

020 7147 0062 or e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

B

Draft Legislation

B.1 Draft Legislation below.

1 Machine games duty

Schedule 1 contains provision replacing amusement machine licence duty with a new excise duty and exempting related supplies from VAT.

SCHEDULE 1

Section 1

MACHINE GAMES DUTY

PART 1

IMPOSITION OF DUTY

The duty

- 1 A duty of excise, to be known as machine games duty, is to be charged on the playing of machine games in the United Kingdom.

What are machine games

- 2 (1) A machine game is a game (whether of skill or chance or both) played –
 - (a) on a machine, and
 - (b) for a big enough prize.(2) A prize is “big enough” for these purposes if its value exceeds the lowest charge payable for playing the game on the machine for that prize.
(3) The value of a prize is determined in accordance with paragraph 15.
(4) For a game played for a range of alternative prizes, sub-paragraph (1)(b) is satisfied if at least one of the alternative prizes is big enough.
(5) If an adult would reasonably assume that a game is being played for a big enough prize, it is taken to be a game played for a big enough prize, whether or not such a prize, or any prize, can actually be won.
(6) In identifying for the purposes of this paragraph the lowest charge payable for playing a game, any offer that waives or permits a player to pay less than the charge that the player would be required to pay without the offer is disregarded.
(7) Paragraph 3 makes further provision about what counts as a machine game for the purposes of this Schedule.
- 3 (1) A game that would otherwise be a machine game does not count as one if –
 - (a) it involves betting on future real events,
 - (b) bingo duty is charged on the playing of it,
 - (c) lottery duty is charged on the taking of a ticket or chance in it, or
 - (d) it is a real game of chance and playing it –
 - (i) amounts to dutiable gaming for the purposes of section 10 of FA 1997, or
 - (ii) would do so but for subsection (3), (3B) or (4) of that section.(2) A “real game of chance” is a game of chance (within the meaning of BGDA 1981) that is non-virtual.

- (3) A game consisting of several stages counts as a machine game if –
 - (a) at least one stage would (if played on its own) be a machine game, or
 - (b) the stages (taken together) amount to a machine game.
- (4) If more than one game can be played on a given machine, each game is to be considered separately in deciding whether it is a machine game.
- 4 The Treasury may by order specify criteria to be taken into account in deciding whether a particular game falls within the definition in paragraph 2(1).

Types of machine

- 5 (1) Machines are divided into two types for the purposes of machine games duty.
 - (2) A machine is a “type 2 machine” if it can be demonstrated that –
 - (a) the highest charge payable for playing a machine game on the machine does not exceed £[], and
 - (b) the highest prize that can be won as a result of playing a machine game on the machine does not exceed £[].
 - (3) Any other machine is a “type 1 machine”.

How the duty is charged

- 6 (1) Machine games duty is charged on a taxable person’s total net takings in an accounting period for each type of machine.
 - (2) The amount of the duty is found by –
 - (a) applying the standard rate to the person’s total net takings in the accounting period for type 1 machines,
 - (b) applying the lower rate to the person’s total net takings in the accounting period for type 2 machines, and
 - (c) aggregating the results.
 - (3) This is subject to paragraph 10 (negative amounts of duty).
 - (4) The person’s “total net takings” in the accounting period for a type of machine are the sum of the person’s net takings in the period for all the relevant machines of that type.
 - (5) The person’s “net takings” in the period for each relevant machine are determined in accordance with paragraphs 7 and 8.
 - (6) If any of the relevant machines changes type during the accounting period –
 - (a) the net takings in the part of the period before the change and the net takings in the part after the change are to be allocated separately in calculating the person’s total net takings in the period for each type of machine, and
 - (b) if it is not possible to identify the part of a period to which an amount relates, the amount is to be apportioned on a just and reasonable basis.

Net takings per machine

- 7 (1) A taxable person's net takings in an accounting period for a relevant machine are –
- (a) the takings, less
 - (b) the payouts.
- (2) The takings are the charges that become due at any material time from players for playing machine games on that machine (irrespective of when the games are played or the prizes are paid out).
- (3) The payouts are the prizes that are paid out at any material time to players as a result of playing machine games on that machine (irrespective of when the games are played or the charges become due).
- (4) Sub-paragraph (3) does not include prizes paid out to –
- (a) a person who is a registrable person in respect of the premises where the machine is located, or
 - (b) a representative or employee of such a person.
- (5) The calculation of a person's net takings is subject to paragraph 8.
- (6) If it is not reasonably practicable to attribute charges and prizes to machine games or to apportion them between machine games and other games, any attribution or apportionment is to be done on a just and reasonable basis.
- (7) "Material time" means any time in the accounting period when the person is liable for machine games duty in respect of the machine.
- (8) The Commissioners may by regulations make provision about the point in time at which a charge is taken to become due, or a prize is taken to be paid out, for the purposes of this paragraph.
- (9) Without limiting sub-paragraph (8), if a machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would be required to pay without the offer, the charge is treated as becoming due when the player plays the game.
- 8 (1) In calculating the takings and the payouts under paragraph 7, the following amounts are to be left out of account –
- (a) amounts arising from playing machine games on a domestic occasion, and
 - (b) amounts arising in any other circumstances specified by the Treasury by order.
- (2) The power in sub-paragraph (1)(b) –
- (a) may be exercised generally or in relation to particular cases or kinds of case, and
 - (b) may include provision requiring specified conditions to be met before amounts are left out of account.

The rates

- 9 (1) The standard rate is []%.
- (2) The lower rate is []%.
- (3) If a rate changes during an accounting period –

- (a) the old rate is to be applied to the person’s total net takings in the part of the period before the change, and
 - (b) the new rate is to be applied to the person’s total net takings in the part of the period after the change.
- (4) If it is not possible to identify for the purposes of sub-paragraph (3) the part of the period to which an amount relates, it is to be apportioned on a just and reasonable basis.

Negative amounts of duty

- 10 (1) If the calculation of the amount of machine games duty for which a taxable person is liable for an accounting period results in a negative amount (“amount X”) –
- (a) the amount of machine games duty for which that person is liable for that period is treated as nil, and
 - (b) the amount of duty for which that person is liable for the next accounting period is to be reduced by amount X.
- (2) Sub-paragraph (1) applies to an accounting period whether or not amount X results wholly or partly from the previous application of that sub-paragraph.
- (3) Subject to any reduction required by sub-paragraph (1)(b), the person is not entitled to any repayment or refund of machine games duty in respect of amount X.

Who is liable

- 11 (1) A person is liable for machine games duty in respect of a machine at any time if at the time –
- (a) the person is responsible for the premises where the machine is located (see paragraph 12),
 - (b) the machine is available there for use by others for playing machine games on it, and
 - (c) the machine is not an excluded machine (see paragraph 13).
- (2) If, at any time, there is more than one person who satisfies sub-paragraph (1)(a) to (c) in respect of a machine, each of them is jointly and severally liable for the duty.
- (3) If a body corporate is liable for machine games duty in respect of a machine, every director of that body is jointly and severally liable with that body for the duty payable in respect of the machine.
- (4) Sub-paragraph (3) applies to a limited liability partnership as it applies to a body corporate, with the reference to a director being read as a reference to a member of the partnership.
- 12 (1) This paragraph sets out who is “responsible” for premises for the purposes of paragraph 11.
- (2) If a person is registered in respect of premises, that person is responsible for the premises.

- (3) A person is “registered” at any time in respect of premises if at the time there is an entry in force for that person in the MGD register in respect of those premises.
 - (4) If no-one is registered in respect of premises, any person who is a registrable person in respect of the premises or a representative of such a person is responsible for the premises.
 - (5) Paragraphs 20 to 24 make further provision about registration and registrable persons.
- 13 (1) A machine is an “excluded machine” if—
- (a) it is capable of being used both for playing machine games and for some other purpose that is not related to playing machine games, and
 - (b) condition A or B is met.
- (2) Condition A is that the machine is not designed, adapted or presented in such a way as to—
- (a) facilitate its use for playing machine games, or
 - (b) draw attention to the possibility of its use for playing such games.
- (3) Condition B is that the machine is so designed, adapted or presented but the person mentioned in paragraph 11(1) does not know, and could not reasonably be expected to know, that it is.
- (4) References to a machine being “adapted” include a machine to which anything has been done, including the installation of computer software on it.
- (5) The Treasury may by order amend this paragraph.

Accounting periods

- 14 (1) An accounting period for machine games duty is a period of 3 consecutive months.
- (2) The first day of an accounting period is such day as HMRC may direct.
- (3) A direction under sub-paragraph (2) may apply generally or only to a particular case or class of case.
- (4) HMRC may agree with a registered person to make either or both of the following changes for the purposes of that person’s liability to machine games duty—
- (a) to treat specified periods (whether longer or shorter than 3 months) as accounting periods,
 - (b) to begin accounting periods on days other than those applying by virtue of sub-paragraph (2).
- (5) HMRC may by direction make transitional arrangements for periods (whether of 3 months or otherwise) to be treated as accounting periods where—
- (a) a person becomes or ceases to be registered, or
 - (b) an agreement under sub-paragraph (4) begins or ends.
- (6) If there is reason to believe that a person who is liable for machine games duty may not discharge that liability as it falls due from time to time—

- (a) HMRC may by direction specify shorter periods to be treated as accounting periods for the purposes of that person's liability to machine games duty,
- (b) any such direction continues to have effect until it is withdrawn by HMRC (unless otherwise specified in the direction), and
- (c) withdrawal of a direction does not prevent the giving of further directions in respect of the same person.

Valuing prizes

- 15 (1) This paragraph applies in determining the value of a prize for the purposes of this Schedule.
- (2) The value of a prize includes any portion that—
- (a) represents a refund of the charge payable for playing the game, or
 - (b) is calculated by reference to the amount of any such charge.
- (3) The value of a prize other than money is—
- (a) if the person paying it out (“P”) obtained it from an independent third party, the cost to P of obtaining it from that third party,
 - (b) otherwise, the amount that it would have cost P, at the time P obtained the prize, to obtain it from an independent third party.
- (4) But if the value of a prize cannot reasonably be determined in accordance with sub-paragraph (3), the value of the prize is such amount as is just and reasonable.
- (5) For a prize in the form of one or more vouchers that may be used for obtaining a benefit, sub-paragraphs (3) and (4) have effect as if references to the prize were to—
- (a) that benefit, or
 - (b) where there is a choice of benefits, the benefit with the highest value.
- (6) For the purposes of this paragraph, an amount paid by way of value added tax on the acquisition of a thing is to be treated as part of its cost (whether or not the amount is taken into account for the purpose of a credit or refund).
- (7) The Commissioners may by regulations make further provision about the way in which prizes are to be valued for the purposes of this Schedule.
- (8) In this paragraph—
- “benefit” means money, goods, services or any other kind of benefit;
 - “independent third party” means a person not connected with P (and “connected” is to be construed in accordance with section 1122 of CTA 2010);
 - “voucher” includes anything, in whatever form it is recorded or stored, that entitles or may be used by the recipient to obtain a benefit.

Valuing charges

- 16 (1) This paragraph applies in determining the amount of a charge payable or due for playing a machine game.
- (2) If a composite charge is payable or due for the opportunity to play a machine game more than once, the amount of the charge payable or due for each individual go is to be determined on a just and reasonable basis.

- (3) If a machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would have been required to pay without the offer, the amount of the charge due from the player is taken for the purposes of paragraph 7 to be the amount that the player would have been required to pay without the offer.
- (4) Sub-paragraph (3) does not apply in cases where –
 - (a) the offer is genuinely free, or
 - (b) the offer is given by way of winnings for a bet made by the player on which general betting duty is charged.
- (5) Accordingly, in those cases, the amount of the charge due from the player for the purposes of paragraph 7 is the reduced amount payable in accordance with the offer or, if nothing is payable, nil.
- (6) An offer is considered to be “genuinely free” if a player receives it –
 - (a) irrespective of anything the player does or has done, and
 - (b) irrespective of any condition the player meets or has met.

Collection and management

- 17 The Commissioners are responsible for the collection and management of machine games duty.

Returns

- 18 (1) The Commissioners may make regulations requiring registrable persons to make returns to HMRC in respect of relevant machines.
- (2) Regulations under this paragraph may in particular make provision about –
 - (a) liability to make a return,
 - (b) timing,
 - (c) form,
 - (d) content,
 - (e) method of making (including provision requiring returns to be made electronically),
 - (f) declarations,
 - (g) authentication, and
 - (h) when a return is to be treated as made.

Assessment and payment

- 19 (1) The Commissioners may make regulations about payment of machine games duty.
- (2) The regulations may in particular make provision about –
 - (a) timing,
 - (b) instalments,
 - (c) methods of payment,
 - (d) when payment is to be treated as made, and
 - (e) the process and effect of assessments by HMRC of amounts due.
- (3) Subject to regulations under this paragraph, section 12 of FA 1994 (assessment) applies in relation to liability to pay machine games duty.

Registration

- 20 (1) The Commissioners must maintain a register of those responsible for premises where relevant machines are located.
- (2) The register is to be known as the MGD register.
- (3) A person must not make a relevant machine available for use by others for playing machine games on it unless a registrable person (whether that person or someone else) is registered in respect of the premises where the machine is located.
- (4) Paragraph 21 identifies who is a registrable person in respect of premises.
- (5) This paragraph does not apply in relation to a relevant machine if it is reasonable to expect that the only takings and the only payouts in respect of the machine would be amounts that would be left out of account by virtue of paragraph 8.

Registrable persons

- 21 (1) If a person holds a relevant licence or permit in respect of premises, that person is a registrable person in respect of those premises.
- (2) But if the premises are leased premises in respect of which an alcohol licence is held, whichever one of the relevant parties does not hold that licence is also a registrable person in respect of those premises.
- (3) The relevant parties are –
- (a) the tenant, and
 - (b) the person from whom the tenant leases the premises.
- (4) If the premises are a stall at a travelling fair, each of the following is a registrable person in respect of the premises –
- (a) the holder of the stall, and
 - (b) the person in charge of the fair.
- (5) For premises not falling within any of the preceding sub-paragraphs, each person listed in sub-paragraph (6) is a registrable person in respect of the premises.
- (6) The persons are –
- (a) a person required to hold a relevant licence or permit in respect of the premises,
 - (b) an owner, lessee or occupier of the premises,
 - (c) a person who is responsible to the owner, lessee or occupier for the management of the premises,
 - (d) a person who is responsible for controlling the use of machines that are made available on the premises for use by others for playing machine games on them, and
 - (e) a person who is responsible for controlling the admission of persons to the premises or for providing persons resorting to the premises with goods or services.
- (7) “Relevant licence or permit” is defined in paragraph 22.
- (8) “Alcohol licence” means –

- (a) a premises licence issued under Part 3 of the Licensing Act 2003 that authorises the supply of alcohol for consumption on the licensed premises,
 - (b) a premises licence issued under Part 3 of the Licensing (Scotland) Act 2005, except where such a licence only applies to the sale of alcohol for consumption off the premises, and
 - (c) a licence issued under the Licensing (Northern Ireland) Order 1996 (1996 No. 3158 (N.I. 22)), except where such a licence only applies to the sale of intoxicating liquor by retail for consumption off the premises.
- (9) “Travelling fair” means a fair –
- (a) consisting wholly or principally of the provision of amusements,
 - (b) provided wholly or principally by persons who travel from place to place for the purpose of providing such fairs, and
 - (c) held at a place no part of which has been used for the provision of such a fair on more than 27 days in the same calendar year.
- 22 (1) A “relevant licence or permit” is –
- (a) a licence issued under Part 8 of the Gambling Act 2005,
 - (b) a family entertainment centre gaming machine permit as defined in section 247 of that Act,
 - (c) a club gaming permit as defined in section 271 of that Act,
 - (d) a club machine permit as defined in section 273 of that Act,
 - (e) a prize gaming permit as defined in section 289 of that Act,
 - (f) an on-premises alcohol licence or a relevant Scottish licence as defined, in each case, in section 277 of that Act but only if a licence or permit listed above is not held in respect of the same premises,
 - (g) a club premises certificate granted under Part 4 of the Licensing Act 2003 but only if a licence or permit listed above is not held in respect of the same premises,
 - (h) a certificate of registration within the meaning of the Betting, Gaming Lotteries and Amusements (Northern Ireland) Order 1985 (1985 No. 1204 (N.I. 11)),
 - (i) a bookmaking office licence within the meaning of that Order,
 - (j) a bingo club licence within the meaning of that Order,
 - (k) an amusement permit within the meaning of that Order,
 - (l) a certificate of registration within the meaning of the Registration of Clubs (Northern Ireland) Order 1996 (1996 No. 3159 (N.I. 23)), or
 - (m) a licence issued under the Licensing (Northern Ireland) Order 1996 (1996 No. 3158 (N.I. 22)) but only if a licence, permit or certificate listed above is not held in respect of the same premises.
- (2) In sub-paragraph (1), “listed above” means listed in any of the preceding provisions of that sub-paragraph.
- (3) The Treasury may by order amend this paragraph to add to, vary or restrict the list in sub-paragraph (1).

Compulsory registration

- 23 (1) Sub-paragraph (2) applies if –

- (a) it appears to HMRC that a relevant machine is being made available at premises for use by others for playing machine games on it, and
 - (b) no-one is registered in respect of the premises.
- (2) HMRC may give a notice under this paragraph to any person they believe to be a registrable person in respect of the premises.
- (3) The notice is referred to as a “registration notice”.
- (4) A person to whom a registration notice is given may appeal to an appeal tribunal against the notice.
- (5) The appeal may be made on either or both of the following grounds –
 - (a) that the person is not a registrable person in respect of the premises,
 - (b) that relevant machines are not being made available at the premises for use by others for playing machine games on them.
- (6) The appeal must be made within the period of 30 days beginning with the date of the registration notice.
- (7) If –
 - (a) no appeal is made within that period, or
 - (b) an appeal made within that period is dismissed or withdrawn,HMRC may proceed to register the person in respect of the premises (unless another person has since become registered in respect of them).
- (8) Registration under this paragraph is treated as made with effect from the date of the registration notice.

Procedure for registration, de-registration etc

- 24
- (1) The Commissioners may make regulations about registration.
 - (2) Regulations under this paragraph may in particular make provision about –
 - (a) the procedure for applying for registration (including provision requiring applications to be made electronically),
 - (b) the timing of applications,
 - (c) the information to be provided,
 - (d) the giving of registration notices and the making of appeals against them,
 - (e) the procedure for compulsory registration under paragraph 23,
 - (f) notification of changes to the register,
 - (g) de-registration, and
 - (h) re-registration after a person ceases to be registered.
 - (3) The regulations may permit HMRC to make registration, or continued registration, subject to conditions.
 - (4) Those conditions may in particular require –
 - (a) the provision of security for the payment of machine games duty, and
 - (b) (in the case of a foreign person) the appointment of a United Kingdom representative with responsibility for discharging liability to machine games duty.
 - (5) In sub-paragraph (4) “foreign person” means a person who –

- (a) in the case of an individual, is not usually resident in the United Kingdom,
 - (b) in the case of a body corporate, does not have an established place of business in the United Kingdom, and
 - (c) in any other case, does not include an individual who is usually resident in the United Kingdom.
- (6) The regulations may include provision for the registration of groups of persons; and may provide for the modification of the provisions of this Part of this Schedule in their application to groups.

Publication of register

- 25 (1) The MGD register is to contain such details of those who are entered on the register and of the premises in respect of which they are registered as the Commissioners think fit.
- (2) The Commissioners may publish the register (or a part of it).
- (3) If they choose not to publish it or they choose to publish only a part of it, the Commissioners must nonetheless make arrangements for the provision of a copy of an entry in the register (or the unpublished part of it) to a member of the public on request.
- (4) But the Commissioners may refuse a request under sub-paragraph (3) if the person making the request does not pay a fee specified by the Commissioners.
- (5) The fee must not exceed the reasonable cost (including any indirect cost) of meeting the request.

Profit-sharers

- 26 (1) Sub-paragraph (2) applies if –
- (a) it appears to HMRC that machine games duty may be chargeable in respect of a machine,
 - (b) no-one is registered in respect of the premises where the machine is located, and
 - (c) HMRC do not know the identity of any of those responsible for the premises (see paragraph 12).
- (2) HMRC may give a notice under this paragraph to any person they believe to be beneficially entitled to a share of the machine’s takings.
- (3) The notice must inform the person to whom it is given (“P”) that P will become liable to pay a share of the duty in accordance with this paragraph unless, within the specified period –
- (a) P provides HMRC with sufficient information to identify a person in the United Kingdom who is responsible for the premises, or
 - (b) P satisfies HMRC that, when P became beneficially entitled to a share of the machine’s takings, P took all reasonable steps to ascertain that a registrable person was registered in respect of the premises.
- (4) The specified period is –
- (a) such period of 30 days or more as is specified in the notice, or
 - (b) such other period as may be agreed between HMRC and P.

- (5) If P fails to satisfy sub-paragraph (3)(a) or (b) within the specified period, HMRC may assess to the best of their judgement an amount equal to P's share of the machine games duty that would have been due in respect of the machine for an accounting period on the assumptions set out in sub-paragraph (6).
- (6) The assumptions are –
 - (a) that P had been liable for machine games duty in respect of the machine in the accounting period in accordance with paragraph 11,
 - (b) that the machine had been the only machine in respect of which P was so liable, and
 - (c) that the machine games in respect of which P is beneficially entitled to a share of the takings had been the only machine games played on the machine.
- (7) P's share is a percentage equal to the share of the machine's takings to which P is beneficially entitled.
- (8) An assessment under this paragraph may relate to more than one machine, more than one set of premises and more than one accounting period.
- (9) But it may not relate to a period that began more than 4 years before the date of the assessment.
- (10) An amount assessed under this paragraph is deemed to be an amount of machine games duty assessed under section 12 of FA 1994 and due from P in accordance with regulations under paragraph 19 of this Schedule.
- (11) P is not entitled to any repayment from HMRC of an amount assessed under this paragraph if HMRC subsequently identify a person responsible for the premises.
- (12) But if, after P has paid such an amount, HMRC make an assessment under section 12 of FA 1994 of an amount of machine games duty due from another person in respect of the same takings from the same machine for the same accounting period, account must be taken in that assessment of the amount paid by P.

Reviews and appeals

- 27 (1) The decisions mentioned in sub-paragraph (2) are to be treated as if they were listed in subsection (2) of section 13A of FA 1994 (customs and excise reviews and appeals: meaning of "relevant decision") and, accordingly, as if they were relevant decisions for the purposes mentioned in subsection (1) of that section.
- (2) The decisions are –
 - (a) a decision of HMRC to refuse a request for an agreement under paragraph 14,
 - (b) a decision to give a direction under that paragraph,
 - (c) a decision not to give such a direction,
 - (d) a decision of HMRC under regulations by virtue of paragraph 24(2),
 - (e) a decision of HMRC about security by virtue of paragraph 24(4)(a), and
 - (f) a decision of HMRC about the appointment of a United Kingdom representative by virtue of paragraph 24(4)(b).

Interest

- 28 (1) This paragraph applies if an order is made under section 104(3) of FA 2009 appointing a day on which sections 101 to 103 of that Act are to come into force for the purposes of machine games duty.
- (2) Interest charged under section 101 of that Act on an amount of machine games duty (or an amount enforceable as if it were machine games duty) may be enforced as if it were an amount of machine games duty payable by the person liable for the amount on which the interest is charged.

Penalties and enforcement

- 29 In Schedule 24 to FA 2007 (penalties for errors), in the Table in paragraph 1, after the entry relating to remote gaming duty insert –

“Machine games duty	Return under regulations under paragraph 18 of Schedule 1 to FA 2012.”
---------------------	--

- 30 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, after the entry relating to remote gaming duty insert –

“Machine games duty	Obligation under paragraph 20(3) of Schedule 1 to FA 2012 (obligation to register in respect of premises).”
---------------------	---

- 31 In Schedule 55 to FA 2009 (penalty for failure to make returns etc), in the Table in paragraph 1, after item 28 insert –

“29	Machine games duty	Return under regulations under paragraph 18 of Schedule 1 to FA 2012”.
-----	--------------------	--

- 32 In that Schedule, in each of the following provisions, for “28” substitute “29” –

- (a) paragraph 2(1)(b),
- (b) paragraph 13A(1), and
- (c) paragraph 13F(1).

- 33 In Schedule 56 to FA 2009 (penalty for failure to make payments on time), in

the Table in paragraph 1, after item 11M insert –

“11N	Machine games duty	Amount payable under paragraph 6 of Schedule 1 to FA 2012 (except an amount falling within item 17A, 23 or 24)	The date determined by or under regulations under paragraph 19 of Schedule 1 to FA 2012 as the date by which the amount must be paid”.
------	--------------------	--	--

- 34 In that Schedule, in each of the following provisions, for “11M” substitute “11N” –
- (a) items 17A, 23 and 24 of the Table in paragraph 1,
 - (b) paragraph 2(c),
 - (c) paragraph 3(1)(b),
 - (d) paragraph 8A(1), and
 - (e) paragraph 8F(1).

Forfeiture

- 35 (1) A machine is liable to forfeiture if –
- (a) an officer of Revenue and Customs finds it on any premises,
 - (b) the officer is satisfied that it is being, has been or is about to be made available on the premises for use by others for playing machine games on it, and
 - (c) condition A or B is met.
- (2) Condition A is that –
- (a) no-one is registered in respect of the premises, and
 - (b) there is a serious risk that any machine games duty chargeable in respect of the machine would not be paid.
- (3) Condition B is that the officer is satisfied that an amount of machine games duty has become due and payable in respect of the machine, but has not been paid.

Offences

- 36 (1) A person commits an offence if the person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion (by that person or any other person) of any machine games duty.
- (2) A person guilty of an offence under this paragraph is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the maximum amount, or both,
- (3) The maximum amount is the greater of –
- (a) the statutory maximum, and
 - (b) three times the duty or other amount that is unpaid or the payment of which is sought to be avoided.

- (4) In the application of this paragraph –
- (a) in England and Wales, in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, or
 - (b) in Northern Ireland,
- the reference in sub-paragraph (2)(b) to 12 months is to be read as a reference to 6 months.
- (5) Section 27 of BGDA 1981 (offences by bodies corporate) has effect for the purposes of any offence under this paragraph as it has effect for the purposes of the offences mentioned in that section.

Protection of officers

- 37 Section 31 of BGDA 1981 applies in relation to machine games duty as it applies in relation to remote gaming duty.

Orders and regulations

- 38 (1) This paragraph applies to orders and regulations under this Part of this Schedule.
- (2) Orders and regulations –
- (a) may make provision that applies generally or only for specified purposes,
 - (b) may make different provision for different purposes, and
 - (c) may include transitional provision and savings.
- (3) Regulations may confer a discretion on HMRC.
- (4) Orders and regulations are to be made by statutory instrument.
- (5) A statutory instrument containing an order under paragraph 8(1)(b) –
- (a) must be laid before the House of Commons, and
 - (b) ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless, during that period, it is approved by a resolution of the House of Commons.
- (6) In reckoning the 28-day period, no account is to be taken of any time during which –
- (a) Parliament is dissolved or prorogued, or
 - (b) the House of Commons is adjourned for more than 4 days.
- (7) An order ceasing to have effect by virtue of sub-paragraph (5)(b) does not affect –
- (a) anything previously done under the order, or
 - (b) the making of a new order.
- (8) A statutory instrument containing an order under paragraph 13(5) or 22(3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (9) Subject to sub-paragraphs (5) and (8), a statutory instrument containing an order or regulations is subject to annulment in pursuance of a resolution of the House of Commons.

Transitional provision

- 39 (1) The Commissioners may by notice direct that regulations under paragraph 24 (procedure for registration, de-registration etc) are to apply in relation to the period before the go-live date with the modifications specified in the notice.
- (2) A notice under sub-paragraph (1) must be published by the Commissioners.
- (3) For a person who, on the go-live date, is responsible for premises where a relevant machine is located, the first accounting period is to be the period beginning with that day and ending with—
- (a) the day before the day on which the next accounting period is to begin by virtue of a direction given under paragraph 14(2), or
 - (b) such other day as is necessary to give effect to an agreement made under paragraph 14(4).

Consequential amendments

- 40 (1) Section 1(1) of CEMA 1979 (interpretation) is amended as follows.
- (2) In the definition of “the revenue trade provisions of the customs and excise Acts”, at the end insert—
- “(f) the provisions of Part 1 of Schedule 1 to the Finance Act 2012;”.
- (3) In the definition of “revenue trader”, in paragraph (a)—
- (a) omit “or” at the end of sub-paragraph (ic),
 - (b) after that sub-paragraph insert—
 - “(id) being responsible for premises where relevant machines are located (within the meaning of Part 1 of Schedule 1 to the Finance Act 2012); or”, and
 - (c) in sub-paragraph (ii), for “or (ic)” substitute “, (ic) or (id)”.

- 41 For section 118BC of that Act (inspection powers: gaming duty) substitute—

“118BC Inspection powers: gaming duty and machine games duty

- (1) This section applies to premises if an officer has reasonable cause to believe that—
- (a) section 10 gaming is taking place, has taken place or is about to take place on the premises, or
 - (b) machines are located on the premises in respect of which a person is, has been or is about to become liable for machine games duty.
- (2) The officer may at any reasonable time enter and inspect the premises and inspect—
- (a) accounts, records and other documents in the custody or control of any relevant person, and
 - (b) any relevant equipment.
- (3) Subsection (1) does not permit an officer to enter or inspect a particular part of premises if—

- (a) the officer has no reasonable cause to believe that paragraph (a) or, as the case may be, (b) of that subsection is satisfied with respect to that particular part, and
 - (b) the part is used solely as a dwelling.
 - (4) A “relevant person” is –
 - (a) for premises entered in reliance on subsection (1)(a), a person who is engaging, or whom the officer reasonably suspects of engaging, in section 10 gaming or in any activity by reason of which the person is or may become liable to gaming duty, and
 - (b) for premises entered in reliance on subsection (1)(b), the person who is, has been or is about to become liable to machine games duty or any person whom the officer reasonably suspects of being, having been or being about to become so liable.
 - (5) “Relevant equipment” is –
 - (a) for premises entered in reliance on subsection (1)(a), equipment that is being, or the officer reasonably suspects of having been or of being intended to be, used on the premises for or in connection with section 10 gaming, and
 - (b) for premises entered in reliance on subsection (1)(b), any equipment that is, or the officer reasonably suspects of being, a machine in respect of which a person is, has been or may become liable to machine games duty and any other equipment used in connection with such a machine.
 - (6) In this section –
 - (a) “section 10 gaming” means gaming to which section 10 of the Finance Act 1997 applies,
 - (b) “relevant machine” has the meaning given in Part 1 of Schedule 1 to the Finance Act 2012, and
 - (c) a reference to premises where a relevant machine is located is to be read in accordance with that Part of that Schedule.”
- 42 In section 2 of BGDA 1981 (bookmakers: general bets), in subsection (2), omit paragraph (d).
- 43 (1) Section 26H of BGDA 1981 (exemptions from remote gaming duty) is amended as follows.
- (2) After subsection (2A) insert –
- “(2B) Subsection (2) does not apply in cases where the other gambling tax is machine games duty.”
- (3) In subsection (3), after paragraph (a) insert –
- “(aa) machine games duty.”
- 44 In section 12 of FA 1994 (assessment to excise duty), in subsection (2)(c), after “1997” insert “or Part 1 of Schedule 1 to the Finance Act 2012”.
- 45 In section 10 of FA 1997 (gaming duty), for subsection (3AA) substitute –
- “(3AA) This section does not apply to the playing of a game in respect of which –

- (a) bingo duty or lottery duty is chargeable, or would be chargeable but for an express exception, or
- (b) machine games duty is chargeable.”

- 46 In section 7 of the Borders, Citizenship and Immigration Act 2009 (Customs revenue functions of the director), in subsection (2)(e) –
- (a) omit “and” at the end of sub-paragraph (vi), and
 - (b) at the end of sub-paragraph (vii) insert “and (viii) machine games duty;”.

Interpretation

- 47 In this Part of this Schedule –
- “appeal tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;
 - “charge”, in relation to a game, means a charge or deduction in money or money’s worth, however it is described or levied and whether it becomes due before or after the game is played;
 - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
 - “game” does not include a sport;
 - “the go-live date” is defined in paragraph 62(5);
 - “HMRC” means Her Majesty’s Revenue and Customs;
 - “machine” means any apparatus that uses or applies mechanical power, electrical power or both;
 - “machine game” is defined in paragraph 2 and is to be read in accordance with paragraphs 3 and 4;
 - “MGD register” is defined in paragraph 20;
 - “payouts” means prizes paid out to players as a result of playing machine games on a machine;
 - “the payouts”, in relation to a particular taxable person and accounting period, is defined in paragraph 7;
 - “premises” includes any place, any means of transport and any stall or other moveable structure;
 - “prize” means a prize in money or money’s worth, however it is described or paid out and whether it is a prize provided by a person making the game available or is winnings of money staked (but a benefit consisting of nothing more than the opportunity to play the game again does not count as a prize);
 - “registered” has the meaning given by paragraph 12;
 - “registrable person” has the meaning given by paragraph 21;
 - “relevant machine” means –
 - (a) a machine in respect of which machine games duty is or will be chargeable, or
 - (b) in relation to a particular taxable person and accounting period, a machine in respect of which that person is liable for machine games duty in that period;
 - “representative” means a personal representative, trustee in bankruptcy, receiver or liquidator or any other person acting in a representative capacity;
 - “specified” includes described;

“takings” means charges due from players for playing machine games on a machine;

“the takings”, in relation to a particular taxable person and accounting period, is defined in paragraph 7;

“taxable person” means a person who is liable for machine games duty in respect of one or more machines in accordance with paragraph 11;

“total net takings” is defined in paragraph 6;

“United Kingdom” includes the territorial sea of the United Kingdom.

- 48 (1) This Part of this Schedule is to be read in accordance with this paragraph.
- (2) A person “plays” a game if the person participates in the game –
- (a) whether or not there are other participants in the game, and
 - (b) whether or not a computer generates images or data taken to represent the actions of other participants in the game.
- (3) A reference to the charge (or the lowest or highest charge) payable for playing a machine game is a reference to the charge (or the lowest or highest charge) payable for a single go at playing the game.
- (4) A reference to “paying” a charge is to be read, in the case of a charge in money’s worth, as a reference to the provision of the thing, or performance of the service, in money’s worth.
- (5) A reference to a prize (or the highest prize) that can be won as a result of playing a machine game is a reference to a prize (or the highest prize) that can be won as a result of a single go at playing the game.
- (6) A reference to “paying out” a prize is to be read, in the case of a prize in money’s worth, as a reference to the provision of the thing, or performance of the service, in money’s worth.
- (7) A reference to the premises where a machine is located or made available includes, in the case of a portable machine, the premises where the machine is issued to those wanting to play machines games on it.
- 49 The imposition or payment of machine games duty does not make lawful anything that is otherwise unlawful.

PART 2

REMOVAL OF AMUSEMENT MACHINE LICENCE DUTY

Amendment of BGDA 1981

- 50 The following provisions of BGDA 1981 are omitted –
- (a) sections 21 to 26,
 - (b) section 26H(3)(a),
 - (c) section 26N(3) and (4), and
 - (d) Schedules 4 and 4A.
- 51 (1) Part 3 of that Act (general) is amended as follows.
- (2) In section 27 (offences by bodies corporate), for the words from “section 24” to “Schedule 4” substitute “paragraph 13(1) or (3) or 14(1) of Schedule 1 or paragraph 16 of Schedule 3”.

- (3) In section 31 (protection of officers), for “remote gaming duty or the duty on amusement machine licences” substitute “or remote gaming duty”.
- (4) In section 33 (interpretation), in subsection (2), for “remote gaming duty or the duty on amusement machine licences” substitute “or remote gaming duty”.

Amendment of other enactments

- 52 In section 102 of CEMA 1979, in subsection (3)(a), omit “or an amusement machine licence”.
- 53 In section 10 of FA 1997 (gaming duty), omit subsection (3A).
- 54 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, omit the entry relating to amusement machine licence duty.
- 55 In section 7 of the Borders, Citizenship and Immigration Act 2009 (Customs revenue functions of the director), in subsection (2)(e), omit sub-paragraph (i).

Transitional provision and savings

- 56 (1) If a licence granted under section 21 of BGDA 1981 is to expire on or after the go-live date, the holder of the licence is entitled to repayment of an amount of duty.
 - (2) That amount is the difference between—
 - (a) the amount of duty actually paid on the licence before the go-live date in accordance with section 23 of that Act, and
 - (b) the amount (if less) determined in accordance with sub-paragraph (3).
 - (3) The amount is to be determined as follows—
 - (a) [],
 - (b) [].
 - (4) If—
 - (a) duty is being paid on the licence in accordance with arrangements made under paragraph 7A of Schedule 4 to BGDA 1981 (payment of duty by instalments), and
 - (b) the amount of duty actually paid on the licence before the go-live date in accordance with section 23 of that Act is less than the amount determined in accordance with sub-paragraph (3),the difference between those amounts is to be treated under that Act as unpaid duty.
 - (5) A person is not entitled to a repayment under this paragraph if [the person] has been convicted of an offence under section 24 of that Act in respect of a contravention of section 21(1) or 24 of that Act that occurred between the grant of the licence and the go-live date.
 - (6) If, at the go-live date, proceedings for such an offence are pending against [the person], the right to repayment under this paragraph does not arise unless and until the proceedings are terminated and every person charged in those proceedings with such an offence has been acquitted of it.

- 57 (1) If a licence granted or to be granted under section 21 of BGDA 1981 would expire within the 30 days ending with the go-live date, a person may apply –
- (a) for the licence to be treated as extended for the necessary period, or
 - (b) for a new amusement machine licence to be treated as granted in its place under Schedule 4 to that Act for the necessary period.
- (2) The necessary period is the period from expiry of the licence until immediately before the go-live date.
- (3) An application under this paragraph may be made before or after the licence is granted but, if made after the licence is granted, it must be made at least 30 days before the day on which the licence is to expire.
- (4) The application must be made to HMRC in such form and manner as HMRC may require.
- (5) HMRC must grant the application once it has received payment of an amount of duty payable on the licence (or new licence) in respect of the necessary period.
- (6) The amount of duty is to be calculated as follows –
- (a) [],
 - (b) [].
- (7) Schedule 4 to BGDA 1981 and any regulations made under that Schedule apply to an amount of duty payable in accordance with this paragraph as to an amount of duty payable in accordance with section 23 of that Act.
- (8) Nothing in this paragraph affects the operation of that Act with respect to the provision of amusement machines in the necessary period in a case where no application is made under this paragraph or an application is not granted.
- 58 The enactments repealed by this Part of this Schedule continue to have effect on and after the go-live date in relation to the provision of amusement machines before that date.

PART 3

VAT EXEMPTION

Amendment of VATA 1994

- 59 For section 23 of VATA 1994 substitute –

“23 Machine games

- (1) If a person plays a machine game, then for the purposes of VAT the amount paid by the person is to be treated as consideration for a supply of services to that person.
- (2) The value to be taken as the value of any such supplies made in any period is to be determined as if the consideration for the supplies were reduced by an amount equal to the amount (if any) paid out in that period by way of winnings to players of the machine games.

- (3) But any amount paid out by way of winnings to the person making the supply or to persons acting on that person's behalf is to be ignored for the purposes of subsection (2).
 - (4) Inserting a token into a machine on which a machine game is played is to be treated for the purposes of subsection (1) as the payment of an amount equal to that for which the token can be obtained.
 - (5) Handing out a token by way of winnings to a player of machine games is to be treated for the purposes of subsection (2) –
 - (a) if the token is of a kind inserted into a machine to enable machine games to be played on the machine, as the payment out by way of winnings of an amount equal to that for which the token can be obtained, or
 - (b) if the token is not of such a kind but can be exchanged for money, as the payment out by way of winnings of an amount equal to that for which it can be exchanged.
 - (6) "Machine game" has the same meaning in this section as it has in Part 1 of Schedule 1 to the Finance Act 2012 (see paragraphs 2 to 4 of that Schedule).
 - (7) For the purposes of this section, a person plays a game if the person participates in the game –
 - (a) whether or not there are other participants in the game, and
 - (b) whether or not a computer generates images or data taken to represent the actions of other participants in the game."
- 60 (1) Schedule 9 to that Act (exemptions: the groups) is amended as follows.
- (2) In Part 2 (the Groups), in Group 4 –
 - (a) after Item 1 insert –

"1A The provision of any facilities for the playing of machine games (as defined in section 23) but only so far as the takings and payouts in respect of those games are taken into account in determining the charge to machine games duty under Part 1 of Schedule 1 to the Finance Act 2012."
 - (b) in Note (1) –
 - (i) for "Item 1 does" substitute "Items 1 and 1A do", and
 - (ii) omit paragraph (d) and the word "or" immediately preceding that paragraph, and
 - (c) after Note (1) insert –

"(1A) Item 1 does not include the provision of any facilities for the playing of machine games (as defined in section 23)."
 - (3) Accordingly –
 - (a) in that Part, in the heading of Group 4, after "GAMING" insert ", MACHINE GAMES", and
 - (b) in Part 1, in the Index, for "Betting, gaming and lotteries" substitute "Betting, gaming, machine games and lotteries".
- 61 (1) Schedule 11 to that Act (administration, collection and enforcement) is amended as follows.

- (2) In paragraph 9, for paragraph (a) substitute –
 “(a) to open any machine on which machine games (within the meaning of that section) are played; and”.
- (3) Accordingly, in the heading immediately before paragraph 9, for “*gaming machines*” substitute “*machines on which machine games are played*”.

PART 4

MISCELLANEOUS

Application

- 62 (1) The provisions of this Schedule have effect as follows.
- (2) Part 1 has effect in relation to the playing of machine games on or after [*date*].
- (3) Part 2 has effect in relation to the provision of amusement machines on or after that date.
- (4) Part 3 has effect in relation to supplies made on or after that date.
- (5) A reference elsewhere in this Schedule to the “go-live date” is to [*date*].

HM Treasury contacts

This document can be found in full on our website at:
hm-treasury.gov.uk

If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: public.enquiries@hm-treasury.gov.uk

ISBN 978-1-84532-878-8



9 781845 328788 >