

Machine Games Duty

Who is likely to be affected?

Operators, manufacturers and suppliers of machine games in the UK.

General description of the measure

The taxation of gaming machines will be reformed through the introduction of machine games duty (MGD). MGD will be charged on the net takings from the playing of dutiable machine games. These are games played on a machine where customers hope to win a cash prize worth more than they stake. Where MGD is payable, it will replace both Amusement Machine Licence Duty (AMLD) and VAT.

Policy objective

This measure aims to put tax revenues from gaming machines on a more sustainable footing. The VAT treatment of gaming machines has been challenged in the Courts. Introducing MGD and exempting dutiable machine games from VAT will protect tax revenues going forward, and will ensure that operators of gaming machines continue to make a fair contribution to tax receipts.

MGD also supports the Government's objective of a fairer tax system by ensuring the taxation of dutiable machine games will be more closely linked to machine takings.

Background to the measure

A consultation document, *Taxation of gaming machines: consultation on a gross profits tax*, was published in July 2009 on the HM Treasury website and the introduction of MGD was announced in December 2010.

A further consultation document, *Implementing a Machine Games Duty: consultation on policy design*, was published in May 2011 on the HM Treasury website.

The Government has considered all responses received to the consultation, as detailed in the summary of responses published on 6 December 2011.

Detailed proposal

Operative date

The operative date for MGD will be 1 February 2013. Transitional arrangements for AMLD will have effect from when Finance Bill 2012 receives Royal Assent.

Current law

AMLD is provided for in the Betting and Gaming Duties Act 1981.

Section 23 of the Value Added Tax Act 1994 (VATA) provides that payment for play on a gaming machine is, for the purposes of VAT, treated as a consideration for the supply of services.

Group 4 of Schedule 9 to VATA excludes gaming machines from the general exemption for betting and gaming.

Proposed revisions

Legislation will be introduced in Finance Bill 2012 to establish MGD and to bring AMLD to an end.

Appropriate secondary legislation will also be made.

VAT law will be amended to provide for an exemption from VAT for supplies relating to the playing of dutiable machine games.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	The introduction of MGD, in place of AMLD and VAT on machine games, is not intended to be a revenue raising measure. However, the exact exchequer impact will depend on the rates of MGD, which will be set at Budget 2012.				
Economic impact	The change has no significant impact on the economy.				
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. Furthermore, only a small proportion of the population play machine games.				
Equalities impacts	This measure is not expected to have different impacts on any protected equality groups.				
Impact on business including civil society organisations	<p>Approximately 42,000 businesses with dutiable machine games will be impacted by MGD.</p> <p>The effects of this measure will not be distributed equally across the sector, creating winners as well as losers. These effects will be within as well as between gambling sectors. On average, operators with lower takings machines and low VAT recovery rates will benefit. A two tier rate will further ensure a lower effective tax rate for low stakes and prize machines. The detailed tax impact on, and within, specific gambling sectors will be estimated after MGD rates are set.</p> <p>There will also be an impact on business compliance costs. Abolition of AMLD will result in an estimated compliance cost saving of around £20 million over ten years. The introduction of MGD will require quarterly returns and lead to an estimated compliance cost of £85 million over ten years. Exempting the takings from dutiable machine games from VAT will change the VAT status of some businesses. Compliance costs would decrease for a small number of businesses that will no longer be required to register for VAT because they will fall below the VAT threshold. However, other businesses will become partially exempt, increasing their compliance costs. As a result, VAT-related compliance costs are anticipated to increase by around £5 million over ten years. Overall, the estimated compliance cost impact of all the changes is an increase of around £70 million over ten years.</p> <p>These figures are the current best estimates, and may be revised. The final administrative burden estimate will be published at Budget 2012.</p>				

	Figures may not sum due to rounding.		
		Cost	Time Period (yrs)
	Compliance Costs		
	One-off Costs	£3m	1
	Average Annual Costs	£9m	10
	Total Costs (PV)	£90m	10
	Compliance Benefits		
	One-off Benefit	0	1
	Average Annual Benefit	£2m	10
	Total Benefit (PV)	£20m	10
	Net Benefit (NPV)	-£70m	10
	Impact on Administrative Burden		
	Increase	Decrease	Net Impact
	£9m	£2m	£6m
Operational impact (£m) (HMRC or other)	HMRC will develop a new information technology system to support MGD, allowing HMRC to manually process registrations and returns as well as enabling customers to register and file returns online. HMRC will incur additional costs of approximately £9 million (including five years support costs) to develop a new IT system in support of MGD. The processing of final AMLD licences and payments will require small changes to existing systems in the region of £200,000 and will create some additional work for HMRC.		
Other impacts	<p><u>Competition assessment:</u> The abolition of AMLD is expected to increase competition as it removes a fixed cost which can act as a barrier to entry.</p> <p><u>Small firms impact test:</u> The taxation change will impact on small businesses. The impact will vary depending on the specific circumstances of individual businesses, including their current VAT status. It will also depend on the rates of MGD. Following consultation with small businesses on this measure, adjustments have been made to the planned administration of the duty to minimise burdens. Exempting small firms from MGD would disproportionately decrease exchequer revenues.</p>		

Monitoring and evaluation

Following implementation of MGD, this measure will be subject to ongoing monitoring of the amount collected.

Further advice

If you have any questions about this change, please contact Katherine Mansfield on 0161 827 0308 (email: katherine.mansfield@hmrc.gsi.gov.uk).

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 dutiable machine games in the United Kingdom.

Dutiable machine games

- 2 (1) A “machine game” is a game (whether of skill or chance or both) played on a machine for a prize.
 - (2) A machine game is “dutiable” if—
 - (a) the prize or at least one of the prizes that can be won from playing the game on the machine is or includes cash, and
 - (b) the maximum amount of cash that a player can win from playing the game on the machine exceeds the lowest charge payable for playing the game on the machine.
 - (3) “Cash” means money or anything that may reasonably be considered to equate to money, including—
 - (a) anything that can be used in the same way as if it were money, and
 - (b) anything that allows a person to obtain money on demand or otherwise represents a promise to pay a person money on demand.
 - (4) The things mentioned in sub-paragraph (3) include—
 - (a) anything of an intangible nature (such as points), and
 - (b) anything that a person has as a result of the taking of any step by someone else (such as the crediting of an account).
 - (5) If an adult would reasonably assume that a machine game satisfies the tests in sub-paragraph (2)(a) and (b) (taking into account the way in which the game is presented and all the other circumstances of the case), the game is taken to be a dutiable machine game, whether or not it does in fact satisfy those tests.
 - (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 dutiable machine game for the purposes of this Schedule.

- 3 (1) A game that would otherwise be a dutiable 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 dutiable machine game if—
 - (a) at least one stage would (if played on its own) be a dutiable machine game, or
 - (b) the stages (taken together) amount to a dutiable 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 dutiable machine game.
- 4 The Treasury may by order specify criteria to be taken into account in deciding whether a particular game falls within the definitions in paragraph 2(1) and (2).

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 dutiable machine game on the machine does not exceed 10p, and
 - (b) the maximum amount of cash that can be won from playing a dutiable machine game on the machine does not exceed £8.
- (3) Any other machine is a “type 1 machine”.
- (4) The Treasury may by order substitute for a sum for the time being specified in sub-paragraph (2)(a) or (b) such higher sum as may be specified in the order.

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 dutiable machine games on that machine (irrespective of when the games are played or the prizes are paid out).
- (3) The payouts are the prizes (whether cash or non-cash) that are paid out at any material time to players as a result of playing dutiable 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,
 - (b) a representative or employee of such a person at those premises, or
 - (c) a person acting for or at the direction 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 dutiable machine games or to apportion them between dutiable machine games and other games or other activities, 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 (if any) 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 dutiable 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 dutiable machine games on it, and

- (c) the machine is not an excluded dual-use 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) A person who is liable for machine games duty in accordance with this paragraph is referred to as a “taxable person”.

Responsible for premises

- 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.

Excluded dual-use machines

- 13 (1) A machine is an “excluded dual-use 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 dutiable 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 Commissioners may by order specify criteria to be taken into account in deciding whether a machine falls within the definition in sub-paragraph (1).
- (6) 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 valuing prizes for the purposes of this Schedule (including in determining the maximum amount of cash that can be won from playing a machine game).
- (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 in the form of something that is reasonably considered to equate to money is equal to the amount of money to which the thing is reasonably considered to equate.
- (4) The value of a prize in the form of foreign currency or something that is reasonably considered to equate to foreign currency –
 - (a) is, in relation to any day, the sterling equivalent of that currency determined by reference to the London closing rate for that currency for the previous day, and
 - (b) for the purposes of paragraph 7(3), the day in relation to which the value is assessed is the last day of the relevant accounting period.
- (5) The value of a prize other than cash 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.

- (6) But if the value of a prize other than cash cannot reasonably be determined in accordance with sub-paragraph (5), the value of the prize is such amount as is just and reasonable.
- (7) For a prize in the form of one or more vouchers that may be used for obtaining a non-cash benefit, sub-paragraphs (5) and (6) 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 [...] value.
- (8) For the purposes of sub-paragraph (5), 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).
- (9) The Commissioners may by regulations make further provision about the way in which prizes are to be valued for the purposes of this Schedule.
- (10) In this paragraph –
 - “benefit” means goods or services or any other kind of benefit;
 - “foreign currency” means a currency other than sterling;
 - “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.
- (11) This paragraph applies to a part of a prize as it applies to a whole prize, and references to a prize are to be read accordingly.

Valuing charges

- 16 (1) This paragraph applies in determining for the purposes of this Schedule the amount of a charge (or the highest or lowest charge) payable or due for playing a machine game.
- (2) If the amount of a charge in money’s worth cannot be determined, it is assumed to be such amount as is just and reasonable.
- (3) 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.
- (4) If a composite charge is payable or due for the opportunity to play a machine game and for something else, the amount of the charge payable or due for playing the game is to be determined on a just and reasonable basis.
- (5) The Commissioners may by regulations make further provision about the way in which the amount of charges is to be determined for the purposes of this Schedule.
- (6) Sub-paragraph (7) applies if –
 - (a) a dutiable 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,

- (b) the offer was made available to the player by way of winnings from an activity in respect of which another duty of excise or value added tax is charged, and
 - (c) the value of the offer is deductible in calculating the amount of that other duty or value added tax payable in respect of that activity.
- (7) The amount of the charge due from the player for playing the dutiable machine game is taken for the purposes of paragraph 7 to be the amount that the player would have been required to pay without the offer.
- (8) Regulations under sub-paragraph (5) may include provision extending or modifying the circumstances in which sub-paragraph (7) applies.

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 dutiable 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 to a person (“T”) for the purposes of an activity for which an alcohol licence is required and the alcohol licence in respect of the premises is held by someone else, T (and not the licence-holder) is a registrable person in respect of those premises.
- (3) 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.
- (4) For premises not falling within any of the preceding sub-paragraphs, each person listed in sub-paragraph (5) is a registrable person in respect of the premises.
- (5) 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 dutiable 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.
- (6) “Relevant licence or permit” is defined in paragraph 22.
- (7) “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 (S.I. 1996/3158 (N.I. 22)), except where such a licence only applies to

the sale of intoxicating liquor by retail for consumption off the premises.

- (8) “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 (S.I. 1985/1204 (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 (S.I. 1996/3159 (N.I. 23)), or
 - (m) a licence issued under the Licensing (Northern Ireland) Order 1996 (S.I. 1996/3158 (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 by anyone at premises for use by others for playing dutiable 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 dutiable 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) either –
 - (i) HMRC do not know the identity of any of those responsible for the premises (see paragraph 12), or
 - (ii) HMRC do know the identity of one or more such persons but none of them is in the United Kingdom.
- (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 dutiable machine games in respect of which P is beneficially entitled to a share of the takings had been the only dutiable 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.”
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- 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).”
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- 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”.
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- 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).
- 35 (1) Contravention of a provision mentioned in sub-paragraph (2) attracts a penalty under section 9 of FA 1994 (penalties) and also attracts daily penalties under that section.
- (2) The provisions are –
- (a) any provision of regulations made under paragraph 18,
 - (b) any provision of regulations made under paragraph 19,
 - (c) paragraph 20(3), and
 - (d) any provision of regulations made under paragraph 24.

Forfeiture

- 36 (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 dutiable 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

- 37 (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

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

Orders and regulations

- 39 (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) For the purposes of making an order under paragraph 8(1)(b) –
- (a) the statutory instrument containing the order must be laid before the House of Commons, and
 - (b) the order 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(6) 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

- 40 (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

- 41 (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)”.
- 42 (1) For section 118BC of that Act (inspection powers: gaming duty) substitute –
 - “**118BC Inspection powers: gaming duty and machine games duty**
 - (1) Subsection (2) 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) An officer may at any reasonable time (whether or not as part of an inspection under subsection (2)) require a relevant person or anyone acting on such a person’s behalf –
 - (a) to open relevant equipment, and
 - (b) to carry out any other operation that may be necessary to enable the officer to ascertain whether any gaming duty or machine games duty is payable in respect of it and, if so, how much.
 - (5) A “relevant person” is –
 - (a) in relation to gaming duty, 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) in relation to machine games duty, a person who is, has been or is about to become liable to machine games duty or whom the officer reasonably suspects of being, having been or being about to become so liable.
 - (6) “Relevant equipment” is –
 - (a) in relation to gaming duty, 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) in relation to machine games duty, 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.
 - (7) In this section –
 - (a) “section 10 gaming” means gaming to which section 10 of the Finance Act 1997 applies, and
 - (b) a reference to premises where a machine is located is to be read in accordance with Part 1 of Schedule 1 to the Finance Act 2012.”
- (2) In section 118G of that Act (offences under Part 9A), in subsection (1), for “or section 118B” substitute “, 118B or 118BC(4)”.
- 43 In section 2 of BGDA 1981 (bookmakers: general bets), in subsection (2), omit paragraph (d).

- 44 (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,”.
- 45 In Schedule A1 to BGDA 1981 (betting duties: double taxation relief), in paragraph 7, after paragraph (c) insert –
- “(ca) machine games duty,”.
- 46 In Schedule 4B to BGDA 1981 (remote gaming duty: double taxation relief), in paragraph 7, after paragraph (c) insert –
- “(ca) machine games duty,”.
- 47 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”.
- 48 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.”
- 49 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

- 50 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;
- “cash” has the meaning given in paragraph 2 (and “non-cash” is to be read accordingly);
- “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;
- “dutiable machine game” has the meaning given in paragraph 2, subject to paragraphs 3 and 4;
- “game” does not include a sport;
- “the go-live date” is defined in paragraph 66(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” has the meaning given in paragraph 2;
“MGD register” has the meaning given in paragraph 20;
“money” means money in sterling or any other currency;
“payouts” means prizes paid out to players as a result of playing dutiable machine games on a machine;
“the payouts”, in relation to a particular taxable person and accounting period, has the meaning given in paragraph 7;
“premises” includes any place, any means of transport and any stall or other moveable structure;
“prize”, in relation to a game –
 (a) means a prize in the form of cash or non-cash (or both), however it is described or paid out and whether it is a prize provided by a person making the game available or its winnings of money staked, but
 (b) 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 in paragraph 12 (and “registration” is to be read accordingly);
“registrable person” has the meaning given in 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 dutiable machine games on a machine;
“the takings”, in relation to a particular taxable person and accounting period, is defined in paragraph 7;
“taxable person” has the meaning given in paragraph 11;
“total net takings” has the meaning given in paragraph 6;
“United Kingdom” includes the territorial sea of the United Kingdom.

- 51 (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 –
 (a) is a reference to the charge (or the lowest or highest charge) payable for a single go at playing the game, and
 (b) includes any charge that entitles the person paying it to play a machine game or to play it at a reduced rate (even if the charge is ostensibly a charge for something else).

- (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 maximum amount of cash) that can be won from playing a machine game is a reference to a prize (or the maximum amount of cash) that can be won from 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 dutiable machines games on it.
- 52 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

- 53 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.
- 54 (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

- 55 In section 102 of CEMA 1979, in subsection (3)(a), omit “or an amusement machine licence”.
- 56 In section 10 of FA 1997 (gaming duty), omit subsection (3A).
- 57 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.
- 58 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

59 (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—

Step 1

Calculate the amount of duty that would have been paid if the period for which the licence was granted had been the number of complete months beginning with the date on which the licence was granted and ending immediately before the go-live date. The day immediately following the end of that period of complete months is referred to as “day X”.

Step 2

Add to the amount calculated under Step 1 an amount representing the duty payable for the period of days beginning with day X and ending with the day before the go-live date. The duty payable for each such day in that period is to be calculated as 1/365th of the amount of duty payable for a licence of 12 months for a machine of the relevant category.

(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.

(7) If a person entitled to a repayment of more than £10 under this paragraph has not received the repayment within the period of 90 days beginning with the go-live date (or, in a case falling within sub-paragraph (6), the date when the right arises in accordance with that sub-paragraph)—

- (a) the person may give notice to HMRC of that fact,

- (b) the Commissioners must pay interest to the person on the amount of the repayment for the period from the end of that 90-day period until the day on which the repayment is made, and
 - (c) any such interest accrues at the rate under section 197 of FA 1996 (rates of interest) that is applicable for Parts 2 and 3 of Schedule 3 to FA 2001 (excise duty payment by Commissioners in case of error or delay).
- 60 (1) If a licence granted or to be granted under section 21 of BGDA 1981 would expire within the period of 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 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 payable in respect of the necessary period is to be the sum of the amounts payable for each day in that period, each such amount being 1/365th of the duty payable for a licence of 12 months for a machine of the relevant category.
- (7) Schedule 4 to BGDA 1981 and any regulations made under that Schedule apply (subject to any modifications specified by the Commissioners in a notice published for the purposes of this paragraph) 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.
- (9) But if a default licence is granted under Schedule 4A to BGDA 1981 for the necessary period, the amount of duty that may be assessed under paragraph 4 of that Schedule is limited to the amount that would have been payable if an application had been made for a licence under this paragraph.
- 61 (1) This paragraph applies to licences to be granted under section 21 of BGDA 1981 on or after 2 January 2013 (a “final month licence”).
- (2) Section 21(3) of that Act has effect as if –
 - (a) the requirement to grant amusement machine licences for a period of one or more whole months were omitted, and

- (b) the power to grant amusement machine licences for a period not exceeding 12 months were a power to grant such licences for a period ending with a day that is no later than the day before the go-live date.
 - (3) The requirement in section 21(4) of that Act to grant special amusement machine licences for a period of 12 months has effect in relation to a final month licence as if it were a requirement to grant a licence for the period beginning with the date of grant and ending with the day before the go-live date.
 - (4) The amount of duty payable on a final month licence is to be calculated in the manner described in paragraph 60(6).
 - (5) The Commissioners may by notice direct that Schedules 4 and 4A to BGDA 1981 and any regulations made under those Schedules are to apply to a final month licence with such modifications as may be specified in the notice.
 - (6) A notice under sub-paragraph (5) must be published by the Commissioners.
- 62 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

63 For section 23 of VATA 1994 substitute –

“23 Value of supplies involving relevant machine games

- (1) If a person plays a relevant 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) “Relevant machine game” is defined in section 23A.
- (3) The value to be taken as the value of supplies made by a person (“the supplier”) in the circumstances mentioned in subsection (1) in any period is to be determined as if the consideration for the supplies were reduced by an amount equal to X.
- (4) X is the amount (if any) paid out in that period by way of winnings in respect of relevant machine games made available by the supplier (whether the games were played in the same period or an earlier one).
- (5) X does not include any winnings paid out to the supplier or a person acting on the supplier’s behalf.
- (6) Inserting a token into a machine on which a relevant 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.

- (7) Providing a specified kind of token by way of winnings is to be treated for the purposes of subsection (4) as the payment out of an amount by way of winnings equal to the value of the token.
- (8) A specified kind of token is –
 - (a) a token that can be inserted into the same machine to enable games to be played on the machine, or
 - (b) a token that is not of such a kind but can be exchanged for money.
- (9) The value of a specified kind of token is –
 - (a) for a token within subsection (8)(a), an amount equal to that for which the token can be obtained, and
 - (b) for a token within subsection (8)(b), an amount equal to that for which the token can be exchanged.
- (10) If it is not reasonably practicable to attribute payments and winnings to relevant machine games or to apportion them between relevant machine games and other games or other activities, any attribution or apportionment is to be done on a just and reasonable basis.
- (11) 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.

23A Meaning of “relevant machine game”

- (1) A “relevant machine game” is a game (whether of skill or chance or both) that –
 - (a) is played on a machine for a prize, and
 - (b) is not excluded by subsection (2).
- (2) A game is excluded by this subsection if –
 - (a) takings and payouts in respect of it are taken into account in determining any charge to machine games duty,
 - (b) it involves betting on future real events,
 - (c) bingo duty is charged on the playing of it or would be so charged but for paragraphs 1 to 5 of Schedule 3 to the Betting and Gaming Duties Act 1981 (exemptions from bingo duty),
 - (d) lottery duty is charged on the taking of a ticket or chance in it or would be so charged but for an express exception,
 - (e) it is a real game of chance and playing it amounts to dutiable gaming for the purposes of section 10 of the Finance Act 1997 or would do so but for subsection (3), (3B) or (4) of that section, or
 - (f) remote gaming duty is charged on the provision of facilities used to play it or would be so charged but for an exemption conferred by an order made under section 26H(4)(a) of the Betting and Gaming Duties Act 1981.
- (3) In this section –

“game” does not include a sport;

“machine” means any apparatus that uses or applies mechanical power, electrical power or both;

“prize”, in relation to a game, does not include the opportunity to play the game again;

“real game of chance” means a game of chance (within the meaning of the Betting and Gaming Duties Act 1981) that is non-virtual.

(4) The Treasury may by order amend this section.”

64 (1) In Part 2 of Schedule 9 to that Act (exemptions: the groups), the provisions of Group 4 are amended as follows.

(2) After Item 1 insert –

“1A The provision of any facilities for the playing of dutiable machine games (as defined in Part 1 of Schedule 1 to the Finance Act 2012) but only to the extent that –

(a) the facilities are used to play such games, and

(b) the takings and payouts in respect of those games are taken into account in determining the charge to machine games duty.”

(3) In Note (1) –

(a) for “Item 1 does” substitute “Items 1 and 1A do”, and

(b) omit paragraph (d) and the word “or” immediately preceding that paragraph.

(4) After Note (1) insert –

“(1A) Item 1 does not apply to the provision of facilities to the extent that the facilities are used to play a relevant machine game (as defined in section 23A).”

(5) Accordingly –

(a) in Part 2 of Schedule 9, in the heading of Group 4, after “GAMING” insert “, DUTIABLE MACHINE GAMES”, and

(b) in Part 1 of that Schedule, in the Index, for “Betting, gaming and lotteries” substitute “Betting, gaming, dutiable machine games and lotteries”.

65 (1) Paragraph 9 of Schedule 11 to that Act (administration, collection and enforcement) is amended as follows.

(2) For paragraph (a) substitute –

“(a) to open any machine on which relevant machine games (as defined in section 23A) are capable of being played; and”.

(3) In paragraph (b), for “subsection (2) of that section” substitute “section 23(3)”.

(4) Accordingly, in the heading immediately before paragraph 9, for “gaming machines” substitute “*machines on which relevant machine games are played*”.

PART 4

MISCELLANEOUS

Application

- 66 (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 1 February 2013.
 - (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 in this Schedule to the “go-live date” is to 1 February 2013.
- 67 (1) The Treasury may by regulations make transitional or saving provision in connection with the removal of amusement machine licence duty and the introduction of machine games duty.
- (2) The power in sub-paragraph (1) is without prejudice to—
 - (a) the provision made by Part 2 of this Schedule, and
 - (b) any power in this Schedule apart from this paragraph to make transitional or saving provision in connection with the matters mentioned in sub-paragraph (1).
 - (3) Regulations under this paragraph are to be made by statutory instrument.
 - (4) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

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EXPLANATORY NOTE

MACHINE GAMES DUTY

SUMMARY

1. This clause and schedule replaces amusement machine licence duty (AMLD) with a new excise duty, machine games duty (MGD), and exempts the takings from machine games from a charge to VAT where those takings are liable to MGD.

DETAILS OF THE SCHEDULE

Part 1 Imposition of Machine Games Duty

2. Paragraph 2(1) of the Schedule defines a machine game as a game that is played on a machine for a prize regardless of whether the game is a game of chance or a game of skill.
3. Paragraph 2(2) to (6) defines a dutiable machine game as one where any element of its prize is cash, or something that equates to cash, and the maximum amount offered as a cash prize is greater than the lowest charge to play the game on the machine. “Cash” is further defined as money or anything that may reasonably be considered to equate to money, including things of an intangible nature. Paragraph 2(5) provides that if an adult would reasonably assume that these conditions are met, the machine game will be taken to be a dutiable game, even where it does not in fact satisfy these tests. Paragraph (2)6 provides that in order to identify the lowest charge to play a game, for the purpose of determining whether it is a dutiable game, any offer that allows a player to play for nothing or at a reduced cost will be ignored and what would otherwise be the normal charge will be the amount that determines if it is a dutiable game.
4. Paragraphs 3(1) and (2) exclude certain games from the definition of a dutiable machine game if it is a specific form of gambling or there is a liability to, or specific exclusion from, another of the gambling duties. Paragraph 3(3) provides that where a game is played in a number of stages the game will be a dutiable machine game if any one stage on its own, or all the stages together, meet the definition of a dutiable machine game.
5. Paragraph 4 enables the Treasury to specify by order further criteria to take into account in deciding whether a particular game qualifies as a dutiable machine game.

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6. Paragraph 5 makes provision for two types of machines to be defined by reference to the highest charge payable for playing a game and the highest cash prize that can be won from playing a game.
7. Paragraph 6 provides that in any accounting period MGD will be charged on the total net takings from all machines of each type, and prescribes how it will be calculated. Sub-paragraph (6) provides that if a machine changes type during an accounting period the net takings must be calculated separately for the periods before and after the change, and where this is not possible the net takings may be apportioned between the periods either side of the change.
8. Paragraph 7 provides the definition of a person's net takings from a machine as those which are due to them for any period that they are liable for MGD in respect of the machine. Subject to certain stipulations which are specified in this paragraph, or which may be specified in secondary legislation, the net takings are:
 - the charges due from players in that period for playing dutiable machine games on the machine; less
 - the amounts that are paid out to players as prizes (including the value of non-cash prizes where such prizes are offered by machines also offering at least one cash prize greater than the amount paid to play) in that period as a result of playing dutiable machine games.
9. Paragraph 7(6) provides for a just and reasonable apportionment of charges or prizes in circumstances where it is not reasonably practicable to make a precise attribution or apportionment. Sub-paragraph (9) provides that where a game is played for free, or at a lower cost than would normally be the case, it is the lower charge that will be included in the net takings.
10. Paragraph 8 provides that certain amounts must be disregarded (left out of account) when calculating the takings and payouts described at paragraph 7. This has the effect of creating exemptions in those circumstances. Further circumstances may be provided for by secondary legislation. A draft of the Treasury order has been published with this legislation for consultation. The intention is to make the order under provisions of this paragraph and of Paragraph 39.
11. Paragraph 9 prescribes the standard and lower rates of MGD and makes provision for circumstances where there is a rate change during an accounting period to allow the old and new rates to be applied as appropriate.
12. Paragraph 10 provides that where a person's duty calculation results in a negative amount their liability for that period will be zero, and

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the negative amount will be carried forward and offset against their liability in the next period. Negative amounts will continue to be carried forward to future periods until such time as the duty calculation results in a positive amount but no repayments or refunds will be made in respect of a negative amount.

13. Paragraph 11 provides that a person is liable for MGD at any time that they are responsible for any premises where dutiable machine games are available for play on a machine that is not an excluded machine. Where there is more than one person who satisfies the conditions specified in paragraph 11(1) each shall be jointly and severally liable for the duty.
14. Paragraph 12 provides the definition of a responsible person for the purposes of determining liability under paragraph 11. A person is defined as a responsible person if they are registered, or registrable, in respect of those premises where machines are available for play. When one of these persons registers for MGD the others will have no liability (further provision about registration is found at paragraphs 20 – 24).
15. Paragraph 13 defines an excluded dual-use machine as one that can be used for playing dutiable machine games and for some other unrelated purpose. It only qualifies as an excluded machine if:
 - it is not designed, adapted, or presented to facilitate its use for playing dutiable machine games, or draw attention to such a possibility; or
 - the responsible person is unaware, and could not reasonably be expected to be aware, that it is designed, adapted, or presented in such a way.
16. Paragraph 14 provides that MGD will have quarterly accounting periods and that HMRC may:
 - direct the day on which an accounting period will begin;
 - agree to accounting periods of other than exactly 3 months with starting days other than the first day of the month;
 - make transitional arrangements that will allow periods of other than 3 months to be treated as accounting periods in circumstances where someone registers, deregisters or is moving from standard to non-standard periods; and
 - specify shorter accounting periods in any case where they believe that a person may not discharge their liabilities.

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17. Paragraph 15 provides for the valuation of prizes and includes specific valuation provisions where the prize consists of foreign currency or something, for example, a voucher that may be exchanged for cash.
18. Paragraph 15(4) provides that where a prize consists of foreign currency the value of that prize will be calculated on the last day of an accounting period using the London closing rate from the day before.
19. Paragraphs 15(5) and 15(6) provide that where the prize is a non-cash prize its value will be the cost of obtaining it from an independent third party, or the amount it would have cost if obtained from an independent third party. If that cost cannot be reasonably determined it shall be given a value that is just and reasonable. Where the cost of a prize includes VAT paragraph 15(8) provides that the VAT must be included in the value of the prize.
20. Paragraph 15(7) provides that where the prize is any number of vouchers that may be exchanged for any non-cash benefit the value of the prize shall be [determined by the value of any benefit] for which the vouchers may be exchanged.
21. Paragraph 16 makes provision for the valuation of the amounts charged for playing a game. Where the charge to play is unclear, or where the charge allows more than one play or covers something in addition to game play (a “composite charge”), this paragraph allows for the charge for playing a game to be determined on a just and reasonable basis. Paragraphs 16(6) and 16(7) provide that in specified, limited circumstances a charge will be attributed to what would otherwise be presented as a free play, or reduced charge. If all of the conditions in sub-paragraph (6) are met the amount of the charge that is due will be the amount that would have been charged in the absence of any offer.
22. Paragraph 17 provides that HMRC is responsible for the collection and management of machine games duty.
23. Paragraphs 18 and 19 provide for HMRC to set out the requirements in respect of MGD returns, payments and assessments in secondary legislation, and that the excise duty assessment provisions in the Finance Act 1994 apply in relation to MGD. A draft of the regulations will be published for consultation in 2012.
24. Paragraphs 20 to 25 make provision about registration and registrable persons, and the publication of the MGD register. Paragraph 20 requires that HMRC maintain a register, the MGD register, and provides that subject to the exclusion described in paragraph 20(5) no-one may make a machine with dutiable machine games on it

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available for play on any premises unless a registrable person is registered in respect of those premises. The definitions and descriptions of each of these registrable persons are provided at paragraphs 21 and 22.

25. Paragraph 21(1) provides that the holder of a relevant permit or licence (under paragraph 22) is a registrable person. Where there is a licence or permit specified in that paragraph the holder must register in respect of those premises. Paragraph 21(2) makes provision in respect of tenanted pubs such that the tenant is registrable regardless of whether someone else holds the alcohol licence. Paragraph 21(3) makes provision about registrable persons in respect of travelling fairs and paragraphs 21(4) and 21(5) makes provision about registrable persons in respect of premises that are not covered by paragraphs 21(1) to 21(3).
26. Paragraph 22 defines the licences and permits that are described as “relevant licences or permits” for the purposes of paragraph 21.
27. Paragraph 23 makes provision, and describes the process that HMRC must follow, for compulsory registration when dutiable machine games are available for play on premises for which there is no registration in place. HMRC may give a registration notice to any person believed to be a registrable person in respect of the premises. Paragraphs 23(6) and 23(7) provide for an appeals process against the registration notice and if no appeal is made within the specified time or it is dismissed or withdrawn, HMRC may proceed to register the person in respect of the premises.
28. Paragraph 24 provides for HMRC to set out the procedures and requirements for registration and de-registration in secondary legislation, and prescribes particular aspects and conditions of the registration process that may be provided by those regulations. In particular, paragraphs 24(4), 24(5) and 24(6) make provision in relation to the payment of security, the appointment of a tax representative, and group registrations. A draft of the regulations will be published for consultation in 2012.
29. Paragraph 25 makes provision about the information to be recorded on the MGD register and the conditions that may be attached to its publication.
30. Paragraph 26 provides that in certain circumstances HMRC may give a notice to any person who is believed to be entitled to a share of the takings from a machine on which dutiable machine games are played. The person is referred to in the legislation as a “profit-sharer”. That person may become liable to account for MGD for the period specified in the notice. This liability may only be imposed if it appears that MGD may be chargeable; no-one is registered in respect

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of the premises; and the responsible persons are not known to HMRC, or are known but overseas. Unless the person, having received a notice from HMRC, can provide HMRC with sufficient information to identify a responsible person, or show that they had taken all reasonable steps to determine that someone was registered in respect of the premises, HMRC may make an assessment for MGD that will be based on that person's share of the machine's takings. Any assessment under this paragraph will be subject to the excise duty assessments and appeals provisions of the Finance Act 1994. If HMRC subsequently identify someone who is responsible, any assessment made against them must take account of the amount that has already been recovered from the other person, but that other person is not entitled to any repayment of the amount for which he was assessed.

31. Paragraph 27 makes provision for the HMRC decisions listed in paragraph 27(2) to be treated as if they were appealable decisions under section 13A of the Finance Act 1994 and covered by the reviews and appeals provisions of that Act.
32. Paragraph 28 provides that the provisions of the Finance Act 2009 that allow for interest to be charged on unpaid duty and assessments may be applied to MGD.
33. Paragraphs 29 to 35 provide that MGD shall become subject to the penalty provisions that already exist in other legislation and which are specified in each of those paragraphs.
34. Paragraph 36 provides that a machine is liable to forfeiture in circumstances where it is, was or is about to be made available for play for dutiable machine games, and either :
 - there is no registration for the premises and there is a serious risk that MGD will not be paid, or
 - MGD that is due has not been paid in respect of the machine.
35. Paragraph 37 provides that it is an offence to be knowingly involved in the fraudulent evasion of MGD and describes the penalties that may apply to those who are guilty. Paragraph 37(4) qualifies the prescribed penalty provision of paragraph 37(2)(b) to provide that where a person is found guilty on summary conviction of an offence that is committed in Northern Ireland, or in England and Wales before the commencement of s154(1) of the Criminal Justice Act 2003, the maximum term of imprisonment of twelve months that is specified at paragraph 37(2)(b) shall be read as six months. Paragraph 37(5) provides that where fraudulent evasion of MGD is committed by a body corporate, the directors of that body shall be deemed to be guilty of that offence unless it can be proved that they did not

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commit, or connive to commit, the offence and that they acted with appropriate due diligence with regard to their role to ensure that no offence was committed.

36. Paragraph 38 adds MGD to the list of betting and gaming duties in section 31 of the Betting and Gaming Duties Act 1981 (BGDA) and provides that an officer of HMRC does not commit an offence when properly undertaking duties in respect of MGD.
37. Paragraph 39 makes provision about orders and regulations that may be made under Part 1 (paragraphs 1-52) of this Schedule and prescribes the Parliamentary procedures that must be followed in respect of the particular statutory instruments containing those orders or regulations.
38. Paragraphs 40(1) and 40(2) provide that HMRC may direct in a published notice that the registration provisions of paragraph 24 shall apply in advance of the implementation of MGD and that that notice may modify those provisions for the transitional period.
39. Paragraph 40(3) provides for transitional arrangements in respect of any person who has been directed, or has been approved, to use accounting periods other than the standard period of 3 consecutive months. These arrangements give the flexibility to provide that the first accounting period for those persons shall start on the MGD go-live date and end on whichever date is appropriate to allow them to then move to the accounting periods that have been directed or approved.
40. Paragraph 41 provides that the definition of “the revenue trade provisions of the customs and excise acts” in the Customs and Excise Management Act 1979 (CEMA) is amended to include the provisions of Part 1 of this Schedule, and that the definition of “revenue trader” in that Act is amended to include those who are responsible persons within the meaning of this Schedule.
41. Paragraph 42(1) makes a consequential amendment to CEMA to substitute a new section 118BC. This new section provides that HMRC’s powers of entry and inspection applying in relation to gaming duty shall apply also in relation to MGD, and provides a power to open machines. New sections 118BC (2) and (3) specify what may be inspected and when the inspection may take place, and prescribe the circumstances under which entry or inspection is not permitted. New section 118BC(4) provides that HMRC may require a relevant person to open or operate any relevant equipment and to carry out other operations so that they may determine whether there is any duty liability, and if so, how much. New sections 118BC(5) and (6) define the persons and equipment that may be subject to the inspection powers of this section, while new section 118BC(7)

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defines “section 10 gaming” by reference to the Finance Act 1997 and prescribes that “premises where a machine is located” are to be interpreted by reference to Part 1 of this Schedule.

42. Paragraph 42(2) provides that civil penalties under the Finance Act 1994 will apply where there is a failure to open relevant equipment for inspection and perform the operations required under new section 118BC.
43. Paragraph 43 amends section 2 of the BGDA to remove the reference to gaming machines as a consequence of the introduction of MGD and the abolition of AMLD.
44. Paragraph 44 amends section 26H BGDA, which provides for exemptions from remote gaming duty (RGD) in circumstances where another gambling tax applies, or would apply but for an express exception.
45. Paragraph 45 inserts a reference to MGD in Schedule A1(7) to BGDA, a new Schedule introduced by the Finance Act 2012. Paragraph 7 of that Schedule stipulates that there will be no payment of double tax relief for general betting duty or pool betting duty where there has been a breach of statutory obligations in respect of the betting and gaming duties listed there.
46. Paragraph 46 inserts a reference to MGD in Schedule 4B(7) to BGDA, a new Schedule introduced by the Finance Act 2012. Paragraph 7 of that Schedule that there will be no payment of double tax relief for remote gaming duty where there has been a breach of statutory obligations in respect of the betting and gaming duties listed there.
47. Paragraph 47 amends the Finance Act 1994 to make MGD subject to the excise duty assessment provisions in section 12 of that Act.
48. Paragraph 48 amends section 10 of the Finance Act 1997, which provides for exemptions from gaming duty, by substituting a reference to MGD for the previous reference to AMLD.
49. Paragraph 49 amends the Borders, Citizenship and Immigration Act 2009 to include MGD in the list of excise duties which are not functions of the Director of Border Revenue.
50. Paragraphs 50 and 51 provide the definitions of specific terms and expressions for the purposes of Part 1 of this Schedule.

Part 2 Removal of Amusement Machine Licence Duty

51. Paragraphs 53 and 54 amend BGDA to omit those provisions that deal specifically with the imposition and administration of AMLD,

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and remove references to AMLD from those provisions that deal with the general administration of betting and gaming duties.

52. Paragraph 55 omits the reference to an amusement machine licence from the provisions in CEMA about the payment of excise licences by cheque.
53. Paragraph 56 omits the provision in the Finance Act 1997 that provides an exemption from gaming duty by reference to AMLD.
54. Paragraph 57 removes the reference to AMLD from the table of taxes and duties that are subject to penalties for failure to notify etc. in Schedule 41 to the Finance Act 2008.
55. Paragraph 58 removes the reference to AMLD from the list of excise duties for which the Director of Border Revenue has no responsibility to reflect the fact that AMLD is being removed.
56. Paragraph 59 provides a formula which will achieve refunds in respect of the whole months and days which are the subject of the portion of the licence unexpired at the MGD go-live date.
57. Paragraph 59(4) provides that where AMLD is being paid in monthly instalments there may be a liability to pay an amount in respect of any days that form a part-month before the go-live date.
58. Paragraphs 59(5) and (6) provide that a person will not be entitled to a repayment if they have been found guilty of making amusement machines available for play without a licence between the start date of their licence and MGD go-live date. If court proceedings are pending at go-live date there will be no right to repayment until all those charged with the offence are acquitted.
59. Paragraph 59 (7) provides that any person who is entitled to a repayment of more than £10 will be entitled to interest on that amount if they have not been repaid within 90 days of go-live and have notified HMRC of that fact. Interest will be calculated until the day the repayment is made at the rate specified for excise duty payments under s197 of the Finance Act 1996.
60. Paragraph 60 provides that where a licence expires in the final month of AMLD an amount will be payable in respect of the days up to go-live (a “daily rate”). Paragraph 60(6) provides that this rate will be $1/365^{\text{th}}$ of the amount charged for a twelve-month licence. If payment is made before its expiry date, the previous licence will be treated as extended to go-live.
61. Paragraphs 60(7) and (8) provide that the standard requirements for the payment of AMLD and for the enforcement and administration of

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AMLD shall continue to apply during the 30 day period before go-live. If any machines (for which an AMLD licence is required) are provided for play without a licence in this 30 day period paragraph 60(9) provides that the amount of any assessment for that period will be calculated by reference to $1/365^{\text{th}}$ of the amount charged for a twelve-month licence.

62. Paragraph 61 makes provision in respect of licences that will be granted less than one month before MGD go-live. For licences granted in this period this paragraph disapplies those provisions in BGDA that stipulate the minimum and maximum periods for which a licence application may be made, and provides that these licences will expire on the day before go-live. Paragraph 61(5) provides that HMRC may direct that the existing administrative arrangements for AMLD shall apply in relation to any final month licences as they do to other licences.
63. Paragraph 62 provides that any legislation that is repealed by Part 2 of this Schedule will continue to have effect after go-live date in relation to things that happened before go-live date.

Part 3 VAT Exemption

64. Paragraph 63 substitutes a new section 23 and inserts an additional section 23A into the Value Added Tax Act 1994 (VATA). The new section 23 provides a mechanism for valuing supplies involving relevant machine games, which are defined in section 23A.
65. New Section 23(1) and (2) provide that the amount a person pays to play a relevant machine game is treated as the consideration for a supply of services.
66. Section 23(3), (4) and (5) provide that the value of such supplies is the takings received, less the amount of the winnings paid out, excluding any winnings paid to the supplier or a person acting on their behalf.
67. Section 23(6), (7), (8) and (9) provide for the valuation of tokens inserted into a machine to play a relevant machine game or provided by way of winnings from such a game. Games played solely for prizes consisting of the opportunity to play the game again are not relevant machine games. However a token that enables the machine to be played again may be one of a number of prizes offered by a relevant machine game. Where that is the case, the value of the token is deducted in calculating the value of the relevant supply.
68. Section 23(10) provides that if it is not reasonably practicable for takings and winnings to be attributed to relevant machine games, or apportioned between relevant machine games and other games, the

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attribution or apportionment is to be carried out on a just and reasonable basis.

69. New Section 23A(1) and (2) define a relevant machine game as a game played on a machine for a prize, unless it is liable to, or is excluded from, specified gambling duties. Relevant machine games may be games of skill, games of chance, or games that involve elements of both skill and chance.
70. Section 23A(3) includes relevant definitions. A “prize” does not include the opportunity to play the game again.
71. Paragraph 64 amends Group 4 (betting, gaming and lotteries) in Part 2 of Schedule 9 (exemptions) to VATA.
72. Paragraph 64 (2) inserts item 1A, which exempts the provision of facilities for playing dutiable machine games from VAT, but only insofar as the takings and payouts from those games are taken into account in determining the charge to MGD. Dutiable machine games may be games of skill, games of chance, or games that involve elements of both skill and chance.
73. Paragraph 64(3) removes Note (1)(d), which excludes gaming machines from exemption under item 1 (exemption of the supply of facilities for placing bets or for playing games of chance for a prize). The introduction of MGD means that it is necessary for the exclusion from item 1 to be framed in different terms.
74. Paragraph 64 (4) inserts Note (1A) which excludes the provision of facilities from item 1 to the extent that those facilities are used to play a relevant machine game.
75. The amendments to Group 4 mean that the provision of facilities for playing games of chance which are not relevant machine games will be exempt from VAT under item 1. The provision of facilities for playing dutiable machine games will be exempt from VAT under item 1A, insofar as the takings and payouts from those games are taken into account in determining the charge to MGD. Other machine games will not be exempt from VAT under Group 4.
76. Paragraph 65 amends paragraph 9 (power to require opening of gaming machines) of Schedule 11 (administration, collection and enforcement) to VATA by substituting a new paragraph (a) which entitles an authorised person to require that a machine on which relevant machine games are capable of being played be opened.

Part 4: Miscellaneous

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77. Paragraph 66 provides that this Schedule has effect in relation to the playing of machine games, the provision of amusement machines and supplies made on or after 1 February 2013.
78. Paragraph 67 provides for the Treasury to make transitional or saving provisions for the removal of AMLD and introduction of MGD and prescribes the Parliamentary procedures that must be followed in respect of the statutory instruments containing the regulations.

BACKGROUND NOTE

79. This measure aims to put tax revenues from gaming machines on a more sustainable footing. The VAT treatment of gaming machines has been challenged in the Courts. Introducing MGD and exempting dutiable machine games from VAT will protect tax revenues going forward, and will ensure that operators of gaming machines continue to make a fair contribution to tax receipts.
80. MGD also supports the Government's objective of a fairer tax system by ensuring the taxation of dutiable machine games will be more closely linked to machine takings.
81. MGD will be charged on the net takings from games played on machines where those games offer the player the opportunity to win a cash prize whose value is greater than the cost to play the game once.
82. The rate of MGD that is charged will depend on the maximum cost to play a single game and the maximum cash prize offered for a single game.
83. The standard rate of MGD will be charged at X% on the takings of machine games where the maximum cost to play a single game is more than 10p or the maximum prize offered for a single game is more than £8. The lower rate of MGD will be charged at Y% on the takings from other machine games. If a single machine offers games in each category, all of the takings will be charged at the standard rate.
84. If a single machine offers a mixture of dutiable machine games and other services or facilities, only the takings from the machine games will be liable to MGD.
85. The introduction of MGD and the replacement of AMLD will apply to the playing of machine games from 1 February 2013 and Regulations will be made to allow people to register for MGD before then. The VAT changes will apply to supplies made on or after 1 February 2013.

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86. If you have any questions about this change, or comments on the legislation, please contact Brian O’Kane on 0161 827 0325 (email: brian.okane@hmrc.gsi.gov.uk) about Parts 1 and 2, and Femi Olagundoye on 0207 147 0479 (email femi.olagundoye@hmrc.gsi.gov.uk) about Part 3.

Order made by the Treasury, laid before the House of Commons under [paragraph .. of Schedule...to the Finance Act 2012], for approval by resolution of that House within twenty-eight days beginning with the date on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2012 No.

MACHINE GAMES DUTY

The Machine Games Duty (Exemptions) Order 2012

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	***

The Treasury make the following Order in exercise of the powers conferred by paragraphs 8(1)(b) and (2) and 39(2) of Schedule [...] to the Finance Act 2012(a).

Citation and commencement

- 1.—(1) This Order may be cited as the Machine Games Duty (Exemptions) Order 2012.
- (2) This Order comes into force on 1st February 2013.

Interpretation

2. In this Order, “specified circumstance” means a circumstance that is specified for the purposes of paragraph 8(1)(b) of Schedule [...] to the Finance Act 2012.

Charitable events

- 3.—(1) Playing dutiable machine games at a charitable event is to be a specified circumstance.
- (2) An event is a “charitable event” if—
 - (a) the event is promoted by or on behalf of a not-for-profit organisation,
 - (b) the whole of the net proceeds from the event will be devoted to purposes other than private gain, and
 - (c) the opportunity to win prizes by playing dutiable machine games at the event does not constitute the only, or the only substantial, inducement for people to attend the event.
- (3) Proceeds of an event promoted by or on behalf of a not-for-profit organisation that are applied for a purpose calculated to benefit the organisation as a whole are not to be regarded as applied for purposes of private gain by reason only that their application for that purpose results in benefit to any person as an individual.

(a) 2012 c. [...].

(4) “Net proceeds”, in relation to an event, means the proceeds from the event (including the proceeds from playing dutiable machine games at the event) after deducting the expenses of the event (including any expenses incurred in connection with making machines available there for playing dutiable machine games on them and with providing prizes to successful players of those games) so far as the expenses are reasonable.

(5) “Not-for-profit organisation” means an organisation (including any club, society, institution or association of persons and any separate branch or section of a club, society, institution or association of persons) that is established and conducted wholly for purposes other than purposes of any commercial undertaking.

Tournaments

4.—(1) Playing dutiable machine games in a tournament is to be a specified circumstance.

(2) A dutiable machine game is played “in a tournament” if—

- (a) two or more real people participate in the game (or in a competition that involves a combination of machine games including the game),
- (b) they are the only participants in the game (or competition), and
- (c) they compete purely against each other for the prize for which the game (or competition) is being played.

(3) “Real” means non-virtual.

(4) A dutiable machine game is not to be regarded as being played in a tournament merely because the success or failure of the player, or the value of the prize, is or may be determined wholly or partly by reference to the success or failure of other players of dutiable machine games, or the value of other prizes won.

(5) A dutiable machine game is not to be regarded as being played in a tournament if the participants in the game (or competition) include—

- (a) a person who is a registrable person in respect of the premises where the machine on which the game is played is located,
- (b) a representative or employee of such a person at those premises, or
- (c) a person acting for or at the direction of such a person.

Lottery machines

5.—(1) Participating in a lottery by means of a sub-category B3A machine is to be a specified circumstance.

(2) The reference to participating in a lottery is to be read in accordance with section 14 of the Gambling Act 2005(a).

(3) “Sub-category B3A machine” has the meaning given in regulation 5 of the Categories of Gaming Machine Regulations 2007(b).

Record-keeping and information provision

6.—(1) A person wishing to rely on an exemption conferred by this Order must—

- (a) keep such records as are reasonably necessary to show that the requirements of the exemption are met in the person’s case, and
- (b) provide HMRC with copies of those records if HMRC so request.

(a) 2005 c. 19.
(b) S.I. 2007/2158.

(2) The Commissioners may by notice in writing (either generally or in a particular case) specify the kinds of record that are likely to be necessary to show that the requirements of an exemption are met.

(3) Nothing in this article limits any power HMRC may otherwise have to require a person to keep records or provide information or documents.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

Schedule [...] to the Finance Act 2012 (“the Schedule”) introduces a new duty of excise, known as machine games duty, to be charged on the playing of dutiable machine games in the United Kingdom.

By virtue of paragraphs 8(1)(b) and (2) of the Schedule, the Treasury may specify by order the circumstances in which amounts are to be left out of account in respect of the takings and payouts when calculating the duty payable. Each of these is referred to in the Order as a “specified circumstance”.

Article 3 provides that playing a dutiable machine game at a charity event is to be a specified circumstance provided the conditions are met.

Article 4 provides that playing a dutiable machine game in a tournament is to be a specified circumstance provided the conditions are met.

Article 5 provides that participating in a lottery by means of a sub-category B3A machine is to be a specified circumstance. Sub-category B3A machines are defined in regulation 5 of the Categories of Gaming Machine Regulations 2007 (S.I. 2007/2158).

Article 6 imposes administrative and record keeping obligations on a person wishing to rely on an exemption conferred by the Order.

A Tax Information and Impact Note covering this instrument and the draft primary legislation for Machine Games Duty will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

**EXPLANATORY MEMORANDUM TO
THE MACHINE GAMES DUTY (EXEMPTIONS) ORDER**

2012 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) and is laid before the House of Commons by Command of Her Majesty. This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1. This instrument exempts receipts from dutiable machine games from Machine Games Duty (“MGD”) in specified circumstances. These circumstances are play at charitable events, tournament play and play on a “lottery machine” (a specific category of gaming machine).

3. Matters of special interest to Select Committee on Statutory Instruments

3.1. This is the first use of the Order making powers in paragraphs 8(1)(b), 8(2) and 39(2) of Schedule [X] to the Finance Act 2012. MGD is a new excise duty.

4. Legislative context

4.1. Section [Y] and Schedule [X] to the Finance Act 2012 provide for MGD to apply to the playing of dutiable machine games from 1 February 2013. These provisions also provide that, immediately before that point, the current Amusement Machine Licence Duty (“AML”) – see sections 21 – 26 of the Betting and Gaming Duties Act 1981) is brought to an end. Part 3 of Schedule [X] exempts from VAT dutiable machine games which are taken into account for the purposes of determining liability to MGD.

4.2. This instrument is made under paragraphs 8 and 39(2) of the Schedule. These paragraphs provide that, in

calculating duty liability, receipts from dutiable machine games should be left out of account in any circumstances specified in a Treasury Order.

- 4.3. This instrument specifies three such circumstances: play at charitable events, tournament play and play on a lottery machine.

5. Territorial extent and application

- 5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1. Chloë Smith MP, the Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Machine Games Duty (Exemptions) Order 2012 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1. The Government's reform of gaming machine taxation aims to put tax revenues from gaming machines on a more sustainable footing. The VAT treatment of gaming machines has been challenged in the Courts. Introducing MGD and exempting dutiable machine games from VAT will protect tax revenues going forward, and will ensure that operators of gaming machines continue to make a fair contribution to tax receipts.
- 7.2. MGD will also support the Government's objective of a fairer tax system by ensuring the taxation of machine games will be more closely linked to machine takings.
- 7.3. The effect of this instrument is to provide certain exemptions from MGD by leaving takings and payments out of account in the specified circumstances described below.

<i>Circumstances</i>	<i>Reasons</i>
Charitable events (with the provision that the event must be for a not-for-profit organisation with none of the proceeds going to private gain. The playing of machine games must not be the only or main reason for attending the event)	Takings from the playing of machine games can make a contribution to achieving the charitable objectives of not-for-profit organisations. Play at most such events is not currently VATable and there is no intention to extend VAT liability
Play in a tournament (with “tournament” defined as involving two or more real people (but not a person registrable for duty or his representative) competing against each other for a prize)	Tournament play is fundamentally different from “normal” play in that players compete against each other to win from a single prize-pot. The normal functionality is typically turned off and the outcome determined by the player’s relative scores.
Participating in a lottery on a B3A machine (B3A is the social law/ regulatory categorisation of so-called “lottery machines”). Social law restricts the location of such machines to certain private members clubs.	B3A machines are currently not subject to either AMLD or VAT. There is no intention to extend their liability to indirect tax.

7.4. The instrument also provides that those benefitting from exemption under these provisions must keep and allow HMRC access to records. This will ensure that HMRC has the means to look in detail, if appropriate, at the circumstances in which the dutiable machine games were played and whether these circumstances were as set out in legislation.

- **Consolidation**

- 7.5. MGD is a new duty and so HMRC has no plans for consolidation at this time.

8. Consultation outcome

- 8.1. In a consultation document, “Implementing a Machine Games Duty: consultation on policy design”, published in May 2012, the Government published a draft of the Finance Bill provisions and sought views on the design characteristics of MGD. Comments received were considered in drafting this instrument.
- 8.2. In line with the Government’s Tax Policy Framework, this instrument, explanatory memorandum and a Tax Information and Impact Note were published for consultation in draft in advance (in December 2011) of laying before the House of Commons. The Tax Information and Impact Note remains accurate.

9. Guidance

- 9.1. Prior to the introduction of MGD on 1 February 2013, the Government will publicise and provide full guidance on the duty, including the exemptions provided for by this instrument.

10. Impact

- 10.1. The impact of this instrument on business, charities and voluntary bodies will be a reduction in the additional burden which will follow from the introduction of MGD. The provision of machine games for play for charitable purposes at events, in tournaments, or on a lottery machine will not be subject to MGD. Therefore, businesses which provide machine games for play in these circumstances will not be subject to the administrative burden resulting from the introduction of MGD. However, some record-keeping will be required from such businesses in order to ensure that HMRC has sufficient information for the purpose of protecting revenue. Although these record-keeping requirements will be relatively light, they will impose an increase in administrative burden to those operators who are currently exempt from AMLD and VAT.

- 10.2. This instrument will not result in any impact on the public sector.
- 10.3. A Tax Information and Impact Note covering both this instrument and the draft primary legislation for MGD will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>

11. Regulating small business

- 11.1. The legislation applies to businesses including small business.
- 11.2. The Government has considered whether it would be appropriate to make provision to ameliorate the effect of this instrument on small businesses. On balance, and despite the fact that there may be some additional complexity notably for the limited number of small businesses who have machines capable of running both VATable tournaments and MGDable machine games, this measure relieves burden because it provides for an exemption from duty.
- 11.3. Small businesses were consulted during the consultation and comments received were considered in drafting this instrument.

12. Monitoring and review

- 12.1. HMRC will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

Katherine Mansfield, HMRC Gambling Tax Policy, Ralli Quays, Salford M60 9LA, telephone 0161 827 0308 email katherine.mansfield@hmrc.gsi.gov.uk can answer any queries regarding this instrument.