



HM Revenue
& Customs

Tax treatment of freeplays in Remote Gaming Duty

Consultation document

Publication date: 9 August 2016

Closing date for comments: 17 October 2016

Subject of this consultation:	Reforming the tax treatment of freeplays in Remote Gaming Duty (RGD)
Scope of this consultation:	The government announced at Budget 2016 that it would align the tax treatment of free gaming subject to Remote Gaming Duty with the treatment of free betting within General Betting Duty (GBD). This consultation seeks to gather information about how this change should be made, and whether the draft legislation will deliver the intended change.
Who should read this:	HM Revenue and Customs (HMRC) would like to hear from you if you offer remote gaming to UK customers or if you represent anyone who does. You should read this if you are already registered for and pay Remote Gaming Duty.
Duration:	9 August –17 October 2016
Lead official:	Brian O’Kane, Gambling Duties Team, Indirect Taxes, HMRC
How to respond or enquire about this consultation:	<p>gambling.taxes@hmrc.gsi.gov.uk, or by post to:</p> <p>Freeplays: Consultation Gambling Duties Team HM Revenue & Customs 3w Ralli Quays 3 Stanley Street Salford M60 9LA</p> <p>Telephone enquiries should be directed to Brian O’Kane at HM Revenue and Customs (HMRC):</p> <p>Brian O’Kane 03000 588011</p>
Additional ways to be involved:	This is a technical consultation about implementation of the change. In addition to receiving written responses, HMRC plans to arrange meetings with bodies representing key stakeholder groups. Contact Brian O’Kane if you are interested in attending a meeting.
After the consultation:	HMRC will publish a summary of responses in the Autumn which will include a list of respondents. Legislation will be included in Finance Bill 2017 and the measure will be effective from 1 August 2017.
Getting to this stage:	The current scheme of taxation is provided for in Finance Act 2014. Amending legislation has been drafted to deliver the proposed change (reproduced in chapter 4. below).

Previous engagement:

There has been ongoing informal engagement with stakeholders from across the gambling industry about the use of free gambling promotions. The tax treatment of freeplays in Remote Gaming Duty was previously discussed as part of the wider consultation around remote gambling that took place ahead of the reforms introduced in Finance Act 2014.

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1. Executive Summary

The government is committed to reducing administrative burdens and removing imbalances from taxation. The gambling industry is innovative and constantly evolving. Most gambling operators use a range of promotions and offers such as discounted or free stakes ('freeplays') as part of their customer retention and acquisition strategy.

Remote gaming operators currently benefit from a more generous tax treatment of freeplays in Remote Gaming Duty (RGD) than is the case for operators offering free bets on sports like football and horse racing in General Betting Duty (GBD). The government therefore plans to amend the tax treatment of freeplays in RGD to bring it into line with the tax treatment of similar free bets in GBD.

This consultation document explains how the law will be changed to align the duties and seeks to gather information about how this change should be made, and whether the draft legislation will deliver the intended change.

This consultation presents an opportunity for the industry to work with the government to ensure the legislation delivers its objective, and all interested parties are encouraged to participate and respond fully to this consultation.

2. Introduction

Background

1. At the March 2016 Budget, the government announced that it would be changing the tax treatment for free gambling and similar customer incentives for RGD to bring them into line with the treatment that currently applies for free gambling in GBD.
2. It is common practice for bookmakers to offer customer incentives such as free bets or matched deposits that give them the opportunity to make a bet for no payment, or at a reduced cost. Collectively, these are known as free bets.
3. Remote gaming operators also make use of a wide range of promotions and incentives such as free spins, matched deposits or bonus credits that give customers the opportunity to participate for no payment or at a reduced cost. Collectively, these offers are known as 'freeplays'.
4. For the purposes of GBD, free bets are deemed to have a value when used by customers and must be included when calculating the bookmaker's duty liability. Any money winnings from those bets are also included in the duty calculation (a fundamental principle in GBD is that non-money prizes cannot be used to reduce the duty liability). In contrast, freeplays are not subject to a duty liability under RGD.
5. This change means that remote gaming freeplays will have a value as a stake when staked by a customer, but will not be deductible expenditure when calculating an operator's profit for RGD. Genuine prizes resulting from freeplays will continue to be deductible.

Policy rationale

6. Remote gaming operators currently benefit from a more generous tax treatment when they offer freeplays to customers in RGD than would be the case for operators offering free bets on things like football and horseracing. The government will therefore amend the tax treatment of freeplays in RGD to bring it into line with the tax treatment of free bets in GBD.
7. This consultation is seeking evidence on current practices, as well as views on practical implementation issues, and whether the draft legislation included in this document will deliver what is intended.

8. The government understands that a range of businesses will be affected by these changes, and is keen to encourage as many interested parties as possible to engage fully with the consultation.

3. The Current Position

General Betting Duty (GBD)

9. GBD is charged on general bets made with a bookmaker by a UK person, or on UK betting premises, and is charged at the rate of 15 per cent of the bookmaker's profits on the bets. GBD also applies in a similar way, and at the same rate, to horserace pool betting and betting exchanges. Spread betting is charged at a lower rate and is charged only on bets that are made with a bookmaker who is in the UK.
10. For GBD, free bets are deemed to have a value. When customers use their free bets, the bookmaker must include the notional value of that bet when making their duty calculation ([see s139 of the Finance Act 2014](#)). Any money that is paid out from successful use of a free bet can be included among the total amount of winnings in their duty calculation.
11. For GBD, only winnings in the form of money can be included in the bookmaker's duty calculation. Any free bets that are given as part of a customer's winnings, or credited to a customer's account, are not a deductible expenditure for duty purposes.

Remote Gaming Duty (RGD)

12. RGD is charged on a UK person's participation in remote gaming with a gaming provider, and is charged at 15 per cent of the gaming provider's profits from that gaming. The provider's profits from remote gaming are defined by reference to the gaming payments that are due to them from customers, and the value or expenditure on prizes provided by them.
13. **Gaming payments (stakes)** Freeplays in remote gaming are not taxed in the same way as free bets in general betting. When calculating 'stakes' under the current legislation the remote gaming provider only needs to include in their duty calculation "amounts that entitle customers to participate in the gaming, or amounts payable in

connection with gaming” ([see s159 of the Finance Act 2014](#)). In effect this means that a freeplay is not treated as a gaming payment, and is not included in the duty calculation.

14. **Prizes** When making their RGD calculation, remote gaming operators can take account of both winnings in the form of money, and non-cash prizes. Non-cash prizes may be in the form of goods, vouchers or tokens that may be used in place of money, or exchanged for goods or money. Any freeplays that are given as winnings can be treated as a prize for RGD purposes. All non-cash prizes are subject to specific valuation provisions that are intended to ensure that non-cash prizes are given a fair value for duty purposes ([see s160](#)).
15. In addition to winnings that are paid out or credited to successful customers’ accounts as a result of participating in gaming, remote gaming operators also credit the accounts of customers with freeplays as an incentive to participate in remote gaming (for example sign-up offers, loyalty rewards). HMRC understands that there is some inconsistency in the way that operators are accounting for these latter credits. Some are treating these credits as prizes under [section 160 of the Finance Act 2014](#) and using them to reduce their duty liability, while others are not. The current law only allows freeplays to be treated as prizes when they are given as winnings to those participating in remote gaming, but not when they are credited to an account as an incentive unconnected with participating in gaming. HMRC wants to gather as much information as possible about current practices.

Question 1: If you are a remote gaming operator, do you currently credit your customers’ accounts with freeplays as an additional incentive to participate in remote gaming – if so, how do you treat these amounts in your duty calculations and what is the basis for that treatment?

4. The Changed Position

16. The changes announced by the government will bring the tax treatment of remote gaming freeplays into line with the tax treatment of free bets under GBD. From August 2017, for the purposes of RGD a freeplay will be defined as participation by means of an offer that waives all or part of the customer’s payment and the proposal is that:

- a. freeplays will be deemed to have a value for duty purposes when used in place of a gaming payment by a customer;
- b. freeplays that are given as a prize, or as part of a prize, will have a nil value for duty purposes;
- c. as currently freeplays that are given to a customer, other than as a prize from participation in gaming, will not be treated as the payment of a prize and will not be included in the duty calculation (such freeplays will continue to attract a duty liability under (a) above whenever they are used by a customer);
- d. cash prizes paid to customers from the successful use of freeplays will continue to be deductible.

Draft legislation

17. The draft legislation for the change is included below.

Remote gaming duty: freeplay

(1) Part 3 of FA 2014 is amended in accordance with subsections (2) to (5).

(2) In section 159 (remote gaming duty: gaming payments), for subsection (4) substitute—

(4) For the purposes of this Chapter—

(a) where the chargeable person participates in the remote gaming in reliance on an offer which waives all of a gaming payment, the person is to be treated as having made a gaming payment of the amount which would have been required to be paid without the offer (“the full amount”), and

(b) where the chargeable person participates in the remote gaming in reliance on an offer which waives part of a gaming payment, the person is to be treated as having made an additional gaming payment of the difference between the gaming payment actually made and the full amount.

(5) Where a person is treated by subsection (4) as having made a gaming payment, the payment is to be treated for the purposes of this Chapter—

(a) as having been made to the gaming provider at the time when the chargeable person begins to participate in the remote gaming to which it relates, and

(b) as not having been—

- (i) returned, or
- (ii) assigned to a gaming prize fund.

(6) The Commissioners may by regulations make further provision about how a gaming payment which a person is treated as having made under subsection (4) is to be treated for the purposes of this Chapter.”

(3) In section 160 (remote gaming duty: prizes)—

- (a) in subsection (1), in the opening words, after “account” insert “only”,
- (b) omit subsection (2),
- (c) in subsection (3), at the end insert “(but where a gaming payment is returned by being credited to an account this subsection has effect subject to subsection (1))”, and
- (d) at the end insert—
“(9) This section has effect subject to section 160A.”

(4) After section 160 insert—

“160A Prizes: freeplay

(1) Where a prize is a freeplay offer (whether or not in the form of a voucher) which does not fall within section 160(4)—

- (a) for the purposes of sections 156 and 157, the expenditure on the prize is nil, and
- (b) subsections (5) to (7) of section 160 do not apply in relation to the prize.

(2) Where a prize is a voucher which gives the recipient a choice of using it in place of money for freeplay or as whole or partial payment for another benefit, section 160(5)(b) has effect as if after “used” there were inserted “if it is used as payment for a benefit other than freeplay”.

(3) In this section—

“freeplay” means participation, in reliance on a freeplay offer, in—

- (a) remote gaming, or
- (b) an activity in respect of which a gambling tax listed in section 161(4) is charged;

“freeplay offer” means an offer which waives all or part of—

- (a) a gaming payment, or
- (b) a payment in connection with participation in an activity in respect of which a gambling tax listed in section 161(4) is charged.”

(5) In section 194(4) (regulations under Part 3 to which the procedure in section 194(5) is to apply), at the beginning insert—

“(za) regulations under section 159(6);”.

(6) The amendments made by this section have effect with respect to accounting periods beginning on or after 1 August 2017.”

Question 2: Does this draft legislation deliver the intended policy effect, or do you foresee any unintended consequences? Will it capture all types of remote gaming freeplays and all types of scenarios where they are used?

Question 3: Do you think the draft legislation needs any amendment – if so, please specify?

Question 4: Are there any particular practical issues that remote gaming operators will face in implementing this change?

Question 5: Are there any particular guidance or communication issues that HMRC needs to be aware of to ensure that this change is implemented effectively and operators have the information they need at the right time?

5. Assessment of Impacts

Summary of Impacts

Exchequer	2016-17	2017-18	2018-19	2019-20	2020-21
impact (£m):	-20	+45	+90	+100	+110

	<p>These figures are set out in Table 2.1 of Budget 2016 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2016.</p>
<p>Impact on individuals, families, and households:</p>	<p>The impact on individuals and households in the UK is expected to be negligible as this measure is not expected to have a significant impact on the availability, price and payouts of remote gambling.</p> <p>The measure is not expected to impact on family formation, stability or breakdown.</p>
<p>Equalities impact:</p>	<p>This measure is not expected to have different impacts on any protected equality groups.</p>
<p>Devolution impact:</p>	<p>Gambling taxes in the UK are not devolved, and so these changes will apply to operators with customers in all parts of the UK.</p>
<p>Impact on business, including civil society organisations:</p>	<p>This measure is expected to have a negligible impact on businesses.</p> <p>Currently there are around 130 businesses registered for RGD, who are expected to incur negligible one-off transitional costs associated with changing IT systems and familiarisation with the new rules. HM Revenue and Customs expects that operators will already keep records about freeplays given out to customers, and therefore any additional ongoing burdens are likely to be negligible.</p> <p>This measure will have no impact on civil society organisations.</p>
<p>Operational impact (£m):</p>	<p>There will be no significant operational impact to HMRC.</p>
<p>Other impacts:</p>	<p>Other impacts have been considered and none have been identified.</p>

6. Summary of Consultation Questions

Question 1: If you are a remote gaming operator, do you currently credit your customers' accounts with freeplays as an additional incentive to participate in remote gaming – if so, how do you treat these amounts in your duty calculations and what is the basis for that treatment?

Question 2: Does this draft legislation deliver the intended policy effect, or do you foresee any unintended consequences? Will it capture all types of remote gaming freeplays and all types of scenarios where they are used?

Question 3: Do you think the draft legislation needs any amendment – if so, please specify?

Question 4: Are there any particular practical issues that remote gaming operators will face in implementing this change?

Question 5: Are there any particular guidance or communication issues that HMRC needs to be aware of to ensure that this change is implemented effectively and operators have the information they need at the right time?

7. The Consultation Process

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

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

This consultation is taking place during stage 3 of the process. The purpose of the consultation is to seek views on draft legislation in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects.

How to respond

A summary of the questions in this consultation is included at chapter 6.

Responses to the questions should be sent by 17 October 2016, by e-mail to:

gambling.taxes@hmrc.gsi.gov.uk, or by post to:

Freeplays: Consultation
Gambling Duties Team
Indirect Taxes Division
HM Revenue & Customs

3w Ralli Quays
3 Stanley Street
Salford M60 9LA

Telephone enquiries should be directed to Brian O’Kane at HM Revenue and Customs (HMRC):

Brian O’Kane 03000 588011

(from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC’s GOV.UK pages](#). All responses will be

acknowledged, but it will not be possible to give substantive replies to individual representations.

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

Confidentiality

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

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

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. To ensure that a wide range of interested parties have an opportunity to respond this consultation will run for a period of ten weeks. Requests for meetings from representative bodies and individual taxpayers will be considered during, and beyond, this period

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Relevant Government Legislation

The current legislation for Remote Gaming Duty can be found at Part 3, Chapter 3 of the Finance Act 2014 starting at section 154.

<http://www.legislation.gov.uk/ukpga/2014/26/part/3/chapter/3>