



HM Revenue  
& Customs

# Technical consultation on the tax treatment of freeplays in Remote Gaming Duty

**Summary of Responses**  
December 2016

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# 1. Introduction

1. At Budget 2016, the government announced its intention to change the tax treatment of free gambling and similar customer incentives for remote gaming duty (RGD) to bring them into line with the treatment that currently applies for general betting duty (GBD). Remote gaming operators benefit from a more generous tax treatment in RGD when they offer freeplays to customers than would be the case for operators offering free bets on things like football and horseracing. The proposal was to introduce a tax charge on all freeplays in RGD. The government also announced that HM Revenue and Customs (HMRC) would carry out a technical consultation on draft legislation for the change.
2. HMRC launched the consultation “Tax treatment of freeplays in Remote Gaming Duty” on 9 August. The consultation asked specific questions about the impact of the draft legislation, as well as more general questions about implementation and guidance.
3. Responses were invited from remote gaming operators and other interested parties by 17 October 2016.
4. This document summarises the responses to that consultation and sets out the government’s response and next steps. We are grateful to all those who submitted a response or attended meetings in the course of this consultation.
5. The consultation received 14 written responses. Of these, 10 came from RGD registered businesses, 3 from advisors or tax representatives, and 1 from the main remote gaming industry representative body. A list of respondents is provided at Annex A. In addition to these written responses HMRC also held meetings and telephone conferences with advisors and representatives during the consultation period. A list of these meetings and calls is provided at Annex B.
6. Common themes were raised by all respondents in writing and in meetings during the consultation period. The main concern was about the impact on businesses of having to apply the new rules to the common industry practice of re-wagering. This is where certain freeplays are provided to customers on condition that they play through their ‘winnings’ to a pre-determined value, or pre-determined multiple, before being able to withdraw any money.
7. Part 2 of this document provides a summary of the responses along with the government response to each issue. Part 3 outlines the next steps.

## 2. Responses

8. Overall, the responses to the consultation were largely consistent in their views highlighting one key concern. The responses to each of the questions are summarised below.

**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?**

9. The majority of respondents focussed on the second part of this question which dealt with the current treatment of freeplays in their duty calculation. In summary, they were unanimous in their responses that the issuing of freeplays to customers has a nil net effect for RGD purposes.
10. There was however some inconsistency in how this revenue neutral result was arrived at. Some respondents confirmed that they leave freeplays out of the duty calculation altogether while others included them on both sides of the duty calculation, i.e. they are included both as stakes and as winnings so that they cancelled themselves out.
11. The following quotes from two respondents serve to illustrate the consensus view on this point:  
*“Given the two approaches we can therefore see how it could appear to HMRC that operators are treating such freeplays differently although in our view it is simply that there are two methods of calculation in use which arrive at the same result.”*  
  
*“The duty treatment followed by operators varies across the industry, but typically with the same net result, which is that freeplays have no overall duty impact.”*

**The government's response**

12. The government is grateful for the responses received on this point and the confirmation that businesses are not using freeplays as a means of reducing duty liabilities.

**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?**

13. This question stimulated the most debate and delivered a consistent response from businesses and representatives.

14. There was consensus that, while the draft legislation might capture all types of remote gaming freeplays, it failed to take account of the different business practices between the betting and remote gaming markets and would impose a greater RGD tax and administrative burden than anticipated.
15. Most respondents commented that freeplays in remote gaming work differently to those offered in general betting. In general betting, freeplays are generally used only once with winnings paid out on successful wagers. In remote gaming freeplays are subject to re-wagering requirements that require customers to play through their 'winnings' to a pre-determined value, or pre-determined multiple, before being able to withdraw them. Respondents commented that compared with general betting remote gaming works to a very low margin and without any re-wagering requirements it would not be economically viable for businesses to offer freeplays.
16. Under the draft legislation in the consultation, any freeplays that are subject to re-wagering requirements are treated as taxable gaming payments each time they are played. Conversely, any winnings that accumulate during the re-wagering process cannot be deducted from the duty calculation until the re-wagering requirements are met, and the player is free to withdraw them.
17. Respondents were consistent in their view that, as drafted, the legislation would impose an unacceptably high tax burden that could severely damage this market. Aside from the impact this would have on those currently operating in this sector this change would also undermine an important and valuable marketing tool for new entrants seeking to gain a foothold. These concerns were clearly expressed in the following responses:

*“This has resulted in draft legislation that creates an RGD tax base that will distort the tax payable on gaming products, undermine the business model applicable to gaming products and result in operators incurring a significantly higher RGD charge on freeplays when compared to the GBD charge on freebets”, and*

*“Firstly and without doubt the main concern is that the legislation is punitive on freeplays that are subject to re-wagering requirements.”*
18. In addition to the concerns around re-wagering some respondents also commented that the draft legislation did not properly take account of games that may be played without any payment by any player. Such games are not uncommon in online bingo or poker. The draft legislation would require that duty is charged on these types of games. But in the absence of a comparator stake from any paying customers it would be difficult for businesses to identify a taxable value for these freeplays and comply with their obligations.
19. Respondents also commented on the additional administrative burdens that the policy as drafted would impose. Their written responses focussed mainly on the burdens associated with implementing the change and this is covered at Question 4.

### **The government's response**

20. See the government's response to Question 3 below.

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

21. While respondents were vocal in their concerns about the draft legislation, and articulated these concerns during meetings and in their written responses, most also gave thought to possible amendments to the draft to mitigate the wider impacts of the policy.
22. Respondents suggested two alternative ways of treating re-wagered freeplays. Each of these deliver the same result.
23. One suggestion was to allow, subject to specified restrictions, amounts won during the re-wagering process to be treated as deductible winnings. The alternative was to only bring into the duty calculation the first use of the freeplay and any winnings that might remain at the end of the re-wagering process, ignoring interim transactions.

### **The government's response**

24. The government has carefully considered the evidence provided by respondents on the issue of freeplays in re-wagering arrangements. The government accepts that taxing all freeplays in remote gaming will impose greater burdens than expected. As a result, the government has decided that it can still achieve its objective of aligning freeplays in remote gaming with those in general betting by taxing the first use of freeplays only. In line with the consultation suggestion, winnings will also only be brought into the duty calculation at the end of the re-wagering process. This means the additional burdens on businesses are reduced and are proportionate. Revised draft legislation has been produced to reflect this change. Changes will also be made to ensure that games that are free to play for all participants will not be subject to any charge to RGD. Any prizes from these free to play games will also be excluded from the duty calculation.

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

25. Respondents raised a number of concerns about implementing this change and some commented that an August 2017 implementation date was challenging, particularly if they had to change their systems to account for all freeplays in re-wagering arrangements.
26. Respondents concerns can broadly be divided into process and commercial issues:
  - Process issues include a range of impacts around operators' and suppliers' systems processes and accounting processes that will need to be reviewed, redesigned and tested to allow freeplays to be properly tracked and accounted for. As most remote gaming businesses are heavily dependent on third-party platform providers and software suppliers this will add to the complexity of this change.

- Commercial issues include the impact on existing contracts with their platform providers, and the impact on marketing strategies and wider commercial budgets. Many of their supplier contracts have 'revenue-sharing' elements that will be affected by the new duty charge on freeplays. Freeplays are an important marketing tool for the remote gaming sector. The additional duty charge will have a financial cost that will have consequences for operators' marketing strategies and future use of freeplays.

### **The government's response**

27. The government has decided to tax the first use of freeplays only with winnings brought into the duty calculation at the end of the re-wagering chain. As the interim transactions can be ignored this should reduce the adverse impacts highlighted by respondents. On that basis, the government considers that an announcement now of an implementation date of August 2017 is reasonable and gives businesses sufficient time to make the necessary changes. HMRC will continue to work with industry representatives and support them over the coming months to help them implement the 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?**

28. Respondents took the opportunity to raise comments more generally about the current guidance for remote gambling operators. In relation to the freeplay changes it was felt that this was quite a complex area and that it was essential for HMRC to provide operators with more comprehensive guidance: *"We will also need guidance on how to interpret the legislation from HMRC to ensure that any changes made are consistent with HMRC's understanding of the law. Furthermore, with so many different platforms, naming conventions, uses and actual cost calculations for freeplays in the industry there is a need for standardisation."*

### **The government's response**

29. The government recognises the importance of meaningful and timely guidance. HMRC will work with industry representatives to develop guidance that is useful and facilitates a smooth implementation of the change.

## 3. Next steps

30. Revised draft legislation is being published on 5 December 2016 together with a tax information and impact notice.
31. The government intends to introduce final legislation in the Finance Bill 2017 to amend the RGD provisions in Part 3 of the Finance Bill 2014, and implement the changes to the taxation of freeplays from 1 August 2017.
32. HMRC will consult with stakeholders about the revised draft legislation to ensure it delivers the intended effect.



## Annex A: List of respondents

Ampla Consulting  
BDO  
CashBet  
Daub Alderney Limited  
Gala Coral Group  
Grant Thornton UK LLP  
Greentube Alderney Limited  
Jumpman Gaming Limited  
Paddy Power Betfair plc  
The Rank Group Plc  
The Remote Gambling Association  
Sports Gaming Limited  
tombola ltd  
William Hill Online

## Annex B: List of meetings

Ampla Consulting and Fiscal Reps Limited  
BDO  
PricewaterhouseCoopers LLP  
The Remote Gambling Association