Neutral Citation: **[2026] UKUT 00364 (TCC)**

Case Number: UT/2025/000131

UPPER TRIBUNAL
(Tax and Chancery Chamber)

Rolls Building, London

REMOTE GAMING DUTY— whether taxpayer assessable to duty on spin of promotional game or subsequent spins of other games won following the promotional game, or on neither – application of s159A Finance Act 2014 – appeal allowed

Heard on: 17,18 June 2026
Judgment date: 25 September 2026

Before

JUDGE SWAMI RAGHAVAN
JUDGE GUY BRANNAN

Between

JUMPMAN GAMING LTD

Appellant

-and-

THE COMMISSIONERS FOR
HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Jonathan Peacock KC, and Michael Ripley, Counsel, instructed by Macfarlanes LLP

For the Respondents: Eleni Mitrophanous KC, and Max Schofield, Counsel, instructed by the General Counsel and Solicitor to His Majesty's Revenue and Customs

DECISION

INTRODUCTION

1. This is an appeal against a decision of the First-tier Tribunal (Tax Chamber) ("FTT") in *Jumpman Gaming Ltd v HMRC* [2025] UKFTT 1117 (TC) ("FTT Decision").

2. Jumpman Gaming Limited ("Jumpman") operated online gaming platforms through which customers played remote games of chance. In broad terms, the games operated like electronic fruit machines: a player initiated a game, a randomised process determined the outcome, and prizes could include cash, bonus credits or free spins on other games. This appeal concerns Jumpman's "Welcome Offer", under which a customer opening an account and making a qualifying deposit received a free spin of the "Mega Reel" (referred to in this decision as the "Welcome MR Spin"). The Mega Reel was itself a game of chance and could award a range of promotional prizes, including free spins on other games.

3. HMRC assessed Jumpman to approximately £13.2 million of Remote Gaming Duty ("RGD") in respect of accounting periods between 1 July 2018 and 31 December 2022. The appeal concerns a representative sample of transactions and, in substance, the tax treatment of free spins awarded and used under those promotional arrangements.

4. The appeal concerns provisions introduced into the RGD regime by the Finance (No. 2) Act 2017. RGD is charged by reference to a remote gaming provider's profits, broadly calculated by reference to gaming payments received and deductible prizes paid out. The 2017 amendments introduced special rules dealing with promotional freeplays, including free spins and bonus credits. The principal provisions in issue are s159(4) and s159A of the Finance Act 2014 ("FA 2014"). In broad terms, s159(4) deems certain freeplay participation to involve a gaming payment, whilst s159A excludes certain later participation from that treatment. The FTT accepted HMRC's interpretation of those provisions and dismissed the appeal. It concluded that participation in the Welcome MR Spin did not fall within s159(4) and that free spins subsequently won from that game did not qualify for exclusion under ss159A(4) and (5).

5. With permission granted by the FTT, Jumpman appeals on the grounds that those conclusions involved errors of law principally concerning the application of s159(4) to the Welcome MR Spin and the proper interpretation of s159A(4)(b).

LAW

6. RGD is imposed by Chapter 3 of Part 3 FA 2014. Broadly, the regime taxes a remote gaming provider by reference to its profits from remote gaming in an accounting period.

7. "Remote gaming" is defined in s154 FA 2014 and includes situations where individuals participate in gaming by means of the internet or other remote communications. "Gaming" takes its meaning from the Gambling Act 2005, subject to the modifications and exclusions contained in s188 FA 2014.

8. For present purposes, the key feature of the regime is that profits from ordinary gaming are calculated by reference to gaming payments received by the provider, less certain deductible prizes. The concept of a "gaming payment" therefore lies at the centre of the statutory calculation.

9. Remote gaming operators commonly offer customers incentives such as free spins, bonus credits, matched deposits and similar promotions under which participation may occur without payment, or at a reduced cost. Such arrangements form part of the factual and commercial background to the present appeal.

10. Against that background, the Finance (No. 2) Act 2017 introduced amendments directed to the treatment, for RGD purposes, of participation pursuant to offers waiving all or part of a gaming payment and of certain later participation deriving from such gaming.

11. The amendments operate through two interrelated provisions. First, s.159(4) extends the gaming payment calculation by treating participation in remote gaming pursuant to an offer waiving all or part of a gaming payment as giving rise to a deemed gaming payment. Secondly, s159A provides exclusions from that treatment in specified circumstances. Read together, the provisions establish a scheme governing both the initial participation undertaken pursuant to a waived-payment offer and the treatment of certain later participation deriving from, or funded by, the outcomes of that participation.

12. Ground 1 concerns the circumstances in which s.159(4) is engaged. Ground 3 concerns the scope of the relieving provision in s.159A and, in particular, the meaning of the expression "the gaming" in s.159A(4)(b).

13. The principal provisions are as follows. The starting point is the definition of “gaming payment” in s159(1):

> “(1) Where a chargeable person participates in remote gaming, the “gaming payment” for the purposes of this Chapter is the aggregate of—
>
> (a) any amount that entitles the person to participate in the gaming, and
>
> (b) any other amount payable for or on account of or in connection with the person's participation in the gaming.”

14. The 2017 amendments extended that concept by deeming certain participation pursuant to offers waiving all or part of a gaming payment to involve a gaming payment for RGD purposes. Section 159(4) (inserted by Finance (No. 2) Act 2017) provided that:

> “(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.”

15. Section 159A, introduced at the same time, creates exclusions from that treatment in specified circumstances. Subsections (1) to (3) deal with amounts paid out of certain qualifying winnings. Subsections (4) and (5), which are central to Ground 3, deal with participation pursuant to further offers waiving payment:

> “(1) Where a chargeable person participates in remote gaming, an amount is not to be taken into account in determining the “gaming payment” (if any) under section 159 so far as the amount is paid out of money in relation to which the first and second conditions are met (“excluded winnings”).
>
> (2) The first condition is that the money has been won by participation in the gaming either—
>
> (a) in reliance on an offer which waives all or part of a gaming payment, or
>
> (b) in a case where the gaming payment was paid out of money in relation to which this condition and the second condition were met.

> (3) The second condition is that the chargeable person is not entitled to use the money otherwise than for the purpose of participation in the gaming.
>
> (4) Subsection (5) applies where—
>
> (a) a chargeable person participates in remote gaming in reliance on an offer which waives all or part of a gaming payment, and
>
> (b) that offer has been won in the course of the person's participation in **the gaming** (and the person was not given the choice of receiving a different benefit instead of the offer).
>
> (5) The amount which would, apart from this subsection, be treated by section 159(4)(a) or (b) as a gaming payment (or additional gaming payment) is not to be so treated.
>
> (6) For the purposes of this section, where a payment is made out of moneys which include both excluded winnings and money which is not excluded winnings (the "other funds"), the payment is not taken to be made out of excluded winnings except so far as the amount of the payment exceeds the amount of those other funds.
>
> (7) In this section "money" includes any amount credited and any other money's worth." (emphasis added)

Consultation materials and explanatory notes

16. The amendments introduced by the Finance (No. 2) Act 2017 were preceded by a consultation conducted by HMRC in 2016 entitled *Tax treatment of freeplays in Remote Gaming Duty*.

17. The consultation explained that remote gaming operators commonly offered promotions such as free spins, matched deposits and bonus credits which enabled participation without payment, or at a reduced cost. It stated that the Government intended to align the treatment of such arrangements more closely with the treatment of free bets for General Betting Duty purposes.

18. A central theme of the consultation concerned what respondents described as "re-wagering" arrangements. The Government's response recorded concerns that, under the draft legislation, participation within such arrangements could be taxed repeatedly. The response summarised those concerns as follows:

> "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."; and
>
> "The government accepts that taxing all freeplays in remote gaming will impose greater burdens than expected."

19. The Government then stated:

> "The government has decided that it can still achieve its objective ... by taxing the first use of freeplays only."

20. The Government also explained that winnings would "only be brought into the duty calculation at the end of the re-wagering process".

21. The consultation materials additionally addressed concerns regarding games which could be played without payment by any participant and recorded the Government's intention that such games, and prizes arising from them, should not be brought within charge to RGD.

22. Explanatory Notes accompanying the Finance (No. 2) Bill 2017 described s159A as dealing with: "play using the winnings from successful freeplay" and explained that ss159A(4) and (5) operate where:

> "a person participates in gaming by means of a freeplay, and that freeplay has itself been won from gaming in which no alternative benefit was offered".

23. The parties placed significant reliance upon these materials. Their relevance and the competing submissions concerning them are considered in detail under Grounds 2 and 3.

BACKGROUND AND FTT DECISION

24. Save in the limited respects raised by Ground 1, there is no material dispute as to the underlying facts. The factual findings made by the FTT were based principally upon contemporaneous documentary material concerning the design and operation of the relevant gaming products, together with the written and oral evidence of Mr Andrew Marsden, the Compliance Director of 15 Marketing Ltd (a company which supplied marketing, technical development and compliance services to Jumpman). The appeal is concerned predominantly with the legal consequences of those facts and the proper interpretation of the statutory provisions at issue.

25. In this section, we summarise only those aspects of the factual background necessary to understand the operation of the products and promotional arrangements giving rise to the appeal. More detailed findings of fact, including those relied upon by the FTT in reaching its conclusions on Ground 1, are addressed where relevant in the discussion of the individual grounds of appeal.

26. During the periods relevant to this appeal, Jumpman operated online gambling platforms through which customers participated in remote games of chance over the internet. Customers could win cash, bonus credits or free spins entitling them to participate in further games (FTT [10],[11]).

27. The appeal concerns a promotional arrangement known as the "Welcome Offer". A customer who opened an account and made a qualifying deposit became entitled to a free spin on the Mega Reel (the Welcome MR Spin) (FTT [11(5)] – [11(6)], [12]).

28. The Mega Reel was a game of chance presented through a pop-up box displaying an image of a reel. Depending upon the configuration applied by Jumpman's back office, prizes available on the Mega Reel could include free spins on identified games, cash prizes, Amazon vouchers, "spin again" outcomes and "unlucky" outcomes (FTT [12], [15]).

29. The prizes available from the Mega Reel included free spins on other games operated by Jumpman. Those games had titles such as Fluffy Favourites, King Kong Cash and Chilli Heat. A customer who won free spins on one of those games could use those spins to play the relevant game without making a further payment at that stage (FTT [12], [15], [20]).

30. The customer journey relevant to this appeal can therefore be summarised as follows. A customer made a qualifying deposit and received a Welcome MR Spin. The customer then played the Mega Reel. If the Mega Reel awarded free spins on another game, the customer could use those free spins to participate in that game. The appeal concerns the tax consequences of both stages of that process (FTT [12], [20]). (In this decision, those free spins won from the Welcome MR Spin are referred to as “Further Free Spins”.)

The proceedings before the FTT

31. Against the factual and statutory background described above, the central issue before the FTT was the treatment of free spins awarded and used under the Welcome Offer.

32. As regards s159(4), Jumpman contended that participation in the Welcome MR Spin constituted participation in remote gaming in reliance on an offer which waived all or part of a gaming payment. HMRC contended that it did not. As regards ss159A(4) and (5), the parties disagreed as to the circumstances in which the use of free spins won from earlier gaming was excluded from treatment as a gaming payment.

33. The FTT considered the statutory language, the structure of the RGD regime and the Explanatory Notes accompanying the Finance (No. 2) Act 2017. It declined to take into account certain consultation materials generated during the legislative process, concluding that those materials were not admissible aids to interpretation.

34. The FTT ultimately accepted HMRC's construction of the relevant provisions. It concluded that participation in the Welcome MR Spin did not fall within s159(4) and further concluded that the free spins in issue did not qualify for exclusion under ss159A(4) and (5).

35. The detailed factual findings and reasoning relied upon by the FTT in reaching its conclusion on s159(4) are addressed when considering Ground 1. Likewise, the competing interpretations of s159A(4)(b), the Explanatory Notes and the consultation materials are considered in detail under Ground 3.

36. With permission granted by the FTT, Jumpman appeals on three grounds. In summary:

(1) Ground 1 is that the FTT erred in law in its application of s159(4) to the facts by concluding that in respect of the Welcome MR Spin, the offer made to players is for participation in a free game and not an offer to participate in a game for free.

(2) Ground 2 concerns the FTT's refusal to consider the consultation materials.

(3) Ground 3 is the FTT erred in interpretation of the phrase "the gaming" in s159A(4)(b) by reading it as a reference to gaming "pursuant to an offer which waived the gaming payment".

GROUNDS OF APPEAL

GROUND 1 – WHETHER THE MEGA REEL WAS, FOR THE PURPOSES OF S159 PLAYED PURSUANT TO AN OFFER THAT THE GAMING PAYMENT BE WAIVED

37. Ground 1 concerns the FTT's conclusion that participation in the Welcome MR Spin was not participation: "in reliance on an offer which waives all of a gaming payment" within the meaning of s159(4)(a).

FTT reasoning on Ground 1 issue: Distinction between free game and game played for free

38. As explained at [56] of its decision, the FTT considered the legislation drew a distinction between free games (ones in which anyone could usually expect to participate without payment) and games played for free (but which would otherwise usually require a payment in order to play) explaining it was only in the latter case where there was a gaming payment capable of waiver:

> "56. Subsection 4 expands what is included as a gaming payment when aggregated for the purposes of the profits calculation in circumstances "where the chargeable person participates in remote gaming in reliance on an offer which waives all of the gaming payment", in that case "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." In our view, this provision establishes a clear difference between the provision of a free game (i.e. one in which anyone is entitled to participate without payment) and being permitted to play a game for free (i.e. the participant is relieved of a pre-existing

obligation to pay). In the latter case, the payment otherwise required is specifically scoped into the definition of a gaming payment and thereby included in the gaming profit calculation. In the former, participation is not subject to RGD because no amount is otherwise due as a gaming payment. Whilst gaming which requires no one to pay a wager or place a stake but provides an opportunity to win meets the definition of gaming (as provided in section 6 Gambling Act 2005) the participant does not risk and can never be asked to pay anything to participate and, as such, there is nothing to waive and thereby nothing to treat as a gaming payment."

39. Having drawn that distinction the FTT went on to consider how that applied to the Welcome MR Spin:

> "59. We then turn to analyse the arrangements between the Appellant and the Customer. On the basis of the facts as we have found them, it is apparent that in respect of an MR Spin the offer is for participation in a free game and not participation in a game for free. This is on the basis that:
>
> (1) The terms and conditions generally provide that promotional offers are made through use of the Mega Reel.
>
> (2) The terms of such promotional offers vary. However, the Welcome offer is made on the basis that the Customer receives "a free spin of the Mega Reel". There is no indication on the offer for the Customer to participate in the Welcome offer Mega Reel that it is anything other than a free game. And for that customer pursuant to that offer it is a free game.
>
> (3) The pop-up box through which the Welcome offer is transacted bears no indication that there is a requirement to pay an amount to participate which will be waived. We do not consider the spin value shown on the reel an amount required to participate because it is not, it is an entirely notional sum which the Appellant does not require to be paid and which is accordingly not waived when, by accepting the Welcome offer, the Customer is forming a contract to play a free game. As such, we do not consider that even were the Customer to notice the spin value, they would consider that their entitlement to participate was on the basis of an offer to waive a payment otherwise required.
>
> (4) The back-office accounting which is undertaken whereby the spin value is credited to the Customer to be immediately debited again does not, in our view, represent a gaming payment. The credit and debit are invisible to the Customer. Further, the recording of the MR Spin differs from the way in which Free Spins are recorded. If there is synonymity between a Free Spin (participation in which both parties accept is pursuant to an offer to waive the gaming payment) we cannot understand why there would be this difference. In our view, the commercial reality is that the Appellant was forced to generate a debit and credit reflecting the spin value in order to substantiate its contention that there was an offer to waive the gaming payment. It not therefore evidence of the offer.
>
> (5) We do not consider the fact that the Mega Reel is the vehicle through which other promotions (by invitation) may be offered which involve a requirement to pay affects our conclusion (however frequently it may be so offered). When the Mega Reel is used in that way it is a separate game with different participation terms and conditions. Where those terms and conditions require a payment there is an amount required to participate and there is a gaming payment pursuant to section 159(1). Where participation is pursuant to an offer that waives the amount required to be paid there will be a deemed gaming

> payment pursuant to section 159(4). However, where the offer is to play a free game there is no gaming payment actual or deemed."

40. The Appellant's case on Ground 1 developed in two stages. First, it challenged the FTT's evaluative conclusion that the Welcome MR Spin was a free game rather than a game played for free. Mr Ripley submitted that the FTT had wrongly discounted a number of matters which, properly analysed, demonstrated the existence of an amount that would otherwise have been payable for participation in the Mega Reel. Particular emphasis was placed on the displayed spin value, Jumpman's accounting treatment and the existence of paid versions of the Mega Reel.

41. Secondly, in the skeleton argument and oral submissions, Jumpman advanced a broader contention that the FTT's analysis at [55]-[58] rested on an erroneous interpretation of s159(4). It was submitted that the FTT had treated the provision as requiring an actual payment obligation capable of waiver and had thereby introduced a restriction not found in the statutory language.

42. HMRC disputed both contentions. They submitted that the FTT was entitled to reach the evaluative conclusions challenged by Jumpman and that the criticisms advanced amounted in substance to disagreement with findings which were plainly open to the FTT on the evidence. HMRC also objected that the broader construction argument fell outside Ground 1 as pleaded and no permission to advance the broader ground had been sought or obtained.

Scope of Ground 1

43. The starting point is therefore to identify the scope of Ground 1.

44. The pleaded ground is directed to the FTT's conclusion that participation in the Welcome MR Spin was participation in a free game rather than participation in a game played for free. The Grounds of Appeal focus on the FTT's treatment of the evidence, including the significance of the spin value, Jumpman's accounting treatment and the existence of paid versions of the Mega Reel. The complaint is, in substance, that the FTT ought, on the evidence before it, to have concluded that the requirements of s159(4) were satisfied.

45. We accept HMRC's submission that the broader challenge to the FTT's interpretation of s159(4) falls outside Ground 1 as pleaded. Ground 1 does not identify any error in the FTT's interpretation of s159(4) at [55]-[58], nor does it contend that the distinction drawn by the FTT between a free game and a game played for free was legally incorrect. Had Jumpman intended to challenge the FTT's construction of the legislation itself, rather than its application of that legislation to the facts as found, one would have expected that point to be raised expressly in the Grounds of Appeal. Indeed, the Ground is framed by reference to the very distinction drawn by the FTT between a free game and a game played for free. The complaint is that the FTT reached the wrong conclusion when applying that distinction to the Welcome MR Spin, not that the distinction itself was legally erroneous.

46. An appellate tribunal may, in an appropriate case, permit a new point of law to be advanced. However, the argument raised before us would materially alter the nature of Ground 1, transforming it from a challenge to the FTT's evaluative conclusions into a challenge to its interpretation of s159(4). That point only first emerged clearly in Jumpman's skeleton argument shortly before the hearing. We accept HMRC's submission that this left insufficient opportunity for proper consideration of the wider implications of the construction point now advanced, including consultation with the relevant policy and technical specialists. That contributes materially to our conclusion that it would be unfair to permit Ground 1 to be reformulated in that way at this stage. In those circumstances, we do not consider it fair to permit Ground 1 to be reformulated in that way. We do not therefore express any concluded view on the broader

construction argument advanced by Jumpman in relation to s159(4). That argument falls outside Ground 1 as pleaded and, for the reasons given above, we do not permit the appeal to be reformulated so as to raise it. We accordingly confine our consideration of Ground 1 to the criticisms directed at the FTT's treatment of the evidence and the conclusions reached at [59].

Discussion on Ground 1

47. Jumpman's complaint under this ground is that in finding the customer's participation in the Welcome MR spin was not pursuant to an offer which waived the gaming payment the FTT failed properly to take account relevant evidence and took into account irrelevant considerations. The applicable principles are not in dispute. As explained in *Volpi v Volpi* [2022] EWCA Civ 464 at [2]-[4], an appeal court does not retry the case and must not interfere merely because it would itself have reached a different conclusion. Nor does the fact that a different conclusion was available on the evidence establish error. The Supreme Court recently reaffirmed the same approach in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8 at [49]. Ground 1 is, in substance, an *Edwards v Bairstow* challenge. As HMRC submitted, Jumpman must show that the conclusion reached by the FTT was not rationally supportable, that is, that it was not a conclusion reasonably open to the FTT on the evidence before it or that the FTT took account of irrelevant factors or failed to take account of relevant factors.[1]

The reasoning at FTT [59]

48. Having concluded that Ground 1 is confined to a challenge to the FTT's evaluative conclusion that the Welcome MR Spin was a free game rather than a game played for free, we turn to the factors on which the FTT relied at [59]. Those were:

(1) the general role of the Mega Reel within Jumpman's promotional arrangements (FTT [59(1)]);

(2) the terms of the Welcome offer itself (FTT [59(2)]);

(3) the significance of the displayed spin value (FTT [59(3)]);

(4) the accounting treatment adopted by Jumpman (FTT [59(4)]); and

(5) the existence of paid versions of the Mega Reel (FTT [59(5)]).

49. Jumpman challenges the FTT findings on each factor.

50. Before addressing them individually, it is convenient to deal with a submission which featured prominently in Mr Ripley's oral argument. He submitted that important aspects of the evidence of Mr Marsden, Jumpman's Chief Marketing Officer, had not been challenged in cross-examination and that the FTT had therefore been wrong to depart from that evidence.

51. Particular reliance was placed on paragraphs 6.2 and 6.4 of Mr Marsden's witness statement, where he stated:

> "The screenshots show that the games look and operate the same. There is no difference in appearance between a paid for game and one which is free for the customer to play."

52. At paragraph 6.4 he stated:

> "The game is played in exactly the same way as a paid for game. It is played by the customer opting to spin the wheel."

53. Mr Ripley submitted that those passages constituted positive evidence that the paid and unpaid versions of the Mega Reel were the same game offered in different ways. He emphasised that no challenge at all was made to this evidence in cross-examination and

[1] See per Henderson LJ in *Degorce v HMRC* [2017] EWCA Civ 1427 at [5].

submitted that, if HMRC wished to contend otherwise, that case should have been put to the witness.

54. We do not consider that submission assists Jumpman. The first difficulty is evidential. During argument before us, attention was drawn to the material exhibited to Mr Marsden's statement. HMRC's position was not simply that Mr Marsden should not be believed. Their point was that the material relied upon by him did not itself demonstrate that the paid and unpaid products were identical. That issue was in fact explored in HMRC's cross-examination before the FTT. In particular, it was put to Mr Marsden that the screenshots relied upon in support of his assertion were not screenshots of the paid Mega Reel. The challenge therefore went directly to the evidential basis for the proposition on which Jumpman relied.

55. More fundamentally, HMRC's position was not that Mr Marsden's evidence should be rejected. Their case was that the evidence did not establish the proposition for which Jumpman relied upon it. The FTT accepted the underlying facts, including the existence of spin values, accounting entries and occasional paid Mega Reel promotions. The issue was whether those matters showed that participation in the Welcome MR Spin occurred pursuant to an offer waiving a gaming payment. That was an evaluative question for the FTT. The fact that Mr Marsden expressed the view that the paid and unpaid Mega Reels were the same game did not require the FTT to reach the same conclusion, particularly where the evidential basis for that assertion had itself been explored in cross-examination.

The Welcome offer and the presentation of the game

56. The first two matters relied upon by the FTT concerned the way in which the Welcome MR Spin was presented to customers.

57. The FTT observed that promotional offers were generally provided through the Mega Reel mechanism (FTT [59(1)]). It further observed that the Welcome offer specifically stated that the customer "will receive a FREE spin of the Mega Reel" and concluded that there was no indication that the customer was being offered participation in a game for which payment would normally be required (FTT [59(2)]).

58. Mr Ripley submitted that the FTT attached excessive significance to the fact that the offer was described as "free". He pointed out that s159(4) was itself introduced to address freeplay arrangements. The fact that a promotion was described as free could not therefore answer the question whether a gaming payment had been waived.

59. We accept that submission up to a point. The mere use of the word "free" cannot itself determine whether s159(4) applies. However, that is not how the FTT approached the matter. The FTT did not treat the terminology as determinative. Rather, it regarded the presentation of the Welcome offer as one indication of the commercial reality confronting the customer. The offer invited participation in a free spin. It did not identify any usual price, any waived price or any amount from which the customer was said to be relieved. The FTT was entitled to regard those matters as relevant to the characterisation exercise which it was required to undertake.

The spin value

60. Jumpman's principal challenge concerned the FTT's treatment of the displayed spin value. The FTT concluded that the spin value was:

> "an entirely notional sum" which the Appellant did not require to be paid and which was not waived when the customer accepted the Welcome Offer (FTT [59(3)]).

61. Mr Ripley submitted that this conclusion could not be reconciled with other findings made by the FTT. In particular, he relied on [12] and [16], where the FTT accepted that a spin

value was attributed to the game and that Mega Reels carrying higher spin values could carry higher-value prizes.

62. We do not agree. The FTT was not finding that the spin value served no function within the operation of the Mega Reel. Rather, it was addressing a different question: whether the spin value represented an amount which would otherwise have been required to be paid for participation. At [12], the FTT found:

> "the spin value was a notional sum fixed by the back office; it could be fixed at any value without affecting the Customer experience of the Welcome offer."

63. At [16], it found:

> "Mr Marsden did not know whether the outcome of the Welcome offer Mega Reel varied by reference to the spin value. To the extent it did vary, the Customer would not have known because the offer was presented simply as a free spin of the Mega Reel."

64. Those findings, based on Mr Marsden's evidence, are not challenged as perverse.

65. The FTT was therefore entitled to distinguish between the existence of a spin value and the existence of an amount otherwise payable for participation. The fact that different spin values may have been associated with different prize structures did not require the FTT to conclude that the spin value represented a participation price. It was open to the FTT to conclude that the spin value was an internal figure assigned by Jumpman rather than an amount which the customer would otherwise have been required to pay.

66. The FTT was also entitled to regard the presentation of the offer as significant. Customers were offered "a free spin of the Mega Reel". The spin value was not presented as a price which was then waived. In those circumstances, the FTT was entitled to conclude that the existence of the displayed spin value did not establish participation pursuant to an offer waiving a gaming payment.

The accounting entries

67. Jumpman also challenged the FTT's treatment of the accounting entries by which the spin value was credited and immediately debited from the customer's account. Particular criticism was directed towards the FTT's observation that:

> "the commercial reality is that the Appellant was forced to generate a debit and credit reflecting the spin value in order to substantiate its contention that there was an offer to waive the gaming payment" (FTT [59(4)]).

68. Mr Ripley submitted that there was no evidential basis for that observation and that no such proposition had been put to Mr Marsden in cross-examination.

69. We do not read the challenged observation as carrying the significance attributed to it by Jumpman. The central reasoning of the FTT appears elsewhere in the same paragraph:

> "The back-office accounting which is undertaken whereby the spin value is credited to the Customer to be immediately debited again does not, in our view, represent a gaming payment. The credit and debit are invisible to the Customer. Further, the recording of the MR Spin differs from the way in which Free Spins are recorded. If there is synonymity between a Free Spin ... and an MR Spin, we cannot understand why there would be this difference."

70. The FTT's focus was therefore on the evidential significance of the accounting entries. It regarded them as internal to Jumpman, invisible to the customer and inconsistent with the

accounting treatment adopted for Free Spins, notwithstanding the Appellant's reliance on both as examples of participation pursuant to an offer waiving a gaming payment.

71. Those were matters the FTT was entitled to take into account. The issue before it was whether the customer participated pursuant to an offer waiving a gaming payment. The FTT was entitled to regard the customer-facing features of the transaction as more informative on that question than Jumpman's internal accounting treatment. Read in context, the challenged observation does not materially affect the reasoning process by which the FTT reached its conclusion. The substance of that conclusion was that the accounting entries did not demonstrate that the customer was being relieved of a payment which would otherwise have been required for participation.

The paid Mega Reel

72. The final and most substantial challenge concerned FTT [59(5)]. There the FTT concluded that the existence of occasional paid versions of the Mega Reel did not assist Jumpman because:

> "When the Mega Reel is used in that way it is a separate game with different participation terms and conditions."

73. Mr Ripley submitted that the FTT was wrong to characterise the paid Mega Reel and the Welcome MR Spin as different games. Relying on the passages of Mr Marsden's evidence discussed above, he submitted that the same Mega Reel game was being offered in two different ways and that the FTT had impermissibly moved from identifying differences in participation terms to treating the products as different games altogether.

74. We do not accept that submission. The issue before the FTT was not whether the visual appearance or mechanics of the paid and unpaid products were identical. The issue was whether participation in the Welcome MR Spin occurred pursuant to an offer waiving an amount which would otherwise have been required to be paid.

75. HMRC illustrated the point, as it had done below in the FTT, by reference to a wheel-of-fortune game. The same wheel might be used at a school fête where participation is free and prizes are modest or in a commercial setting where payment is required to participate. The mechanics of the game may be identical in both cases. It does not follow that participation in the former involves the waiver of a charge applicable in the latter. The distinction lies in the terms on which participation occurs, not the mechanics of the game itself.

76. That was, in substance, the FTT's reasoning. The FTT accepted that paid Mega Reels existed. It also found that they were offered only occasionally, on an invitation-only basis and pursuant to different participation terms. There was no finding that the paid and unpaid products were economically identical, that they carried identical prize structures or that the stated spin value corresponded to a price ordinarily charged for participation.

77. The FTT therefore did not reject the primary facts relied upon by Mr Marsden. It accepted that paid Mega Reels existed and shared common features with the Welcome MR Spin. Its conclusion was that those facts did not establish that participation in the Welcome MR Spin involved the waiver of an amount otherwise payable. That was an evaluative conclusion which was open to it on the evidence before it.

78. More importantly, nothing in the evidence required the FTT to conclude that participation in the Welcome MR Spin occurred pursuant to an offer waiving an amount otherwise payable. The existence of occasional paid Mega Reels did not, without more, establish that customers would ordinarily have been required to pay to participate in the Welcome MR Spin. Nor did the evidence require the FTT to conclude that the displayed spin value corresponded to an amount generally charged for participation. Accordingly, quite apart from any debate as to the

precise legal meaning of s159(4) (which we have not engaged with given the scope of the ground), it was open to the FTT on the evidence to conclude that the Welcome Offer did not involve the waiver of an amount which customers would otherwise have been required to pay.

79. The rarity and limited availability of paid Mega Reels reinforced that conclusion. The FTT found that paid participation was offered only exceptionally and on an invitation-only basis. It was therefore entitled to conclude that customers were not ordinarily charged to participate in the Welcome MR Spin and that the displayed spin value did not correspond to a price generally payable for participation in the Mega Reel.

80. In those circumstances, the FTT was entitled to conclude that the existence of occasional paid Mega Reel promotions did not establish that participation in the Welcome MR Spin occurred pursuant to an offer waiving a gaming payment.

Conclusion on Ground 1

81. Drawing these matters together, we are not persuaded that Jumpman has identified any error of law within the scope of Ground 1. The FTT accepted the principal factual matters on which Jumpman relied, including the existence of the displayed spin value, the accounting entries and the occasional use of paid Mega Reel promotions. The dispute was not whether those matters existed but what they demonstrated for the purposes of s159(4).

82. The FTT considered each of those matters and concluded that they did not establish that participation in the Welcome MR Spin occurred pursuant to an offer waiving a gaming payment. In particular, it was entitled to conclude that the displayed spin value did not correspond to an amount ordinarily payable for participation, that the accounting entries were of limited significance in determining the customer's position, and that the existence of occasional paid Mega Reel promotions did not demonstrate that customers would otherwise have been required to pay to participate in the Welcome MR Spin.

83. Accordingly, irrespective of any wider debate concerning the precise scope of s159(4), nothing in the evidence required the FTT to conclude that the Welcome Offer involved the waiver of an amount otherwise payable by the customer. The criticisms advanced by Jumpman amount, in substance, to disagreement with the weight and significance which the FTT attached to the evidence. The conclusion that the Welcome MR Spin was not participation pursuant to an offer waiving a gaming payment was one which was reasonably open to the FTT on the evidence before it. Ground 1 is therefore dismissed.

GROUND 2 – WHETHER THE FTT ERRED IN REFUSING TO TAKE ACCOUNT OF THE CONSULTATION IN 2016 WHICH LED TO THE LEGISLATIVE CHANGES MADE BY FINANCE (NO. 2) ACT 2017

84. Under this ground, Jumpman contends that the FTT erred in refusing to take account of the consultation materials generated during the legislative process leading to the Finance (No. 2) Act 2017 amendments. Those materials included HMRC's August 2016 consultation paper, the Government's response published in December 2016 and associated policy documents. Jumpman relied on those materials before the FTT as part of the legislative background to ss159(4) and 159A. The FTT declined to take them into account, concluding that they were not admissible aids to construction, although it did consider the Explanatory Notes.

85. The FTT accepted that materials such as Explanatory Notes, Law Commission reports, advisory committee reports and Government White Papers may be considered in construing legislation. However, it considered that those authorities were concerned with materials prepared by or for Parliament and that consultation materials fell outside that category because they were not themselves before Parliament.

86. Before us, HMRC did not seek to uphold that approach. Both parties accepted that the consultation materials formed part of the relevant legislative background, although they disagreed as to the significance to be attached to them.

87. In our view, that concession by HMRC was correctly and properly made. The limitation adopted by the FTT is not supported by the authorities on which it relied. In *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255 at [30], approved in *For Women Scotland Ltd v Scottish Ministers* [2025] UKSC 16; [2026] AC 315 at [9]-[11], the Supreme Court recognised that external materials, whilst not displacing the statutory language, may assist in identifying the background, purpose and mischief of legislation and that the context disclosed by such materials may assist in ascertaining statutory meaning. The Court did not suggest that admissibility depends on whether a document was before Parliament. Rather, the relevance of such materials lies in their ability to illuminate the legislative context.[2]

88. That conclusion is consistent with the authorities relied upon by Jumpman: *Melville Dundas Ltd v George Wimpey UK Ltd* [2007] UKHL 18 and *R (Maughan) v HM Senior Coroner for Oxfordshire* [2020] UKSC 46, where the appellate courts considered pre-legislative materials as part of the wider legislative background when addressing questions of statutory purpose and context. It is also consistent with statements in *Bennion, Bailey and Norbury on Statutory Interpretation (8th ed) section 24.9* that:

> "The fact that a report is a consultation paper does not affect its admissibility, at least for the purposes of ascertaining the contextual setting of the legislation or the mischief at which it is aimed…"

89. Accordingly, the FTT erred in excluding the consultation materials from consideration altogether and Ground 2 succeeds.

90. That conclusion does not determine the substantive issue of construction. The parties' real disagreement concerns the significance of those materials and whether they support Jumpman's or the Respondents' interpretation of s159A(4)(b). We address that issue under Ground 3.

GROUND 3 - WHETHER THE FTT ERRED IN ITS INTERPRETATION OF "THE GAMING" IN S.159A(4)

The parties' submissions in outline on Ground 3

91. The principal issue under Ground 3 is the meaning of the expression "the gaming" in s.159A(4)(b).

92. The dispute can be stated shortly. Section 159A(4)(b) applies where a chargeable person uses an offer waiving payment and that offer "has been won in the course of the person's participation in the gaming". The question is whether "the gaming":

(1) refers to remote gaming generally, as the Appellant contends; or

(2) refers only to the gaming identified in s159A(4)(a), namely participation pursuant to an offer waiving all or part of a gaming payment, as HMRC contend.

93. Put another way, the issue is whether the provision applies whenever the relevant freeplay has been won from earlier remote gaming, or only where it has been won from earlier waived-payment gaming.

[2] See also *Osmond & Anor v HMRC* [2025] UKUT 183 (TCC) where this Tribunal considered at [57]-[59] that the absence of any reference in a Consultation Document to the expansive meaning of the statutory language for which HMRC contended indicated that HMRC's interpretation was not sustainable.

94. The parties were agreed that the issue is one of statutory interpretation. They were also agreed as to the applicable approach. The task is to identify the meaning of the language enacted by Parliament, determined purposively and having regard to the statutory text, the legislative context and such legislative materials as may properly be taken into account.

95. By the conclusion of the hearing there was also substantial common ground as to the broader operation of the statutory scheme. In particular, both parties accepted that participation funded through non-withdrawable money falls to be analysed principally through ss159A(1) to (3), whereas s159A(4) and (5) are directed to participation pursuant to further offers waiving payment. The remaining disagreement concerns the circumstances in which the relieving effect of s159A(4) and (5) is engaged.

96. It is convenient to begin with the statutory language before turning to the contextual considerations on which the parties rely.

Discussion

A) Natural meaning of the text

97. We restate the relevant parts of s159A for ease of reference:

> "(1) Where a chargeable person participates in remote gaming, an amount is not to be taken into account in determining the "gaming payment" (if any) under section 159 so far as the amount is paid out of money in relation to which the first and second conditions are met ("excluded winnings").
>
> (2) The first condition is that the money has been won by participation in the gaming either—
>
> (a) in reliance on an offer which waives all or part of a gaming payment, or
>
> (b) in a case where the gaming payment was paid out of money in relation to which this condition and the second condition were met.
>
> (3) The second condition is that the chargeable person is not entitled to use the money otherwise than for the purpose of participation in the gaming.
>
> (4) Subsection (5) applies where—
>
> (a) a chargeable person participates in remote gaming in reliance on an offer which waives all or part of a gaming payment, and
>
> (b) that offer has been won in the course of the person's participation in **the gaming** (and the person was not given the choice of receiving a different benefit instead of the offer)…"(emphasis added)

98. The starting point is the language chosen by Parliament. The parties agree that the issue turns on the meaning of the expression "the gaming" in s159A(4)(b), but they disagree as to what gaming that expression refers.

99. Jumpman's reading reflects the more immediate meaning of the words used. Section 159A(4) begins by referring to a chargeable person who "participates in remote gaming". Paragraph (b) then requires that the relevant offer has been won in the course of the person's participation in "the gaming". Read as ordinary prose, "the gaming" naturally points back to the remote gaming already identified in the subsection.

100. As Mr Peacock KC submitted, Parliament did not say that the offer must have been won in gaming falling within paragraph (a). Nor did it use formulations such as "that gaming", "such gaming" or "gaming in reliance on an offer". Had Parliament intended to confine paragraph (b) to gaming of the kind described in paragraph (a), it could readily have done so.

101. The same point can be seen elsewhere in s159A. Where Parliament wished expressly to identify gaming undertaken pursuant to an offer waiving payment, it did so. Section 159A(2)(a), for example, refers to money won through participation in gaming "in reliance on an offer which waives all or part of a gaming payment". No equivalent language appears in s159A(4)(b).

102. HMRC nevertheless rely on a feature of the drafting which cannot be ignored. Paragraph (a) identifies a specific category of gaming, namely participation in remote gaming pursuant to an offer waiving all or part of a gaming payment. Ms Mitrophanous KC submitted that the definite article in paragraph (b) naturally points back to that previously identified category. On that reading, "the gaming" is not a fresh reference to remote gaming generally but a reference to the gaming already identified in paragraph (a).

103. In support of that submission, HMRC relied upon *Edricon Ltd v Whiteley* [2021] EWCA Civ 118, in which a reference to "the premises" in a later limb of a provision was construed as referring back to premises identified earlier in the same provision. We do not regard *Edricon* as establishing any wider drafting principle. It does, however, illustrate the more modest and hopefully uncontroversial proposition that use of the definite article may indicate a reference back to something already identified in the statutory context.

104. We therefore accept that HMRC's interpretation is linguistically possible. The issue remains however, whether, in the context of s159A(4), "the gaming" refers back to the remote gaming identified at the beginning of the subsection or to the more specific gaming identified in paragraph (a).

105. There is also a further point. Whilst HMRC's interpretation explains the use of the phrase "the gaming", it does not fully explain why Parliament chose not to identify more clearly the narrower category of gaming on which that interpretation depends. If paragraph (b) was intended to refer specifically to gaming of the type described in paragraph (a), Parliament could readily have said so.

106. Taken on its own, therefore, the language of s159A(4) marginally favours Jumpman's interpretation, although not decisively so. HMRC's reading is neither strained nor linguistically impermissible. The text, considered in isolation, does not resolve the issue and it is therefore necessary to turn to the wider context.

B) Use of "the gaming" elsewhere in Chapter 3

107. Both parties sought support from the use of the expression "the gaming" elsewhere in Chapter 3.

108. Jumpman submitted that the phrase is repeatedly used as a straightforward reference to the relevant gaming activity under discussion and that nothing elsewhere in the Chapter supports the specialised meaning advanced by HMRC.

109. Particular reliance was placed on:

(1) s154(2), concerning pooled prize gaming;

(2) s159A(2) and (3), concerning non-withdrawable winnings; and

(3) s162(3), concerning recovery of remote gaming duty.

110. HMRC accepted that the phrase appears in those provisions, but submitted that its meaning is supplied by the immediate statutory context and that no consistent chapter-wide drafting pattern emerges. We agree with HMRC that the expression is context-sensitive.

111. Turning to the particular provisions, we did not, however, find it especially illuminating. Section 154(2) is concerned with defining a particular category of remote gaming, namely

pooled prize gaming. In that context, the phrase "the gaming" refers neither to remote gaming generally nor to “pooled prize gaming” (which would be circular). Rather, it refers to the gaming activity which satisfies the conditions being laid down by the subsection and thereby falls within the definition. What matters is the relationship between the participants, the gaming payments assigned to the prize fund and the prizes paid out of that fund. The provision therefore illustrates the context-sensitive nature of the phrase "the gaming" but does not materially assist in resolving the dispute before us.

112. Similar observations apply to s162(3). Mr Peacock submitted that "the gaming" there plainly means the remote gaming from which the relevant duty liability arose. Ms Mitrophanous submitted that it refers to the particular gaming activity generating the liability during the relevant accounting period. We do not consider that much turns on the difference. The provision is concerned with identifying the gaming activity giving rise to the recoverable duty and again is an illustration of the context dependent nature of the use of the term.

113. Jumpman derives somewhat greater assistance from s159A(2). As Mr Peacock emphasised, Parliament there had no difficulty expressly referring to money won through participation in gaming "in reliance on an offer which waives all or part of a gaming payment". The subsection therefore shows that Parliament was capable of identifying waived-payment gaming expressly when it wished to do so.

114. Standing back, we derive two conclusions from the surrounding provisions. First, none of the provisions demonstrates a clear and consistent usage of "the gaming" in the specialised sense contended for by HMRC in relation to s159A(4)(b). Secondly, Jumpman does not establish the converse proposition that the phrase invariably means remote gaming generally. Context plainly matters. The wider statutory usage therefore provides only some limited support to Jumpman. A reader encountering the phrase in s159A(4)(b) would not immediately assume the highly specific meaning contended for by HMRC. However, the surrounding provisions do not compel any particular conclusion.

115. We therefore regard this consideration as marginally supportive of Jumpman, but ultimately inconclusive.

C) Section 159A(2)(b) and the "this condition" debate

116. The parties also relied upon the structure of s159A itself, and in particular s159A(2)(b). Because that provision forms part of the same statutory scheme as s159A(4), both sides submitted that it sheds some light on how Parliament intended successive stages of play to be treated. Section 159A(2)(b) refers to money won where the gaming payment was paid out of money in relation to which: “this condition” and the second condition were met.

117. The drafting immediately raises the question of what is meant by “this condition”. The subsection does not identify any particular part of the first condition and it is not obvious whether the phrase refers to the first condition as a whole or only part of it.

118. Despite that drafting difficulty, the parties were broadly agreed as to the function performed by paragraph (b). Paragraph (a) deals with money won directly from participation pursuant to a waived-payment offer. Paragraph (b) then extends the same treatment to later winnings derived from participation funded by those earlier winnings.

119. To illustrate the point, assume a player participates in gaming pursuant to a waived-payment offer ("Play A") and wins non-withdrawable money. The use of that money in a later game ("Play B") falls within s.159A(2)(a). If the player then wins further non-withdrawable money from Play B and uses it in a further game ("Play C"), paragraph (b) operates to extend the same treatment to that later participation.

120. On that analysis, paragraph (b) is concerned with carrying forward the treatment afforded to qualifying winnings through successive stages of play. It is not naturally concerned with repeatedly identifying the original waived-payment participation from which the chain began.

121. We do not, for present purposes, need to reach a concluded view on the precise operation of the phrase "this condition". What matters is that neither party's explanation of paragraph (b) depends upon identifying an originating instance of waived-payment gaming each time the subsection is applied.

122. A similar picture emerges from paragraph 10 of the Explanatory Notes, which describes subsection (2) as applying where money has been won from participation in gaming by means of a freeplay or from participation funded by money that can itself only be used for gaming. The focus is on the continuing treatment of winnings available for later participation rather than on tracing back to an original waived-payment game.

123. We return later to the significance of successive chains of transactions and the extent to which the statutory scheme requires an enquiry into earlier stages of participation. For present purposes, it is sufficient to observe that ss159A(1) to (3) appear more naturally concerned with the continuing treatment of qualifying winnings than with identifying an originating instance of waived-payment gaming.

124. We would not place significant weight on this point in isolation. It does not determine the meaning of "the gaming" in s.159A(4)(b). It does, however, make it less obvious that the structure of s.159A is built around a requirement to identify an original waived-payment game and then trace all subsequent participation back to it – thus marginally supporting Jumpman.

D) The heading to s159A

125. HMRC place reliance on the heading to s159A, namely “Play using the results of successful freeplay”. They submit that the heading identifies the subject matter with which the section is concerned and supports a construction which confines the operation of ss159A(4) and (5) to circumstances in which the relevant entitlement derives from earlier freeplay participation.

126. The parties were agreed that the heading forms part of the statutory context and may properly be considered as an aid to construction. The Respondents relied in this regard upon *R v Montila* [2004] UKHL 50, where the House of Lords referred to a heading as part of the interpretative context of a provision. Equally, it was not suggested that a heading could control or override the meaning of the operative statutory language.

127. The limited role of headings as an interpretative aid was not materially disputed. The FTT had referred to *Lipton v BA CityFlyer Ltd* [2024] UKSC 24, in which the Supreme Court recognised the use of headings as an aid to interpretation whilst emphasising their limited role.

128. HMRC submit that the heading points towards a continuing connection between s159A and successful freeplay. On their construction, that connection is maintained because the further offer waiving payment must itself have been won from earlier participation in gaming falling within s159A(4)(a). The section therefore operates, consistently with its heading, upon play using the results of successful freeplay.

129. HMRC further submit that, on Jumpman's interpretation, the section extends beyond play using the results of successful freeplay and may encompass play using the results of gaming more generally. They contend that such an outcome sits uneasily with the description chosen by Parliament.

130. We accept that the heading is relevant in the present case because the parties advance competing interpretations of the operative language. In those circumstances, it forms part of

the context in which s159A falls to be construed. The expression "Play using the results of successful freeplay" sits more comfortably with HMRC's interpretation than with Jumpman's. It suggests a continuing connection between the operation of s159A and earlier successful freeplay and therefore tends to favour a construction under which the participation addressed by the section derives from such freeplay.

131. However, we do not consider that the heading bears the weight which HMRC seek to place upon it. As Mr Peacock submitted, relying on *Project Blue Ltd v HMRC* [2018] UKSC 30 at [42], the operative text remains paramount. The authorities concerning headings proceed on the basis that a heading cannot override the meaning conveyed by the enacted words themselves. If that is so, it also follows that a heading need not provide an exhaustive description of every situation falling within the scope of the operative provisions. A heading may accurately identify the principal focus of a section without fully defining its boundaries.

132. That consideration is of some significance here. The heading is plainly apt to describe at least a substantial part of s159A, particularly ss159A(1) to (3), which concern participation funded by winnings derived from successful freeplay. The present dispute concerns the more specific question whether ss159A(4) and (5) are confined to that same paradigm. The heading assists in addressing that question, but it does not answer it.

133. We therefore regard the heading as a consideration favouring HMRC's interpretation, although not strongly so. It provides a useful indication of the general focus of s159A, but it does not determine the meaning of the expression "the gaming" in s159A(4)(b).

E) Mixed chains and the scope of the language "in the course of"

134. The parties devoted a significant part of the hearing to a series of worked examples. Their significance lies not in the outcomes themselves but in the light they shed on the phrase "won in the course of the person's participation in the gaming" in s159A(4)(b).

135. It is convenient to begin with a simple example discussed during the hearing:

(1) Play 1: the player participates pursuant to a freeplay offer and wins non-withdrawable money within the meaning of s159A(1) to (3);

(2) Play 2: the player uses that non-withdrawable money to participate in further gaming and wins a further freeplay offer;

(3) Play 3: the player uses that further freeplay offer.

136. On Jumpman's interpretation, the position is straightforward. The freeplay used at Play 3 was won in the course of participation in the gaming undertaken at Play 2. Since Play 2 constituted remote gaming, s159A(4)(b) is capable of being satisfied.

137. Jumpman initially relied upon examples of this kind to demonstrate what it considered to be a structural weakness in the Respondents' interpretation. The submission was that, once the chain had moved into participation using non-withdrawable winnings, the freeplay subsequently won could no longer have been won through participation pursuant to an offer waiving payment.

138. The Respondents did not accept that characterisation of their case. Both in their written case and in oral submissions, they relied upon the words "in the course of" as permitting the relevant entitlement to be traced back through intervening transactions to an earlier freeplay. Ms Mitrophanous submitted that the freeplay used at Play 3 remained connected to the original freeplay at Play 1, notwithstanding the intervening participation involving non-withdrawable winnings.

139. The real disagreement therefore concerns the level at which the statutory inquiry is conducted.

140. Jumpman's case focuses upon the participation which directly generated the relevant entitlement. On the above example, the freeplay used at Play 3 was won from Play 2 and the enquiry therefore focuses on Play 2.

141. The Respondents' approach is different. It permits the decision-maker to look beyond Play 2 and identify Play 1 as the relevant gaming on the basis that the later entitlement ultimately derives from the earlier freeplay.

142. The force of Jumpman's criticism increases as additional transactions are inserted into the chain.

143. Suppose, for example, that:

(1) Play 1 involves participation pursuant to a freeplay offer;

(2) Plays 2 to 59 consist of successive rounds of participation funded by non-withdrawable winnings won from earlier rounds of participation; and

(3) Play 60 results in a further freeplay offer.

144. On the Respondents' analysis, the freeplay obtained at Play 60 may still qualify because the chain can ultimately be traced back to the original freeplay at Play 1. Mr Peacock submitted, in substance, that if Play 3 may be linked back to Play 1 notwithstanding intervening participation, it becomes difficult to identify any principled stopping point. The same reasoning potentially permits Play 60 to be linked back to Play 1 through dozens of intervening transactions.

145. We accept that HMRC's construction accommodates mixed chains by treating the phrase "in the course of" as permitting a later entitlement to be traced back through intervening transactions to an earlier freeplay. The difficulty is that this requires the phrase to bear a meaning extending beyond the participation which directly generated the entitlement in question.

146. In ordinary usage, "in the course of" naturally directs attention to the participation from which the entitlement was obtained. It is less naturally understood as requiring an enquiry into gaming many transactions earlier. The examples discussed during the hearing demonstrate that HMRC's interpretation depends upon such a tracing exercise. Whilst not impossible, that is a function which one might ordinarily expect Parliament to express through clearer tracing language.

147. To that extent, the examples expose a difficulty in HMRC's construction.

F) Explanatory Notes

148. Before turning to the consultation materials, it is convenient to consider the Explanatory Notes. The parties were agreed that the Notes may properly be taken into account as an aid to construction. Their role is not to displace the statutory language but to assist, where appropriate, in understanding the purpose and context of the provisions enacted.

149. The principal focus of the parties' submissions was paragraphs 8 to 12 of the Notes accompanying the Finance (No. 2) Act 2017 amendments. Paragraph 8 states that s159A was introduced:

> "to deal with play using the winnings from successful freeplay."

150. HMRC place considerable reliance on that statement. They submit that it mirrors the heading to s159A and reflects a scheme concerned with participation deriving from earlier

successful freeplay. In that respect, paragraph 8 points in the same direction as the heading considered above.

151. Jumpman places greater emphasis on paragraph 12, which addresses ss159A(4) and (5) specifically. It states:

> "The new subsections (4) and (5) combined provide that where a person participates in gaming by means of a freeplay, and that freeplay has itself been won from gaming in which no alternative benefit was offered, the use of that freeplay will not be treated as a gaming payment under section 159."

152. We regard paragraph 12 as an important passage. Unlike paragraph 8, which describes the section at a relatively high level of generality, paragraph 12 is directed specifically to the operation of the provisions whose meaning is in dispute. It is therefore of particular note that it describes the qualifying freeplay as having been won from "gaming". It does not say that the gaming must itself have consisted of participation pursuant to an earlier freeplay offer or other waived-payment participation.

153. Had Parliament intended the restriction for which HMRC contend, one might reasonably have expected some indication of it in a passage specifically directed to ss159A(4) and (5). The absence of such language does not resolve the issue, but it is a relevant consideration.

154. We accept HMRC's submission that paragraph 8 should not be ignored merely because it is cast at a higher level of generality. It forms part of the same explanatory exercise and provides a useful indication of the broad legislative purpose. Nevertheless, in addressing the specific question raised by this appeal, we derive greater assistance from paragraph 12 because it speaks directly to the operation of ss159A(4) and (5).

155. Taken as a whole, the Explanatory Notes point in both directions. Paragraph 8 tends to favour HMRC's interpretation at the level of general purpose. Paragraph 12 sits more comfortably with Jumpman's interpretation of the disputed provisions themselves. Ultimately, the Notes do not clearly indicate that Parliament intended the more restrictive construction advanced by HMRC.

G) Consultation materials

156. The parties also relied upon the consultation process which preceded the amendments introduced by Finance (No. 2) Act 2017. In particular, reference was made to HMRC's consultation paper published in August 2016 and to the Government's response published in December 2016.

157. The consultation materials contain two strands particularly relevant to the present appeal. First, they explain the policy concern which led to the amendments. The August 2016 consultation paper stated:

> "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 ... in General Betting Duty (GBD)."

158. Secondly, they record concerns raised about the treatment of re-wagering arrangements. The Government summarised those concerns as follows:

> "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."
>
> and

> "Conversely, any winnings that accumulate during the re-wagering process cannot be deducted ... until the re-wagering requirements are met."

159. The Government accepted the force of those concerns and responded:

> "The government has decided that it can still achieve its objective ... by taxing the first use of freeplays only."
>
> and
>
> "winnings will also only be brought into the duty calculation at the end of the re-wagering process."

160. Before considering the substance of the consultation materials, it is necessary briefly to identify their role in the interpretative exercise. As explained under Ground 2, the parties were agreed that they form part of the legislative background and may assist in identifying the context of the legislation and the mischief at which it was directed. Equally, it was common ground that they cannot determine the meaning of the statutory language enacted by Parliament.

161. The materials show that a particular concern raised during consultation was the treatment of re-wagering chains. The Government accepted that taxing every freeplay within such chains would impose greater burdens than anticipated and stated that it could achieve its objective "by taxing the first use of freeplays only". It also explained that winnings would be brought into the duty calculation only at the end of the re-wagering process.

162. HMRC are entitled to derive some assistance from those statements. They sit comfortably with an interpretation under which the first participation pursuant to a freeplay offer is brought into charge and subsequent participation deriving from that freeplay is excluded.

163. In our view, however, the significance of the consultation materials is limited. They appear to proceed on the basis of the conventional promotional freeplay model, namely a customer who is offered a freeplay and whose subsequent participation and re-wagering activity must then be addressed by the legislation. The present appeal concerns a different scenario. It arises because, on the FTT's conclusion under Ground 1, the initial Welcome MR Spin falls outside s159(4) altogether but generates further freeplay. The consultation materials do not appear to address that situation and therefore provide only indirect assistance on the issue before us.

164. Nor do the materials articulate the particular limitation for which HMRC contend. They do not state that relief is confined to freeplays won from earlier freeplay rather than from gaming more generally. Equally, they contain no indication of the more extensive historical enquiry which, as discussed earlier, HMRC's interpretation ultimately requires. If those matters formed an important part of the legislative solution adopted following consultation, one might reasonably have expected some reference to them in the Government response or the Explanatory Notes.

165. Taking these matters together, the consultation materials establish that Parliament was concerned with re-wagering chains, sought to avoid repeated taxation within those chains and nevertheless intended some freeplay participation to be brought into charge. Beyond that, they provide only limited assistance in resolving the specific question raised by s159A(4)(b).

H) Interpreting the text in the light of the interpretative aids and scheme of legislation

166. The issue is whether the expression "the gaming" in s159A(4)(b) refers to remote gaming generally, as Jumpman contends, or to the gaming identified in s159A(4)(a), namely participation in remote gaming pursuant to an offer waiving all or part of a gaming payment, as HMRC contend.

167. The language of s159A(4)(b), taken on its own, does not resolve the question. Jumpman's interpretation reflects the more immediate reading of the words used. HMRC's interpretation is nevertheless linguistically possible, particularly given the use of the definite article and the existence of a specific category of gaming identified in paragraph (a).

168. Nor does the wider use of the expression "the gaming" elsewhere in Chapter 3 produce a clear answer. The surrounding provisions show that the meaning of the phrase is context-dependent. They do not establish a settled drafting practice which points decisively in either direction.

169. The structure of s159A also provides some assistance. In particular, the parties were broadly agreed that s159A(2)(b) operates to extend the treatment accorded to qualifying winnings beyond the initial participation undertaken pursuant to a waived-payment offer. Whether one analyses the subsection in the manner advanced by Jumpman or by reference to the alternative reading discussed above, the focus appears to be on the continuing treatment of later winnings derived from earlier qualifying participation. That does not determine the meaning of s159A(4)(b), but it sits less comfortably with an interpretation of the statutory scheme which is primarily concerned with repeatedly identifying an original instance of waived-payment gaming. Paragraph 10 (see [122] above) of the Explanatory Notes points in the same direction.

170. The most significant consideration, however, arises from HMRC's interpretation of the phrase "in the course of the person's participation in the gaming". As the examples discussed during the hearing demonstrated, HMRC's construction depends upon those words permitting a later entitlement to be traced back through intervening transactions to an earlier freeplay. The longer the chain becomes, the more substantial that historical enquiry becomes.

171. We accept that the phrase "in the course of" can accommodate a degree of temporal and causal connection. The difficulty is that HMRC's interpretation requires it to bear a considerably broader meaning. It requires the decision-maker, in an appropriate case, to move beyond the participation which directly generated the relevant entitlement and to investigate participation occurring potentially many stages earlier. We do not consider that requirement emerges naturally from the language Parliament chose to enact.

172. We have, of course, taken account of the considerations favouring HMRC's interpretation. The heading to s159A and paragraph 8 of the Explanatory Notes both emphasise the connection between the section and successful freeplay. Likewise, the consultation materials show that Parliament was concerned with re-wagering chains and intended at least some freeplay participation to be brought into charge.

173. Those considerations carry weight. However, they do not identify the specific limitation for which HMRC contend. Paragraph 12 of the Explanatory Notes, which addresses ss159A(4) and (5) directly, refers simply to a freeplay won from "gaming". The consultation materials likewise refer to taxing the first use of freeplays and avoiding repeated taxation within re-wagering chains, but they do not explain the extended historical enquiry which HMRC's interpretation ultimately requires.

174. We also bear in mind that the consultation materials appear principally to address the conventional promotional freeplay model in which participation pursuant to a freeplay offer itself gives rise to the initial charge. They provide less direct assistance in relation to the circumstance with which this appeal is concerned, namely a wholly free instance of gaming which falls outside s159(4) but generates further freeplay.

175. Drawing these matters together, we prefer Jumpman's interpretation. It gives the expression "the gaming" a more direct meaning, accords more naturally with the operation of

s159A viewed as a whole and does not require the phrase "in the course of" to perform the extensive tracing function for which HMRC contend. Whilst HMRC's interpretation is consistent with one aspect of the legislative purpose identified in the consultation materials, we do not consider that Parliament expressed that limitation in the language of s159A(4)(b).

176. Accordingly, we conclude that, in s159A(4)(b), the expression "the gaming" refers to the remote gaming identified in s159A(4) and is not confined to gaming undertaken pursuant to an offer waiving payment.

177. It follows that, whilst paying tribute to its careful analysis, the FTT erred in law in concluding that "the gaming" in s159A(4)(b) meant gaming in which the chargeable person participated pursuant to an offer waiving the gaming payment.

178. Ground 3 is therefore allowed.

DISPOSITION

179. For the reasons set out above Ground 1 is dismissed. Grounds 2 and 3 succeed.

180. The error identified under Ground 3 was material. The FTT's conclusion that the Further Free Spins gave rise to gaming payments under s159(4) depended upon an erroneous interpretation of s159A(4)(b). On the correct interpretation of ss159A(4) and (5), the Further Free Spins fall within the statutory exclusion and do not give rise to liability to RGD.

181. Ground 1 having been dismissed, the FTT's conclusion that no liability arose in respect of the Welcome Offer remains undisturbed. No further findings of fact are required. We therefore set aside the FTT's decision to the extent identified above and remake it accordingly.

182. It appears to us to follow that no liability to RGD arises in respect of either category of participation which formed the basis of the assessments under appeal. The consequence of the Upper Tribunal's decision is that the assessments (made under s12 Finance Act 1994 read together with s167 FA 2014) fall to be reduced to nil pursuant to s16(5) Finance Act 1994.

JUDGE SWAMI RAGHAVAN
JUDGE GUY BRANNAN

Release date: 25th September 2026