



HM TREASURY



HM Revenue
& Customs

Design of Machine Games Duty consultation:

the Government response

December 2011



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ISBN 978-1-84532-915-0

PU1218

Contents

		Page
Chapter 1	Introduction	3
Chapter 2	Responses to the consultation	5
Chapter 3	Next steps	15
Annex A	List of respondents	17
Annex B	List of meetings	21
Annex C	Outline of Machine Games Duty	23

1

Introduction

1.1 In December 2010 the Government announced reform of the taxation of gaming machines through the introduction of Machine Games Duty (MGD). Budget 2011 confirmed the Government's intention to legislate for MGD in Finance Bill 2012, and for implementation to follow in early 2013. MGD will be charged on the net takings from the playing of dutiable machine games. These are games played on a machine where customers hope to win a cash prize worth more than they stake. Where MGD is payable, it will replace both Amusement Machine Licence Duty (AMLD) and VAT.

1.2 The introduction of MGD will put tax revenues from gaming machines on a more sustainable footing. The VAT treatment of gaming machines has been challenged in the Courts. Introducing MGD and exempting dutiable machine games from VAT will protect tax revenues going forward, and will ensure that operators of gaming machines continue to make a fair contribution to tax receipts. MGD also supports the Government's objective of a fairer tax system by ensuring the taxation of dutiable machine games will be more closely linked to machine takings.

1.3 The consultation document "Implementing a Machine Games Duty: consultation on policy design" sought views on design characteristics of MGD. The Government welcomed general views on the proposed design, and sought answers to some specific questions outlined in the consultation. Comments on the summary of impacts and the draft legislation included in the consultation document were also welcomed. Responses were invited from businesses, trade bodies and other interested parties by 26 July 2011.

1.4 This document summarises the responses to that consultation, outlines the detailed design characteristics of MGD and sets out the Government's proposed next steps.

1.5 The consultation received 32 substantive written responses from businesses, industry representative groups and other bodies. Individual members of some trade associations also responded. A list of respondents is available in Annex A. A number of meetings with businesses and industry representative groups were also held as part of the consultation. A list of meetings held is included in Annex B.

1.6 Chapter 2 provides a summary of the responses received and outlines the Government's response to the issues raised. The Government has made some significant amendments to MGD following feedback received during the consultation.

1.7 Following the consultation, the Government has limited the scope of MGD to machines offering cash prizes greater than stakes. This will help to support many small family entertainment centres offering non-cash prize machines such as "crane grabs" and so called "redemption machines".¹ The Government has also excluded machines known as B3A lottery machines² from the scope of MGD.

¹ Redemption machines are machines which pay out in tickets which can be "redeemed" for a range of prizes.

² B3A lottery machines are a specific category of gaming machine which are only allowed to offer the opportunity to participate in a lottery. Their use is restricted to locations such as working men's clubs.

1.8 Changes made in regards to the administration of the duty following the consultation will also help decrease the administrative burdens of MGD. Such changes include a reduction in record keeping requirements and the introduction of a paper channel for filing returns.

1.9 As previously announced, there will be two rates of MGD. The Government has decided that the threshold for the lower rate of MGD will be set so that machines with maximum stakes of 10 pence and maximum cash prizes of £8 pay the lower rate. This threshold will ensure that all category D machines that will be subject to MGD, but that are currently not subject to AMLD, pay the lower rate of MGD. The rates will be determined as part of the normal Budget process.

1.10 Consultation responses on questions relating to administrative burdens and compliance costs have been used to inform the Tax Information and Impact Note, which has been published alongside this summary of responses document.

1.11 The planned implementation date for MGD is 1 February 2013. In accordance with the Government's framework for tax policy making, a revised draft of the primary legislation for MGD together with a draft Treasury Order has also been published for a technical consultation. Further information on next steps is outlined in Chapter 3. To help businesses prepare for implementation, Annex C provides an outline of the detailed design characteristics of MGD.

2

Responses to the consultation

2.1 The consultation asked a number of questions and received a wide variety of views and responses. Where necessary, Treasury and HMRC officials contacted or met with respondents to clarify statements they had made and to ask for further details. The responses received to the questions are summarised below.

General questions

The Government would welcome general views on the proposed policy design of MGD. Views on the draft legislation would be welcome in order to confirm, as far as possible, that it will achieve the intended policy effect.

2.2 Many companies and trade associations commented on the scope of MGD. They noted that MGD would extend beyond the current scope of AMLD and raised concerns that this would adversely impact on venues such as family entertainment centres commonly found at the seaside.

2.3 Some respondents, particularly those representing smaller businesses, noted that mandatory e-filing of returns would increase administrative burdens.

2.4 Suggestions were also put forward for changes aimed at limiting the impact of the VAT exemption. These included a *de minimis* limit for MGD to mirror the VAT threshold, allowing input VAT to be offset against MGD payable, adjusting the VAT capital goods scheme and a one year MGD holiday for new businesses. A few businesses and trade organisations also suggested that instead of introducing MGD, all gambling activities should be made subject to VAT.

The Government's response

2.5 The Government has listened to the concerns raised by industry and has limited the scope of MGD to machine games offering cash-prizes greater than stakes. Machines such as crane grabs and redemption machines only offering non-cash prizes will therefore remain subject to VAT. This will help to support many small family entertainment centres that are commonly found at British seaside resorts. However, as outlined in the response to the 2009 consultation on gaming machines, the scope of MGD will extend beyond the current scope of AMLD since there is no clear dividing line between "gaming machines" as currently defined and certain other machines.

2.6 The Government has also taken into consideration industry's concerns regarding e-mandation. To minimise administrative burdens for small businesses, the Government has decided to allow for manual registration and filing of returns, while also maintaining the option to register and file online.

2.7 In light of ongoing litigation, exempting dutiable machine games from VAT is necessary to protect tax revenues going forward. The suggestions put forward aimed at limiting the impact of the VAT exemption have not been adopted because they are either not permissible under EU law, would be highly complex to introduce, or would lead to significant avoidance risks.

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

2.8 Question 18 below discusses responses received on the summary of impacts.

Specific questions

Scope of Machine Games Duty

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

2.9 Some respondents identified no other categories of machines, or machine play, for which the legislation raised specific issues. Other respondents noted that machines currently exempt from AMLD would face particular issues, for example Skill with Prizes machines (SWPs).

2.10 Respondents noted that applying MGD to B3A lottery machines would make this type of machine “particularly vulnerable” as they are currently neither subject to AMLD nor VAT. Respondents argue that the result would be to threaten the financial viability of private members clubs where these machines are used.

2.11 Respondents also noted that multi-game terminals, which could cut across MGD tax categories, may have to be reviewed in the future.

The Government’s response

2.12 The Government has taken into account the concerns from industry regarding category B3A lottery machines, and has decided to exclude these from MGD. This will support members’ clubs (such as working men’s clubs) and miners’ welfare institutes, where these machines are located.

2.13 The wider scope of MGD is discussed under “general questions” above.

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

2.14 Responses relating to tournaments were mixed. Some respondents preferred tournaments to remain outside the scope of MGD whereas others raised concerns that excluding them would increase administrative burdens. However, very few examples were provided of machines where administrative burdens would increase.

The Government’s response

2.15 In light of the mixed views from industry, the Government has decided to keep tournament play outside the scope of MGD. To minimise any increase in administrative burdens, businesses will also be allowed to use just and reasonable apportionment when it is difficult to identify exactly what proportion of takings are attributable to tournaments.

(Question 3) Under the suggested approach for redemption machines, it is the value of prizes and a number of tickets for which they can be redeemed that are used to determine MGD liability. The tickets themselves will not be treated as having a specific value for the purposes of MGD. (i) What administrative issues or burdens would the suggested approach impose? (ii) Would you prefer if MGD liability was calculated based on valuing the tickets themselves? If so, how should the value of the tickets be determined? (iii) Do you have any suggestions for a simplified approach to redemption tickets? Any approach will need to provide a fair result, and

ensure that similar machines are treated the same. We would be interested in seeing worked step-by-step examples of how any suggested approach would be applied for redemption machines, in particular, looking at the interaction with the VAT partial exemption calculation.

2.16 Some operators expressed no objections to the proposed approach. However, others expressed a preference for redemption machines to remain outside the scope of MGD. They argue that redemption machines are a form of “novelty retailing”, and that including them in MGD would significantly increase businesses’ administrative burdens.

2.17 Under the proposed treatment of redemption machines outlined in the consultation document, operators could end up with some redemption machines subject to VAT and others to MGD. Many respondents believed that this would be impractical, and that it would be better if all redemption machines were treated the same.

The Government’s response

2.18 As discussed under “general questions” above, only machine games with cash prizes greater than stakes will be included in the scope of MGD. This will ensure that all redemption machines which pay out tickets that can be exchanged for a range of non-cash prizes remain outside the scope of MGD. This will help support many small family entertainment centres that are commonly found at British seaside resorts.

Liability for the duty

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

2.19 Many respondents expressed no concern with the proposals for primary liability for MGD as set out in the draft legislation. Some mentioned that contracts would need to be renegotiated, but did not believe that this would pose any significant problems.

2.20 However, businesses from different sectors of the industry objected to the proposed joint and several liability of directors for the duty. Particular concerns were raised in regards to how the joint and several liability would apply to clubs, where many officials are volunteers.

The Government’s response

2.21 Following the responses received, the Government has listened to the concerns raised and has removed the joint and several liability of directors for the duty. This is in accordance with the liability provision that currently exists for VAT.

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

2.22 Most respondents did not answer this question. Of those that responded, some were content with the existence of a choice, whereas others thought it would be better if the legislation provided clarity by firmly placing the liability on the tenant. No respondent requested that the liability should lie with the landlord.

2.23 All respondents to this question expected that it would be the tenant that would pay the duty if the legislation provided a choice.

The Government's response

2.24 The Government has given careful consideration to the liability for the duty of tenanted pubs. While a choice would provide more flexibility it would also give rise to uncertainty. As all respondents expected the tenants to pay the duty in practice, the Government has decided that on balance, it is better to clarify in the legislation that it is the tenant that will be liable to pay the duty.

Net takings from a machine

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

2.25 Many respondents did not answer this question as they did not have any machines falling into this category. Those that did respond identified a number of machines which would have both machine games and non-machine game activity on them.

2.26 Some large businesses and trade associations stated that with the help of "server based gaming", it would be relatively simple to separate the takings stemming from machine games and non-machine game activities. However, other respondents thought that identifying the net takings from the different activities would be impracticable, with the technology required to do so expensive.

2.27 Few respondents gave suggestions for apportionment methods, and no consensus was reached among those that did. One suggestion was to base any apportionment on the results of a sufficiently complete sample period.

The Government's response

2.28 After considering the mixed responses, the Government has decided to continue with the approach suggested in the consultation. As such, where machines provide both dutiable machine games and non-machine game activities, only the net takings from the dutiable machine games will be subject to MGD. It will be for each business to identify what constitutes a just and reasonable basis for apportionment, but HMRC will reserve the right to challenge the apportionment basis.

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

2.29 The majority of respondents expressed a preference for excluding all free plays from dutiable takings. They argued that taxing free plays would seriously undermine genuine promotional business activities.

2.30 Some respondents noted that the distinction between "genuine" and "earned" free plays was unclear and would give rise to uncertainty. Many respondents identified that having different treatments between the two types of free plays would result in an increased administrative burden as it would require new administrative procedures.

The Government's response

2.31 The Government recognises the importance of free plays to the gambling industry. It has therefore decided to exclude everything that can reasonably be described as a free play from the calculation of dutiable takings, subject to targeted anti avoidance provisions to safeguard revenue. As such, free plays (or reduced plays) will be treated in line with the stakes actually payable except where a specific anti-avoidance provision applies.

The rate structure

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

2.32 A number of individual companies provided this information on a confidential basis. Some trade associations also provided estimates of what rates they believed would lead to revenue neutrality.

2.33 Some respondents pointed to weaknesses in the Gambling Commission Industry Statistics 2009-10. In particular, they commented on the lack of information for areas such as unlicensed family entertainment centres, pubs and SWP machines. However, respondents also noted that the statistics served as a useful "reference point".

The Government's response

2.34 The rates of MGD will be determined as part of the normal Budget process. The Government will take into consideration information provided during the consultation when setting rates.

2.35 While the Gambling Commission Industry Statistics will provide a reference point, data received during the consultation will be used to corroborate and supplement this, as appropriate.

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

2.36 Following the previous consultation, the Government decided that there will be two rates of MGD. The number of rates was therefore outside the scope of this consultation. However, many respondents still made representations on the number of rates. In particular, some respondents argued for a single revenue neutral rate of MGD whereas others argued for three or four rates of MGD.

2.37 Many businesses and trade associations noted that machines were typically offered at the maximum stake and prize level allowed under social regulation. However, in some sectors machines were offered on a more variable stake and prize level depending on the preferences of each individual premises. The responses also indicated that while stake and prize limits vary, many SWP machines offer prizes worth up to £50.

2.38 Responses were mixed in regards to the possibility and desirability of adapting the limits on existing machines. Some noted that there would be substantive reprogramming costs to alter machines to take advantage of any differences and others said that whether or not machine

limits would be altered would depend on the tax differential between the two rates. The majority of respondents stated that they preferred the rates thresholds to be set at levels corresponding to the categories of machine as set out in social regulation. However, there was no consensus of where the threshold, or thresholds, should lie.

The Government's response

2.39 The Government has given careful consideration to the MGD rate structure in light of responses received. Two rates of MGD will decrease the tax burden on machines below certain thresholds of stakes and prizes, compared to if only one rate of duty had been introduced. However, if there were more than two rates, administrative burdens would increase, and some operators would also face a very significant increase in tax burdens. On balance, the Government has therefore decided to maintain two rates of MGD, as previously announced.

2.40 The Government has further decided that the threshold for the lower rate of MGD is set so that machines with maximum stakes of 10 pence and maximum cash prizes of £8 pay the lower rate. This threshold will ensure that all category D machines that will be subject to MGD, but that are currently not subject to AMLD, pay the lower rate of MGD.

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

2.41 Responses to this question were mixed. Some supported the proposal of having the rate of duty determined at machine level since that would make the duty calculation easier and would ease administrative burdens. Others preferred the rate of duty to be determined at the level of each game, arguing that this would be more "fair".

2.42 Many responses noted that it would be possible to account for two different rates of duty on machines. However if the machine did not have the appropriate technology already installed it would be costly to do so.

The Government's response

2.43 In light of the mixed responses, and to minimise administrative burdens, the Government has decided to maintain its plans to apply duty rates *per machine* rather than *per game*.

Administration of MGD

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

2.44 Most respondents had no objection to providing individual premises details to HMRC, although a few commented that it would see increased administrative burdens. Many also commented that they would like an option to register as an "MGD group", so that a representative member could file a single return and make one payment per quarter (similarly to what is currently allowed under VAT).

2.45 Respondents offered no consensus on whether it would be administratively burdensome to verify whether someone is registered for MGD. Some highlighted the need for an up-to-date public register of those registered for MGD, to allow profit sharers to take all reasonable steps to protect themselves from any MGD liability.

The Government's response

2.46 To minimise burdens on businesses, the Government will allow companies to register as an "MGD group" (subject to certain conditions) as requested during the consultation.

2.47 To address the concerns raised by profits sharers as part of the consultation, the Government will publish a free "look up" facility allowing profit sharers to identify whether someone is registered for the tax.

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

2.48 All respondents who answered this question supported quarterly accounting periods.

The Government's response

2.49 Following industry responses, the Government will introduce quarterly accounting periods.

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

2.50 For some respondents, fixed return periods would pose no additional administrative problems. However, others said that it could pose an additional burden.

The Government's response

2.51 In accordance with the consultation responses, the Government will allow accounting periods to span any three consecutive months.

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

2.52 Most respondents supported the proposal for special accounting periods. They argued that not having special accounting periods would increase the administrative burden on business as "unnecessary manual calculations would be required to manipulate the data".

The Government's response

2.53 Following concerns raised during the consultation, the Government will allow special accounting periods for MGD.

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

2.54 Responses to this question offered no consensus. Some did "not see any rationale for keeping records in any other way" to help ensure the correct payment of tax. However, many small businesses commented that the proposed approach was not necessary and would add to the administrative burden on business. Some businesses also suggested alternative ways a

dispensation could be made. Such alternative suggestions included only keeping records for groups of machines, for a short period of time, or only for operators posing compliance risks.

The Government's response

2.55 To address the concerns raised by industry the Government will not require record keeping per machine as standard. However, to address compliance risks, HMRC will be able to direct that individual machine records are kept in circumstances where they have specific concerns about individual tax payers. Also, where operators already keep records per machine, they may be obliged to continue to do so.

Tax impact assessment

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

2.56 Some respondents agreed with the estimated costs. However, many others thought that the estimated compliance costs for business were underestimated. Some of these stated that they thought the estimate only covered the cost of making the return itself and not the cost of producing and validating the return.

2.57 Other respondents found it difficult to comment without further knowledge of the requirements under MGD.

The Government's response

2.58 The Government has taken into consideration industry's responses in the revised Tax Information and Impact Note published alongside this summary of responses. A final summary of impacts will be produced at Budget when rates have been decided.

2.59 Changes made to the design of the duty in response to this consultation will serve to reduce the administrative burdens of MGD. Examples include the exclusion of machines which only have non-cash prizes from the scope of MGD and the removal of the default requirement to keep individual machine records.

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

2.60 Many respondents agreed with the overall assumptions on changes in VAT status, or found them "reasonable". However, some felt that the impact of the VAT capital goods scheme had not been taken into account. Others thought that the impact on the pub industry was underestimated.

2.61 Those who expected to become partially exempt for VAT anticipated a significant increase in administrative burdens.

The Government's response

2.62 The Government has taken into consideration industry's responses in the revised Tax Information and Impact Note.

2.63 The Government recognises that exempting dutiable machine games from VAT will increase burdens for some businesses. However, in light of the ongoing litigation, exempting dutiable machine games from VAT is necessary to protect tax revenues going forward.

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

2.64 Many respondents provided comments on the overall assessment of impacts. In particular, many respondents thought that the assessment of impacts did not fully take account of the impact stemming from B3A machines, category D machines, SWP machines and the impact of VAT partial exemption.

The Government's response

2.65 The Government has taken the consultation responses into consideration in the revised Tax Information and Impact Note.

3

Next steps

3.1 The draft legislation published in May has been revised in light of changes made to the design characteristics following the consultation. The revised draft legislation has been published for a technical consultation and is available on the HM Treasury website, www.hm-treasury.gov.uk. A Tax Information and Impact Note as well as explanatory notes to the draft legislation have also been published.

3.2 The draft legislation will be open to consultation until 10 February 2012. Please address any comments on the draft legislation to Katherine Mansfield in HM Revenue and Customs on Katherine.Mansfield@hmrc.gsi.gov.uk, or 0161 827 0308.

3.3 The Government intends to publish the secondary legislation covering the administration of the duty in early 2012.

3.4 The rates of MGD will be determined as part of the normal Budget process.

3.5 Following legislation in Finance Bill 2012, the Government plans to introduce MGD on 1 February 2013. HMRC will issue guidance to help businesses prepare for MGD implementation.

A

List of respondents

A.1 A total of 32 substantive responses to the consultation were received from trade associations, other bodies and gambling companies. We are grateful to all participants who have taken the time to respond to the Consultation.

A.2 Substantive responses were received in writing from the following groups:

Trade associations and other bodies:

- The Association of British Bookmakers (ABB)
- The Association of Conservative Clubs
- The Association of Licensed Multiple Retailers (ALMR)
- The Bingo Association
- The British Amusement Catering Trade Association (BACTA)
- The British Association of Leisure Parks, Piers and Attractions (BALPPA)
- The British Beer and Pub Association (BBPA)
- Business in Sport and Leisure (BiSL)
- The National Casino Industry Forum (NCiF)
- The National Piers Society
- The Working Men's Club and Institute Union (WMCIU)

Gambling companies and other businesses:

- Cuerden Leisure
- Dransfield Novelty Co Ltd
- Gala Coral Group
- Genting Casinos UK
- Green King
- H Backhouse (Baker Street) Ltd
- JD Wetherspoon
- Ladbrokes PLC
- Marston's PLC
- Paddy Power PLC
- Praesepe PLC
- Sceptre Leisure
- Swallow Amusement Machines
- Talarius
- The Nobel Organisation Ltd
- The Rank Group PLC
- Valiant Sports Ltd
- Wadbrook Leisure
- Whitbread
- William Hill PLC
- Winners Gaming Ltd

A.3 In addition to these responses, several written responses were also received from individual members of the gambling trade associations, particularly BACTA members. The responses from BACTA members followed a template format, fully supporting BACTA's views. Some responses received in this format did not include any information regarding the company or respondent,

and so were not recorded. Additionally some responses submitted by e-mail failed to open or were sent multiple times by the same company so were not recorded.

The following BACTA members and other businesses supported the BACTA consultation response:

- Alloo Amusements
- Amusement Equipment Co Ltd
- Amusement World Ltd
- Armitage Leisure Service
- Astra Games Ltd
- Automatic Machine Services Ltd
- Barcrest Group
- Bell-Fruit Games Ltd
- Bellmatic
- Billy Manning Ltd
- Booths Enterprise
- Brian Newton Leisure Ltd
- Broadstairs Leisure
- Cain's Amusements Ltd
- Cambells Amusements
- Capital Coin Machine Co Ltd
- Carefree Amusements Ltd
- Clacton Pavilion PLC
- Clacton Pier Company Ltd
- Coastal Amusements Ltd
- Cointron Amusements
- Cromptons Genuine Spares LLP
- Cullis Amusements
- Dealpraise Ltd
- DJC (Amusements) Ltd
- Doubleday Automatics
- D P Leisure
- Dunes Adventure Island
- Electrocoin
- Eliteplayer Ltd
- Empire Games Ltd
- Enterprise Amusements
- F Simmonds & Sons
- Fair City Amusements Ltd
- Family Amusements Ltd
- Five Fifty Ltd
- Flamingo Leisure Ltd
- Fletchers Automatics (Rednal) Ltd
- Funspot Ltd
- Gaiety Clacton Ltd
- Gailygain Ltd
- Game Concepts International LLP
- Games Media
- Games Warehouse
- Gemini Games Ltd
- Grand Pier Ltd
- H B Leisure Ltd
- Halliday Leisure
- Harbour Amusements

- Harker Leisure Ltd
- Harry Levy Amusement Contractor Ltd
- Holdsworth Amusements
- Hull's Enterprises Ltd
- Instance Automacis Ltd
- Itm leisure Ltd
- Ivor Thomas Amusements Ltd
- J R Seldon & Sons Ltd
- John Icke Automatics Ltd
- JSP Leisure Ltd
- Keeday Leisure Equipment Ltd
- Kingston Leisure Ltd
- Las Vegas Amusements Ltd
- Leisure Electronics Ltd
- Linland Ltd
- Lordsdale Estates Ltd
- Machine Rentals Ltd
- Manning's Amusement Parks Ltd
- Marshalls Amusements Ltd
- Mendip Coin Co
- Millers Amusements Ltd
- Mitonsede Ltd
- Money Controls Ltd
- MSL Leisure
- Namco Operations Europe Ltd
- New Coin Automatics Ltd
- New Walton Pier Company Ltd
- Nickelodeon Ltd
- Noble Leisure Co Ltd
- Northumbria Leisure Ltd
- Oasis Family Leisure Ltd
- Oldland Leisure
- Phoenix Leisure Ltd
- Pier Amusments Felixstowe Ltd
- Pier View Amusements
- Porthcawl Ltd
- Prize Planet Arcade
- Project Coin Machines Ltd
- Queensgate Leisure Services Ltd
- Reflex Gaming Ltd
- Riviera Leisure Ltd
- RLMS Sales Ltd
- Rowland & Rowland Ltd
- Rubicon Pastimes Ltd
- SAL Leisure Ltd
- Sandancer Leisure Ltd
- SE Leisure
- Sega Amusements Europe Ltd
- Shipley Investments Ltd
- Shoppers Luck
- Silcock Leisure Group Ltd
- Sims Automatics Ltd
- Slot Leisure Ltd
- Stade Developments (Hastings) Ltd

- Stonegate Pub Company Ltd
- T & D Leisure Ltd
- Taylor Made Fun Ltd
- Teddy Clark Group
- The Bollom Organisation Ltd
- The United Distributing Company
- Thomas's Entertainments Ltd
- Town and county Leisure
- Treatview Ltd
- Triangle Amusements Ltd
- UK Piers Ltd
- Vauxhall Holiday Park Ltd
- W. Underwood amusements Ltd
- Wadbrook Leisure
- Warwicks Amusements Blackpool
- Websons 8 Ltd
- Welcome Break Holdings Ltd
- Wharton Amusements Ltd
- Wheel of Fortune
- White Leisure Ltd
- Whittaker Bros
- World of Rides
- Zenastar Ltd

A.4 There were also 15 responses from individuals employed within the gambling sector. These responses generally supported their employers' support of the BACTA consultation response.

B

List of meetings

B.1 During the course of the consultation, officials met with representatives and members from the following groups:

Trade associations and other bodies:

- The Association of British Bookmakers (ABB) (7 July 2011)
- The Association of Licensed Multiple Retailers (ALMR) (21 July 2011)
- The Bingo Association (22 July 2011)
- The British Amusement and Catering Trade Association (BACTA) (27 June 2011; 4 July 2011; 5 July 2011)
- The British Association of Leisure Parks, Piers and Attractions (BALPPA) (23 June 2011)
- The British Beer and Pub Association (BBPA) (18 July 2011)
- Business in Sport and Leisure (BISL) (14 June 2011)
- The National Casino Industry Forum (NCiF) (21 July 2011)
- The Working Men's Club and Institute Union (WMCIU) (27 July 2011)

Individual companies:

- Backhouse (7 July 2011)
- Broadstairs Leisure (4 July 2011)
- Carefree Amusements Ltd (5 July 2011)
- Dreamland Ltd (4 July 2011)
- Ernst & Young (5 July 2011)
- Free Enterprise Operations (12 July 2011)
- Gala Coral Group (7 July 2011; 21 July 2011)
- Genting UK PLC (21 July 2011)
- Harker Leisure (27 June 2011)
- Harry Levy Ltd (4 July 2011)
- HB Leisure (23 June 2011; 27 June 2011)
- Inspired (7 July 2011)
- KPMG (14 June 2011)
- Ladbrokes PLC (7 July 2011)
- Les Ambassadeurs (21 July 2011)
- London Clubs International PLC (21 July 2011)
- Littlehampton Amusement Park (23 June 2011)
- Mitchells and Butlers (18 July 2011)
- The Noble Organisation (4 July 2011)
- Paddy Power PLC (20 July 2011)
- Parker Leisure (27 June 2011)
- Praesepe PLC (14 June 2011)
- The Rank Group PLC (21 July 2011)
- SE Leisure Ltd. (4 July 2011)
- Talarius (22 June 2011)
- Tir Prince (27 June 2011)
- Weston Super Mare Pier (23 June 2011)
- William Hill PLC (7 July 2011)



Outline of Machine Games Duty

C.1 This annex provides an outline of the detailed design characteristics of MGD, and is intended to help businesses prepare for implementation.¹

Key design features

Dutiable machine games

C.2 Machine games subject to MGD (“dutiable machine games”) will be those where customers pay to play a game on a machine in the hope of winning a cash prize which is greater than the cost to play. Where MGD is payable, it will replace both Amusement Machine Licence Duty (AMLD) and VAT.

C.3 Machine games which only offer the opportunity to win non-cash prizes (“non-cash machine games”) will be entirely outside the scope of MGD. They will, as at present, be subject to VAT. Non-cash machine games include so called “redemption games” which pay out in tickets (but only if no cash is on offer either from the machine itself or in exchange for the tickets, otherwise the game is a mixed game – see below).

C.4 Where a machine offers a game with both cash and non-cash prizes (“mixed game”), it is the size of the cash prize alone which will determine whether or not there is a liability to MGD. In other words, MGD will be due where the cost to play is less than the largest potential cash prize.

C.5 Games played on machines where the cost to play is always equal or higher than the largest potential prize will not be dutiable machine games, and so will remain subject to VAT. In practice, most offerings along these lines are forms of vending machines.

C.6 Where machine games are played on a personal computer that can be used for other purposes but is capable of being used to play machines games, there will not normally be any MGD liability. This will be subject to provisions designed to deal with duty avoidance. Game-play on computers used on “domestic occasions” (which may include occasions both inside and outside the home but will depend on individual circumstances) will not be subject to MGD.

C.7 Net takings from machine game-play at not-for-profit events will be exempt from MGD, subject to restrictions in relation to private gain and provided that the playing of machine games is not the main focus of any event.

C.8 Net takings from lottery machines which comply with the regulatory requirements for Category B3A lottery machines will be exempt from MGD. Their takings will also continue to be exempt from VAT.

C.9 Net takings from tournaments will be exempt from MGD. For MGD purposes a tournament is a situation where a player competes for a prize or set of prizes against at least one other player regardless of whether play is at the same time, in the same place, or on the same

¹ Whilst this Annex is intended to provide a fair and accurate summary of the published draft legislation, and of the remaining secondary legislation which is being prepared, nothing in the summary is intended to qualify or amend anything in that legislation.

machine. However, there is no tournament if one or more of the “players” are not human (eg if the machine is “standing in” for one or more players). The fact that a machine game is subject to payout management (compensation) which may mean that what one person wins is determined by whether another person has won does not, in itself, mean that there is a tournament. Likewise, there is no tournament just because there is a link between the outcomes of two or more machine games.

Geographic Scope

C.10 MGD will be charged on the playing of dutiable machine games in the UK.

C.11 For MGD purposes, ships entering or leaving the country will only be treated as being in the UK when they are in port. This means that there will be no MGD liability on machine games on a foreign-going ship other than if the machine games are left in use when the ship is docked.

Net takings from a machine

C.12 MGD will be due on the net takings from the playing of dutiable machine games. Net takings means amounts due to play less amounts paid out as winnings.

C.13 In the case of mixed games (see C.3 above), it will be possible to deduct both the cash prizes and the value of non-cash prizes when calculating net takings. The value of non-cash prizes that can be deducted will include any VAT input tax paid on the purchase of the prize. Alternative arrangements may be needed where the records kept do not allow precise values to be used, for example where a voucher can be exchanged for a choice of prizes.

C.14 Where a machine offers both dutiable machine games and other activities, the net takings from the playing of the dutiable machine games will be subject to MGD with the remainder being subject to VAT.

C.15 Everything that can reasonably be described as a free play will be excluded from the calculation of net takings, subject to targeted anti avoidance provisions. As such, free plays (or reduced plays) will be treated in line with the stakes actually payable except where a specific anti avoidance provision applies. For the purposes of calculating net takings, it will still be possible to deduct winnings from these plays.

C.16 Provisions will be made so that an appropriate amount of MGD will be payable where an amount is charged for something other than machine game-play but an opportunity to play machine games is “bundled” with that charge.

Rate structure

C.17 There will be two rates of duty: a standard rate and a lower rate.

C.18 The lower rate will apply to machines with maximum stakes of 10 pence and maximum cash prizes of £8. This means that all dutiable machine games classified as “category D machines” for the purposes of social legislation will be subject to the lower rate of MGD.

C.19 The rates will be set at Budget 2012.

C.20 It will be possible to net off losses across all machines for which a person is responsible. It will also be possible to carry across a negative net duty liability to the next accounting period but it will not be possible to seek a refund of duty in these circumstances.

Liability for the duty

C.21 Where a relevant licence or permit is held for the premises on which a dutiable machine game is located the person holding that licence or permit will be required to register with HMRC to pay MGD. Relevant licences or permits are as follows.

In Great Britain:

- Local authority premises licence
- Family entertainment centre gaming machine permit
- Club gaming permit
- Club machine permit
- Prize gaming permit
- On-premises alcohol licence. However, in the case of a tenanted pub where the licence is held by someone other than the tenant the tenant will nevertheless be required to register for and pay the duty
- Club premises certificate

In Northern Ireland:

- Registration certificate including a club registration certificate
- Bookmaking office licence
- Bingo club licence
- Amusement permit
- Licence allowing the serving of alcohol

C.22 Where no licence or permit is held, each of the following may be liable for MGD:

- A person who is required to hold a relevant licence or permit but does not, in fact, hold such a licence/ permit
- The owner, lessee or occupier of premises
- A person who is responsible for the management of the premises
- A person responsible for controlling the use of machine games
- A person responsible for controlling admission to the premises

C.23 It will be required that one of the persons in C.22 registers for MGD in respect of the premises. In that case, the registered person (and none of the other persons listed) will be liable for MGD. However, if there is no registration then all those listed will be treated as jointly and severally liable for unpaid duty.

C.24 If no one is registered for MGD in respect of premises and HMRC cannot identify a person required to register (ie the person required to register is “missing”) then anyone liable to a share of profits from machine game-play may be liable to duty due on their share. The register (see below) will be publicly available and will allow profit sharers to check whether or not a registrable person with whom they wish to enter into a profit share arrangement is, in fact, registered for MGD.

VAT

C.25 Machine games subjected to MGD will be exempt from VAT. This will mean that some businesses will become fully exempt for VAT purposes and others will become partially exempt. This may affect the amount of input tax that can be claimed by a VAT-registered business. Input tax cannot be claimed in respect of expenditure relating directly to exempt supplies. Additionally, input tax incurred that relates to both taxable and exempt supplies will need to be apportioned.

C.26 Where relevant, partial exemption calculations will need to be undertaken each quarter to identify the amount of input tax that can be claimed. The normal VAT rules will apply.

MGD Administration

Submission of registration applications and returns to HMRC

C.27 It will be possible to apply for registration and submit returns online by means of a dedicated system or by means of paper forms.

Accounting periods

C.28 The standard accounting period will be three calendar months (organised in three staggers starting January, February and March) with a facility for special accounting periods by agreement with HMRC.

The register and the registration process

C.29 Applications for registration for MGD will be made to HMRC in advance of machine games being made available for play on the online system or by means of a paper form. Information required on an application will include: type of business, number of machines, any request for a special accounting period, and indication if it is wished to pay by Direct Debit.

C.30 Where an applicant does not hold a relevant licence or permit HMRC will require details of all the premises in respect of which the applicant wishes to register. (However, where a relevant licence or permit is held, details of all premises will not be required.)

C.31 Once HMRC has considered and accepted an application², relevant information about the person³ will be placed on the register and a confirmation of registration will be issued to the person showing the MGD registration number.

C.32 The register will be publicly available in the form of a free online “look up facility”. An enquirer will input a postcode and the facility will display address details of all registered premises at that postcode. HMRC are also considering making a telephone service available in some circumstances which will work in a similar way.

C.33 In certain circumstances, HMRC may require that an applicant provides security for payment of duty before his registration is accepted. In some cases where an applicant gives a non-UK address HMRC may make acceptance of the registration conditional on the appointment of a tax representative in the UK.

C.34 Persons on the register will be obliged to notify HMRC about any changes which will affect the information given at registration.

C.35 It will be possible for two or more entities to request registration as a group. Group registration will normally be allowed provided that all proposed members are corporate bodies,

² The fact that HMRC has confirmed receipt of an application to register will not mean that the applicant has been accepted onto the register.

³ The term “person” is used to include reference to a company or other legal entity.

have a controller in common, are resident in or have an established place of business in the UK, and have given their consent to join the group. It will be necessary for one group member to take on the role of group representative. It is intended that all members will be jointly and severally liable for MGD due.

C.36 HMRC will be able to register someone compulsorily. Compulsory registration will be subject to a right of appeal.

C.37 Registered persons who cease to be eligible to register will be required to deregister.

Returns and payments

C.38 Returns will be required to be made one month from the end of the accounting period.

C.39 It will only be necessary for a registered group to submit a single return in respect of all group members.

C.40 The return will require figures on, for example, net takings from dutiable machine games. If it is not possible to establish the precise figures needed for the return in the situations listed below, HMRC may accept an apportionment provided this is on a just and reasonable basis (HMRC may check the apportionment method used).

- The rate/s of duty change/s during the accounting period and it is not possible to establish which were the dutiable takings before and after the change.
- It cannot be established which takings attached to higher/ lower rated dutiable machine games or which attached to dutiable machine games and non-dutiable activities.
- There is a change in the type of dutiable machine games provided for play during the accounting period (eg from lower to higher rated dutiable machine games) and it is not possible to establish which takings attached to the period before or after the change.
- The value of a non-cash prize cannot be established.
- A single amount is paid for several "turns" on a machine game and it is not possible to establish the cost of an individual turn.

C.41 HMRC will accept MGD payment by: variable Direct Debit, Bankers' Automated Clearing Service (BACS) and Clearing House Automated Clearing System (CHAPS). In situations where HMRC is taking enforcement action to recover a debt it will be possible to make payment by credit or debit card.

Record keeping

C.42 Individual machine records will not be required to be kept as a matter of routine. However, HMRC will have the power to direct that individual machine records are kept in circumstances to address compliance risks.

C.43 The normal requirement will be for records to be kept for six years. HMRC will have discretion to allow that records be kept for a shorter period.

C.44 The general provisions applying to all excise duties require "revenue traders" to keep certain records. Those who are responsible persons for the purposes of MGD will be revenue traders and subject to these requirements. Record keeping for revenue traders is explained in detail in HMRC Notice 206 (dated March 2002).

Compliance approach

C.45 As a duty of excise, MGD will be subject to the strengthened excise powers regime which came into effect in April 2011. This provides, in particular, for extended powers of entry and a four year time limit for assessments and claims. It also provides for an Excise Information Notice by means of which information about excise traders can be obtained from third parties.

C.46 HMRC officers will be able to require that a machine on which machine games are played is opened up for inspection or that other action is taken with a view to explaining the takings and MGD liability. They will also be able to seize machines on which dutiable machine games can be played in certain circumstances.

C.47 HMRC will carry out MGD compliance activities in line with the HMRC charter. This sets out HMRC's aim to provide customers with a service that is even-handed, accurate and based on mutual trust and respect. It also stresses that HMRC wants to make it as easy as possible for customers to get things right.

Phasing out AMLD

C.48 The current AMLD regime will end on 31 January 2013. This section describes the process leading up to the AMLD end-date.

C.49 AMLD licences are taken out in periods of whole months up to 12 months. Anyone who pays for a licence to run beyond 31 January 2013 will be entitled to a full refund of any amount relating to a period after 31 January 2013 (calculated by reference to the precise number of days left on the licence). HMRC do not intend to make these refunds before February 2013.

C.50 Applicants for AMLD licences will be encouraged to take out licences for periods in whole months ending on a date in January 2013 (for many this will mean taking out a licence of less than 12 months). After the Finance Bill 2012 receives Royal Assent it will no longer be possible to pay for licence periods beyond 31 January 2013.

C.51 Where a period of less than one month remains between the expiry of an AMLD licence and 31 January 2013 the licence holder will be expected to pay an additional amount calculated by reference to days unpaid to 31 January 2013. This will be known as the "daily transitional payment". Provided a correct daily transitional payment is made an AMLD licence held and which expires in January 13 will be deemed to continue to 31 January 2013 even if it would otherwise expire in the month before that date. If a daily transitional payment is required but not paid then this will be treated by HMRC as an AMLD debt.

C.52 In Autumn/Winter 2012, HMRC will write to those licence holders who paid for their licences in cash detailing any daily transitional payment requested and explaining how to pay.

C.53 Where a licence holder pays by Direct Debit instalment the amount of any daily transitional payment due will be taken by Direct Debit in January or February 2013. In accordance with the Direct Debit rules, licence holders will be notified of the amounts to be taken.

C.54 Those who hold large numbers of licences and who as part of the normal AMLD renewal procedure receive a detailed print-out of all licences held will be sent a print-out along with any daily transitional payment request.

C.55 All AMLD licences will cease to be valid from 1 February 2013 regardless of whether they show a validity date after then (see above in relation to refunds). HMRC will continue to be able to collect outstanding AMLD debts after 31 January 2013.

C.56 Dutiable machine games will be liable to MGD from 1 February 2013 even if someone holds an AMLD licence in respect of the relevant machines showing a validity date after then.

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This document can be found in full on our website: <http://www.hm-treasury.gov.uk>

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ISBN 978-1-84532-915-0



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