

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (BETTING, GAMING AND LOTTERIES) ORDER 2007
2007 No. 2163

1. This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

2.1 Group 4 of Schedule 9 to the Value Added Tax Act 1994 (“VATA”) exempts betting, gaming and lotteries from VAT. This Order amends Group 4 to reflect the coming into force of the Gambling Act 2005 (“the Gambling Act”) on 1st September 2007.

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

3.1 The aim of this Order is broadly to maintain the existing VAT exemptions. However the underlying gaming legislation is complex and the changes introduced in Great Britain by the Gambling Act are very significant. As a result there are three respects in which the Order will have the effect of abolishing the exemption of a supply without zero-rating it. Section 97(3) and (4)(c)(iii) of VATA therefore require that this Order be approved by the House of Commons within 28 days of the date on which it was made, subject to extension for periods of dissolution, prorogation or adjournment for more than 4 days.

3.2 The respects in which the Order will have the effect, in Great Britain, of abolishing the exemption of a supply, without zero-rating it, are:

- Participation fees charged for gaming against the house become subject to VAT at the standard rate. This reflects the fact that charging fees for gaming against the house is permitted for the first time by the Gambling Act. However it is believed that competitive pressures mean that in practice most operators will choose not to introduce such fees. Gaming against the house refers to games such as roulette or blackjack, in which the player plays against the gambling operator, rather than against other players, as is the case in games like bingo and poker.
- The Gambling Act 2005 (Limits on Prize-Gaming) Regulations 2007 (S.I. 2007/1777) made under section 293 of the Gambling Act introduce, for the first time, a limit on the aggregate value of non-cash prizes which may be offered in prize gaming. Should this £500 limit be exceeded the gaming in question will be subject to VAT at the standard rate. Such gaming would however be illegal.
- Illegal gaming becomes subject to VAT at the standard rate.

3.3 The timing of the making and laying of this Order was determined by three factors, namely:

- The need to consider the relevant secondary legislation being made under the Gambling Act by the Department for Culture, Media and Sport. The Gambling Act 2005 (Limits on Prize-Gaming) Regulations 2007 were made on 20 June 2007. The Gambling Act 2005 (Operating Licence Conditions) Regulations 2007 were approved in draft by Parliament on 17 July 2007; it is anticipated that they will be made shortly.
- Note (5)(a) inserted by the Order creates an exception for the playing of a game of chance which is remote gaming for the purposes of remote gaming duty. Sections 26A – 26M (remote gaming duty) are inserted into the Betting and Gaming Duties Act 1981 (c. 63) by Part 1 of Schedule 1 to the Finance Act 2007 (c. 11), which received Royal Assent on 19 July 2007. (It is anticipated that the provisions of Schedule 1 will be brought into force with effect from 1st September 2007.) This Order could not be made prior to the Finance Act 2007 receiving Royal Assent.
- The need for the Order to come into force on 1st September 2007, the date on which the provisions of the Gambling Act generally come into force in Great Britain. If the Order does not come into force on that date, Group 4 of Schedule 9 to VATA will refer to social legislation which has been repealed.

3.4 As a result this Order had to be made and laid after the Finance Act 2007 received Royal Assent, but with a view to the Order coming into force on 1st September 2007. The Order was made, and laid before the House of Commons, shortly after the Finance Act 2007 received Royal Assent. That did not however leave sufficient time to arrange a debate before the Recess. The debate will therefore have to take place after the Recess, by which time the Order will have come into force.

4. Legislative Background

4.1 This Order updates Group 4 of Schedule 9 to VATA in relation to participation fees for playing bingo and other games of equal chance, to reflect the coming into force of the Gambling Act. It also taxes charges, as opposed to stakes risked in the game, made for games of chance against the house, which will be permitted under the Gambling Act, while continuing to exempt charges for remote gaming. The scope of the existing exemptions is broadly maintained.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, Angela Eagle MP, has made the following statement regarding Human Rights:

In my view the provisions of the Value Added Tax (Betting, Gaming and Lotteries) Order 2007 are compatible with the Convention rights.

7. Policy background

7.1 Under the EU VAT regime betting, lotteries and other forms of gambling are exempt from VAT, although Member States have a discretion to apply conditions and limitations to this exemption. Items 1 and 2 of Group 4 of Schedule 9 to VATA exempt betting, gaming and lotteries from VAT.

7.2 In Great Britain, Note (1)(b) to Group 4 currently excludes from the exemption charges for participating in gaming where these charges are "... made by virtue of regulations under section 14 of the Gaming Act 1968...". Such charges are subject to VAT at the standard rate. The Gaming Act 1968 ("the Gaming Act") prohibits operators from charging participation fees, unless they are specifically permitted under that Act. Most participation fees are permitted under section 14, which only allows gambling operators to charge participation fees for bingo in licensed premises and player-to-player games in casinos (often known as 'card room fees').

7.3 In Northern Ireland, Note (1)(b) to Group 4 currently excludes from the exemption charges for participating in gaming where these charges are "... made by virtue of regulations under ... Article 76 of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985" (S.I. 1985/1204 (N.I.11), "the 1985 Order"). Such charges are subject to VAT at the standard rate. The 1985 Order permits the charging of similar fees to those which are allowed in Great Britain. There are, however, some small differences, for example some of the stake and prize limits in Northern Ireland are slightly different to those in Great Britain.

7.4 Other provisions in the Gaming Act and the 1985 Order allow charges to be made for certain small-scale or non-commercial equal chance gaming. Because these charges are not made by virtue of regulations under section 14 or Article 76, they are not excluded from the scope of the VAT exemption by Note (1)(b), and are therefore VAT exempt. Remote gaming operators also charge participation fees for player-to-player casino games. These charges are not imposed under any provision of the Gaming Act or the 1985 Order and so are also exempt from VAT.

7.5 This Order, which broadly maintains the existing exemptions, is necessary to align VATA with the Gambling Act. The Gambling Act, which comes into force on 1st September 2007, will repeal the Gaming Act 1968, but because it only applies to Great Britain it does not repeal the 1985 Order, which will remain extant.

7.6 The Gambling Act will remove many of the restrictions that currently apply to gambling operators. There will be no equivalent to section 14 of the Gaming Act, instead operators will be allowed, if they wish, to charge participation fees (as distinct from stakes risked in the game) for any form of gaming. This includes games against the house in addition to player-to-player games like bingo or poker. This Order taxes all forms of participation fees for gaming for a prize, subject to certain specified exceptions.

7.7 As in the Gaming Act, there are separate provisions in the Gambling Act, which allow gaming not for private gain to take place without a licence, and for small-scale gaming in establishments such as fairs and family entertainment centres. Again, as in the Gaming Act, regulations may be made under the Gambling Act setting the stake and

prize limits for gaming under these provisions. The Order will ensure that gaming under these limits, will continue to be exempt from VAT. It will also ensure that gaming for small prizes in a bingo hall will continue to be exempt.

7.8 Under the Gambling Act, it will become legal for the first time for a remote gaming operator to be located in Great Britain. The Order ensures that any participation fee charged for remote gaming will continue to be exempt from VAT.

7.9 Because this Order broadly maintains the existing exemptions, the changes which it makes are not regarded as significant. Nor is it anticipated that there will be a significant level of public interest in the changes made.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this Order as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible.

9. Contact

Hugh Haward at HM Revenue and Customs Tel: 020 7147 0311 or e-mail:
Hugh.Haward@hmrc.gsi.gov.uk can answer any queries regarding this Order.