

EXPLANATORY MEMORANDUM TO
THE MACHINE GAMES DUTY REGULATIONS 2012

2012 No. 2500

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument provides for the matters relating to the administration of Machine Games Duty ("MGD").

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

3.1 None.

4. Legislative Context

4.1 Schedule 24 to the Finance Act 2012 (c. 14) ("the Schedule") provides for MGD to apply to the playing of dutiable machine games from 1 February 2013. These provisions also provide that, immediately before that point, the current Amusement Machine Licence Duty ("AMLD" – see sections 21 – 26 of the Betting and Gaming Duties Act 1981 (c. 63)) is brought to an end. Part 3 of the Schedule exempts from VAT dutiable machine games which are taken into account for the purposes of determining liability to MGD.

4.2 This instrument makes the following Regulations in exercise of the powers conferred by paragraphs 18 (returns), 19 (assessment and payment) 24 (procedure for registration, de-registration etc.) and 39 (orders and regulations) of the Schedule. This is the first use of these powers.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Government's reform of gaming machine taxation aims to 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.

7.2 MGD will also support the Government's objective of a fairer tax system by ensuring the taxation of machine games will be more closely linked to machine takings.

7.3 This instrument provides for administrative matters as follows:

- Rules for registration with HMRC, also deregistration and correction of inaccurate information on the HMRC register. Alongside these rules which will apply generally, rules concerning the following are set out to apply as appropriate to particular situations: compulsory registration by HMRC if no one has registered (compulsory registration is provided for by paragraphs 23 and 24 of the Schedule); a provision enabling the Commissioners to make registration conditional on the provision of security, and; in the case of someone based offshore, the appointment of a representative in the UK to have joint and several liability for MGD obligations.
- The making of returns and payment including that underpayments may be corrected on a subsequent MGD return subject to specified thresholds.
- Provision for payment of MGD by an unregistered person if the person has become responsible for premises in accordance with paragraph 12 of the Schedule or if the rules on profits sharers in paragraph 26 of the Schedule apply and there is no one registered for MGD at the premises where the machine is located.
- Provision for communications between HMRC and the duty payer and vice-versa to be electronic or in writing (on paper).
- Group registration. Two or more corporate bodies may apply for group treatment if certain conditions are met. Provision is made for matters concerning the administration of groups (members leaving, joining and group termination etc.).
- Provision for HMRC to prescribe various administrative matters in a notice (which will be published on the HMRC website): in particular as to the form and method of delivery of written (paper) and electronic communications in respect of MGD, and to provide further details of the forms and processes set

out in the Regulations which need to be completed by the taxpayer in respect of registration, returns and payment.

- **Consolidation**

7.4 MGD is a new duty and so HMRC has no plans for consolidation at this time.

8. Consultation outcome

8.1 In a consultation document, “Implementing a Machine Games Duty: consultation on policy design”, published in May 2012, the Government published a draft of the Finance Bill provisions and sought views on the design characteristics of MGD. Comments received were considered in drafting this instrument.

8.2 In line with the Government’s Tax Policy Framework, this instrument, was published for consultation in draft in advance (in February 2012) of laying before the House of Commons.

9. Guidance

9.1 Prior to the introduction of MGD on 1 February 2013, the Government will publicise and provide full guidance on the duty, including the matters provided for by this instrument.

10. Impact

10.1 On balance, this measure will relieve burden on business as it provides for processes that are more streamlined than the current AMLD and allows for those who wish to use efficient electronic communication.

10.2 There will be negligible impact on charities and the voluntary sector. These will benefit from the exemptions in the proposed Machine Games Duty (Exemption) Order which was published in draft on 6 December 2011 at <http://www.hmrc.gov.uk/budget-updates/march2011/draft-tax-finance-bill-2012.htm#3>. They similarly benefit from an exemption from AMLD. This instrument will not result in any impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 21 March 2012 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, at registration and on returns only that information really necessary to HMRC for the good management and assurance of MGD will be required and there is discretion to tailor the information requirements to the businesses concerned. Further, taxpayers will be able to transact with HMRC either electronically or on paper according to which method they find least onerous.

11.3 These measures were informed by the results of the consultation mentioned in 8.1 above. As part of that consultation, views were invited from all in the industry including small businesses. HMRC and HM Treasury engaged with industry trade bodies that represent small businesses (including small arcades and small pubs). On balance, this measure will relieve burden on business including small firms as it provides a more streamlined process.

12. Monitoring & review

12.1 HMRC will monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

Katherine Mansfield, HMRC Gambling Tax Policy, Ralli Quays, Salford M60 9LA, telephone 0161 827 0308 email katherine.mansfield@hmrc.gsi.gov.uk can answer any queries regarding this instrument.