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## SCHEDULES

### SCHEDULE 24

#### MACHINE GAMES DUTY

##### PART 1

##### IMPOSITION OF DUTY

###### *The duty*

- 1 A duty of excise, to be known as machine games duty, is to be charged on the playing of dutiable machine games in the United Kingdom.

###### *Dutiable machine games*

- 2 (1) A “machine game” is a game (whether of skill or chance or both) played on a machine for a prize.
- (2) A machine game is “dutiable” if—
- (a) the prize or at least one of the prizes that can be won from playing the game on the machine is or includes cash, and
  - (b) the maximum amount of cash that a player can win from playing the game on the machine exceeds the lowest charge payable for playing the game on the machine.
- (3) “Cash” means money or anything that may reasonably be considered to equate to money, including—
- (a) anything that can be used in the same way as if it were money, and
  - (b) anything that allows a person to obtain money on demand or otherwise represents a promise to pay a person money on demand.
- (4) The things mentioned in sub-paragraph (3) include—
- (a) anything of an intangible nature (such as points), and
  - (b) anything that a person has as a result of the taking of any step by someone else (such as the crediting of an account).
- (5) If an adult would reasonably assume that a machine game satisfies the tests in sub-paragraph (2)(a) and (b) (taking into account the way in which the game is presented and all the other circumstances of the case), the game is taken to be a dutiable machine game, whether or not it does in fact satisfy those tests.
- (6) In identifying for the purposes of this paragraph the lowest charge payable for playing a game, any offer that waives or permits a player to pay less than the charge that the player would be required to pay without the offer is disregarded.

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- (7) Paragraph 3 makes further provision about what counts as a dutiable machine game for the purposes of this Schedule.
- 3 (1) A game that would otherwise be a dutiable machine game does not count as one if—
- (a) it involves betting on future real events,
  - (b) bingo duty is charged on the playing of it,
  - (c) lottery duty is charged on the taking of a ticket or chance in it, or
  - (d) it is a real game of chance and playing it—
    - (i) amounts to dutiable gaming for the purposes of section 10 of FA 1997, or
    - (ii) would do so but for subsection (3), (3B) or (4) of that section.
- (2) A “real game of chance” is a game of chance (within the meaning of [F1Part 3 of FA 2014]) that is non-virtual.
- (3) A game consisting of several stages counts as a dutiable machine game if—
- (a) at least one stage would (if played on its own) be a dutiable machine game, or
  - (b) the stages (taken together) amount to a dutiable machine game.
- (4) If more than one game can be played on a given machine, each game is to be considered separately in deciding whether it is a dutiable machine game.

#### Textual Amendments

- F1** Words in Sch. 24 para. 3(2) substituted (1.12.2014) by [Finance Act 2014 \(c. 26\)](#), s. 198(2)(c), [Sch. 28 para. 31\(2\)](#) (with [Sch. 29](#))

- 4 The Treasury may by order specify criteria to be taken into account in deciding—
- (a) whether a particular game (or class of game) falls within the definitions in paragraph 2(1) and (2), and
  - (b) what counts as a single go at playing a particular game (or class of game).

#### *[F2Types of machine*

#### Textual Amendments

- F2** Sch. 24 para. 5 and cross-heading substituted (with effect in accordance with s. 124(6) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), s. 124(2)

- 5 (1) Machines are divided into three types for the purposes of machine games duty.
- (2) A machine is a “type 1 machine” if it can be demonstrated that—
- (a) the highest charge payable for playing a dutiable machine game on the machine does not exceed 20p, and
  - (b) the maximum amount of cash that can be won from playing a dutiable machine game on the machine does not exceed £10.
- (3) A machine is a “type 2 machine” if—
- (a) it is not a type 1 machine, and
  - (b) it can be demonstrated that the highest charge payable for playing a dutiable machine game on the machine does not exceed £5.

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- (4) Any other machine is a “type 3 machine”.
- (5) The Treasury may by order substitute for a sum for the time being specified in subparagraph (2)(a) or (b) or (3)(b) such higher sum as may be specified in the order.]

*How the duty is charged*

- 6 (1) Machine games duty is charged on a taxable person's total net takings in an accounting period for each type of machine.
- [<sup>F3</sup>(2) The amount of the duty is found by—
- (a) applying the lower rate to the person's total net takings in the accounting period for type 1 machines,
  - (b) applying the standard rate to the person's total net takings in the accounting period for type 2 machines,
  - (c) applying the higher rate to the person's total net takings in the accounting period for type 3 machines, and
  - (d) aggregating the results.]
- (3) This is subject to paragraph 10 (negative amounts of duty).
- (4) The person's “total net takings” in the accounting period for a type of machine are the sum of the person's net takings in the period for all the relevant machines of that type.
- (5) The person's “net takings” in the period for each relevant machine are determined in accordance with paragraphs 7 and 8.
- (6) If any of the relevant machines changes type during the accounting period—
- (a) the net takings in the part of the period before the change and the net takings in the part after the change are to be allocated separately in calculating the person's total net takings in the period for each type of machine, and
  - (b) if it is not possible to identify the part of a period to which an amount relates, the amount is to be apportioned on a just and reasonable basis.
- (7) For the meaning of “relevant machine” in relation to a taxable person and an accounting period, see paragraph 50.

**Textual Amendments**

- F3** Sch. 24 para. 6(2) substituted (with effect in accordance with s. 124(6) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 124\(3\)](#)

*Net takings per machine*

- 7 (1) A taxable person's net takings in an accounting period for a relevant machine are—
- (a) the takings, less
  - (b) the payouts.
- (2) The takings are the charges that become due at any material time from players for playing dutiable machine games on that machine (irrespective of when the games are played or the prizes are paid out).

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- (3) The payouts are the prizes (whether cash or non-cash) that are paid out at any material time to players as a result of playing dutiable machine games on that machine (irrespective of when the games are played or the charges become due).
- (4) Sub-paragraph (3) does not include prizes paid out to—
- (a) a person who is a registrable person in respect of the premises where the machine is located,
  - (b) a representative or employee of such a person at those premises, or
  - (c) a person acting for or at the direction of a person within paragraph (a).
- (5) Sub-paragraph (3) does not include prizes paid out unlawfully (for example, a prize paid out to a child or young person in breach of a condition attached to an operating licence by virtue of section 83(1)(b) of the Gambling Act 2005).
- (6) If it is not reasonably practicable to attribute charges and prizes to dutiable machine games or to apportion them between dutiable machine games and other games or other activities, any attribution or apportionment is to be done on a just and reasonable basis.
- (7) “Material time” means any time in the accounting period when the person is liable for machine games duty in respect of the machine.
- (8) The Commissioners may by regulations make provision about the point in time at which a charge is taken to become due, or a prize is taken to be paid out, for the purposes of this paragraph.
- (9) If a machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would be required to pay without the offer, the charge (if any) is treated as becoming due when the player plays the game.
- (10) A prize that is paid out using a system involving redemption tickets, points or anything similar is taken to be paid out when the prize is redeemed (rather than when the means of redemption is issued or communicated to the winner).
- (11) Sub-paragraphs (9) and (10) do not limit the power in sub-paragraph (8).
- 8 (1) In calculating the takings and the payouts under paragraph 7, the following amounts are to be left out of account—
- (a) amounts arising from playing dutiable machine games on a domestic occasion, and
  - (b) amounts arising in any other circumstances specified by the Treasury by order.
- (2) The power in sub-paragraph (1)(b)—
- (a) may be exercised generally or in relation to particular cases or kinds of case, and
  - (b) may include provision requiring specified conditions to be met before amounts are left out of account.

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### *F<sup>4</sup>The rates*

#### **Textual Amendments**

**F4** Sch. 24 para. 9 and cross-heading substituted (with effect in accordance with s. 124(6) of the amending Act) by [Finance Act 2014 \(c. 26\), s. 124\(4\)](#)

- 9
- (1) The lower rate is 5%.
  - (2) The standard rate is 20%.
  - (3) The higher rate is 25%.
  - (4) If a rate changes during an accounting period—
    - (a) the old rate is to be applied to the person's total net takings in the part of the period before the change, and
    - (b) the new rate is to be applied to the person's total net takings in the part of the period after the change.
  - (5) If it is not possible to identify for the purposes of sub-paragraph (4) the part of the period to which an amount relates, it is to be apportioned on a just and reasonable basis.]

### *Negative amounts of duty*

- 10
- (1) If the calculation of the amount of machine games duty for which a taxable person is liable for an accounting period results in a negative amount (“amount X”)—
    - (a) the amount of machine games duty for which that person is liable for that period is treated as nil, and
    - (b) the amount of duty for which that person is liable for the next accounting period is to be reduced by amount X.
  - (2) Sub-paragraph (1) applies to an accounting period whether or not amount X results wholly or partly from the previous application of that sub-paragraph.
  - (3) Subject to any reduction required by sub-paragraph (1)(b), the person is not entitled to any repayment or refund of machine games duty in respect of amount X.

### *Who is liable*

- 11
- (1) A person is liable for machine games duty in respect of a machine at any time if at the time—
    - (a) the person is responsible for the premises where the machine is located (see paragraph 12),
    - (b) the machine is available there for use by others for playing dutiable machine games on it, and
    - (c) the machine is not an excluded dual-use machine (see paragraph 13).
  - (2) If, at any time, there is more than one person who satisfies sub-paragraph (1)(a) to (c) in respect of a machine, each of them is jointly and severally liable for the duty.
  - (3) A person who is liable for machine games duty in accordance with this paragraph is referred to as a “taxable person”.

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*Responsible for premises*

- 12 (1) This paragraph sets out who is “responsible” for premises for the purposes of paragraph 11.
- (2) If a person is registered in respect of premises, that person is responsible for the premises.
- (3) A person is “registered” at any time in respect of premises if at the time there is an entry in force for that person in the MGD register in respect of those premises.
- (4) If no-one is registered in respect of premises, any person who is a registrable person in respect of the premises or a representative of such a person is responsible for the premises.
- (5) Paragraphs 20 to 24 make further provision about registration and registrable persons.

*Excluded dual-use machines*

- 13 (1) A machine is an “excluded dual-use machine” if—
- (a) it is capable of being used both for playing machine games and for some other purpose that is not related to playing machine games, and
  - (b) condition A or B is met.
- (2) Condition A is that the machine is not designed, adapted or presented in such a way as to—
- (a) facilitate its use for playing dutiable machine games, or
  - (b) draw attention to the possibility of its use for playing such games.
- (3) Condition B is that the machine is so designed, adapted or presented but the person mentioned in paragraph 11(1) does not know, and could not reasonably be expected to know, that it is.
- (4) References to a machine being “adapted” include a machine to which anything has been done, including the installation of computer software on it.
- (5) The Commissioners may by order specify criteria to be taken into account in deciding whether a machine falls within the definition in sub-paragraph (1).
- (6) The Treasury may by order amend this paragraph.

*Accounting periods*

- 14 (1) An accounting period for machine games duty is a period of 3 consecutive months.
- (2) The first day of an accounting period is such day as HMRC may direct.
- (3) A direction under sub-paragraph (2) may apply generally or only to a particular case or class of case.
- (4) HMRC may agree with a registered person to make either or both of the following changes for the purposes of that person's liability to machine games duty—
- (a) to treat specified periods (whether longer or shorter than 3 months) as accounting periods,

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- (b) to begin accounting periods on days other than those applying by virtue of sub-paragraph (2).
- (5) HMRC may by direction make transitional arrangements for periods (whether of 3 months or otherwise) to be treated as accounting periods where—
  - (a) a person becomes or ceases to be registered, or
  - (b) an agreement under sub-paragraph (4) begins or ends.
- (6) If there is reason to believe that a person who is liable for machine games duty may not discharge that liability as it falls due from time to time—
  - (a) HMRC may by direction specify shorter periods to be treated as accounting periods for the purposes of that person's liability to machine games duty,
  - (b) any such direction continues to have effect until it is withdrawn by HMRC (unless otherwise specified in the direction), and
  - (c) withdrawal of a direction does not prevent the giving of further directions in respect of the same person.

#### *Valuing prizes*

- 15 (1) This paragraph applies in valuing prizes for the purposes of this Schedule (including in determining the maximum amount of cash that can be won from playing a machine game).
- (2) The value of a prize includes any portion that—
    - (a) represents a refund of the charge payable for playing the game, or
    - (b) is calculated by reference to the amount of any such charge.
  - (3) The value of a prize in the form of something that is reasonably considered to equate to money is equal to the amount of money to which the thing is reasonably considered to equate.
  - (4) For a prize in the form of a currency other than sterling or in the form of something that is reasonably considered to equate to such a currency—
    - (a) the value of the prize is, in relation to any day, the sterling equivalent of that currency determined by reference to the London closing rate for that currency for the previous day, and
    - (b) for the purposes of paragraph 7(3), the day in relation to which the value is assessed is the last day of the relevant accounting period.
  - (5) The value of a prize other than cash depends on the person (“A”) from whom the person paying out the prize (“B”) obtained it—
    - (a) if A was not connected with B when B obtained the prize from A, the value is the cost to B of obtaining the prize from A,
    - (b) if A was connected with B when B obtained the prize from A, the value is the smaller of—
      - (i) the cost to B of obtaining the prize from A, and
      - (ii) the amount that it would have cost B, at the time B obtained the prize, to obtain it from a person not connected with B.
  - (6) Whether A is connected with B is to be determined in accordance with section 1122 of CTA 2010.

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- (7) If the value of a prize other than cash cannot reasonably be determined in accordance with sub-paragraph (5), the value of the prize is such amount as is just and reasonable.
- (8) For the purposes of sub-paragraph (5), an amount paid by way of value added tax on the acquisition of a thing is to be treated as part of its cost (whether or not the amount is taken into account for the purpose of a credit or refund).
- (9) The Commissioners may by regulations make further provision about the way in which prizes are to be valued for the purposes of this Schedule.
- (10) This paragraph applies to a part of a prize as it applies to a whole prize, and references to a prize are to be read accordingly.

#### *Valuing charges*

- 16 (1) This paragraph applies in determining for the purposes of this Schedule the amount of a charge (or the highest or lowest charge) payable or due for playing a machine game.
- (2) If the amount of a charge in money's worth cannot be determined, it is assumed to be such amount as is just and reasonable.
- (3) If a composite charge is payable or due for the opportunity to play a machine game more than once, the amount of the charge payable or due for each individual go is to be determined on a just and reasonable basis.
- (4) If a composite charge is payable or due for the opportunity to play a machine game and for something else, the amount of the charge payable or due for playing the game is to be determined on a just and reasonable basis.
- (5) The Commissioners may by regulations make further provision about the way in which the amount of charges is to be determined for the purposes of this Schedule.
- (6) Sub-paragraph (7) applies if—
  - (a) a dutiable machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would have been required to pay without the offer,
  - (b) the offer was made available to the player by way of winnings from an activity in respect of which another duty of excise or value added tax is charged, and
  - (c) the value of the offer is deductible in calculating the amount of that other duty or value added tax payable in respect of that activity.
- (7) The amount of the charge due from the player for playing the dutiable machine game is taken for the purposes of paragraph 7 to be the amount that the player would have been required to pay without the offer.
- (8) Regulations under sub-paragraph (5) may include provision extending or modifying the circumstances in which sub-paragraph (7) applies.

#### *Collection and management*

- 17 The Commissioners are responsible for the collection and management of machine games duty.



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### *Returns*

- 18 (1) The Commissioners may make regulations requiring registrable persons to make returns to HMRC in respect of relevant machines.
- (2) Regulations under this paragraph may in particular make provision about—
- (a) liability to make a return,
  - (b) timing,
  - (c) form,
  - (d) content,
  - (e) method of making (including provision requiring returns to be made electronically),
  - (f) declarations,
  - (g) authentication, and
  - (h) when a return is to be treated as made.

### *Assessment and payment*

- 19 (1) The Commissioners may make regulations about payment of machine games duty.
- (2) The regulations may in particular make provision about—
- (a) timing,
  - (b) instalments,
  - (c) methods of payment (including provision requiring payments to be made electronically),
  - (d) when payment is to be treated as made, and
  - (e) the process and effect of assessments by HMRC of amounts due.
- (3) Subject to regulations under this paragraph, section 12 of FA 1994 (assessment) applies in relation to liability to pay machine games duty.

### *Registration*

- 20 (1) The Commissioners must maintain a register of those responsible for premises where relevant machines are located.
- (2) The register is to be known as the MGD register.
- (3) A person must not make a relevant machine available for use by others for playing dutiable machine games on it unless a registrable person (whether that person or someone else) is registered in respect of the premises where the machine is located.
- (4) Paragraph 21 identifies who is a registrable person in respect of premises.
- (5) This paragraph does not apply in relation to a relevant machine if it is reasonable to expect that the only takings and the only payouts in respect of the machine would be amounts that would be left out of account by virtue of paragraph 8.

### *Registrable persons*

- 21 (1) If a person holds a relevant licence or permit in respect of premises, that person is a registrable person in respect of those premises.

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- (2) But if the premises are leased to a person (“T”) for the purposes of an activity for which an alcohol licence is required and the alcohol licence in respect of the premises is held by someone else, T (and not the licence-holder) is a registrable person in respect of those premises.
- (3) If the premises are a stall at a travelling fair, each of the following is a registrable person in respect of the premises—
- (a) the holder of the stall, and
  - (b) the person in charge of the fair.
- (4) For premises not falling within any of the preceding sub-paragraphs, each person listed in sub-paragraph (5) is a registrable person in respect of the premises.
- (5) The persons are—
- (a) a person required to hold a relevant licence or permit in respect of the premises,
  - (b) an owner, lessee or occupier of the premises,
  - (c) a person who is responsible to the owner, lessee or occupier for the management of the premises,
  - (d) a person who is responsible for controlling the use of machines that are made available on the premises for use by others for playing dutiable machine games on them, and
  - (e) a person who is responsible for controlling the admission of persons to the premises or for providing persons resorting to the premises with goods or services.
- (6) “Relevant licence or permit” is defined in paragraph 22.
- (7) “Alcohol licence” means—
- (a) a premises licence issued under Part 3 of the Licensing Act 2003 that authorises the supply of alcohol for consumption on the licensed premises,
  - (b) a premises licence issued under Part 3 of the Licensing (Scotland) Act 2005, except where such a licence only applies to the sale of alcohol for consumption off the premises, and
  - (c) a licence issued under the Licensing (Northern Ireland) Order 1996 (S.I. 1996/3158 (N.I. 22)), except where such a licence only applies to the sale of intoxicating liquor by retail for consumption off the premises.
- (8) “Travelling fair” means a fair—
- (a) consisting wholly or principally of the provision of amusements,
  - (b) provided wholly or principally by persons who travel from place to place for the purpose of providing such fairs, and
  - (c) held at a place no part of which has been used for the provision of such a fair on more than 27 days in the same calendar year.
- 22 (1) A “relevant licence or permit” is—
- (a) a licence issued under Part 8 of the Gambling Act 2005,
  - (b) a family entertainment centre gaming machine permit as defined in section 247 of that Act,
  - (c) a club gaming permit as defined in section 271 of that Act,
  - (d) a club machine permit as defined in section 273 of that Act,
  - (e) a prize gaming permit as defined in section 289 of that Act,

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- (f) an on-premises alcohol licence or a relevant Scottish licence as defined, in each case, in section 277 of that Act but only if a licence or permit listed above is not held in respect of the same premises,
  - (g) a club premises certificate granted under Part 4 of the Licensing Act 2003 but only if a licence or permit listed above is not held in respect of the same premises,
  - (h) a certificate of registration within the meaning of the Betting, Gaming Lotteries and Amusements (Northern Ireland) Order 1985 (S.I. 1985/1204 (N.I. 11)),
  - (i) a bookmaking office licence within the meaning of that Order,
  - (j) a bingo club licence within the meaning of that Order,
  - (k) an amusement permit within the meaning of that Order,
  - (l) a certificate of registration within the meaning of the Registration of Clubs (Northern Ireland) Order 1996 (S.I. 1996/3159 (N.I. 23)), or
  - (m) a licence issued under the Licensing (Northern Ireland) Order 1996 (S.I. 1996/3158 (N.I. 22)) but only if a licence, permit or certificate listed above is not held in respect of the same premises.
- (2) In sub-paragraph (1), “listed above” means listed in any of the preceding provisions of that sub-paragraph.
- (3) The Treasury may by order amend this paragraph to add to, vary or restrict the list in sub-paragraph (1).

#### *Compulsory registration*

- 23 (1) Sub-paragraph (2) applies if—
- (a) it appears to HMRC that a relevant machine is being made available by anyone at premises for use by others for playing dutiable machine games on it, and
  - (b) no-one is registered in respect of the premises.
- (2) HMRC may give a notice under this paragraph to any person they believe to be a registrable person in respect of the premises.
- (3) The notice is referred to as a “registration notice”.
- (4) A person to whom a registration notice is given may appeal to an appeal tribunal against the notice.
- (5) The appeal may be made on either or both of the following grounds—
- (a) that the person is not a registrable person in respect of the premises,
  - (b) that relevant machines are not being made available at the premises for use by others for playing dutiable machine games on them.
- (6) The appeal must be made within the period of 30 days beginning with the date of the registration notice.
- (7) If—
- (a) no appeal is made within that period, or
  - (b) an appeal made within that period is dismissed or withdrawn,
- HMRC may proceed to register the person in respect of the premises (unless another person has since become registered in respect of them).

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- (8) Registration under this paragraph is treated as made with effect from the date of the registration notice.

*Procedure for registration, de-registration etc*

- 24 (1) The Commissioners may make regulations about registration.
- (2) Regulations under this paragraph may in particular make provision about—
- (a) the procedure for applying for registration (including provision requiring applications to be made electronically),
  - (b) the timing of applications,
  - (c) the information to be provided,
  - (d) the giving of registration notices and the making of appeals against them,
  - (e) the procedure for compulsory registration under paragraph 23,
  - (f) notification of changes to the register,
  - (g) de-registration, and
  - (h) re-registration after a person ceases to be registered.
- (3) The regulations may permit HMRC to make registration, or continued registration, subject to conditions.
- (4) Those conditions may in particular require—
- (a) the provision of security for the payment of machine games duty, and
  - (b) (in the case of a foreign person) the appointment of a United Kingdom representative with responsibility for discharging liability to machine games duty.
- (5) In sub-paragraph (4) “foreign person” means a person who—
- (a) in the case of an individual, is not usually resident in the United Kingdom,
  - (b) in the case of a body corporate, does not have an established place of business in the United Kingdom, and
  - (c) in any other case, does not include an individual who is usually resident in the United Kingdom.
- (6) The regulations may include provision for the registration of groups of persons; and may provide for the modification of the provisions of this Part of this Schedule in their application to groups.
- (7) The modifications may, for example, include a modification ensuring that, where a representative member of a group is registered in place of the members, each member will be jointly and severally liable for the duty payable by the representative member on behalf of the group.

*Publication of register*

PROSPECTIVE

- 25 (1) The MGD register is to contain such details of those who are entered on the register and of the premises in respect of which they are registered as the Commissioners think fit.

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- (2) The Commissioners may publish the register (or a part of it).
- (3) If they choose not to publish it or they choose to publish only a part of it, the Commissioners must nonetheless make arrangements for the provision of a copy of an entry in the register (or the unpublished part of it) to a member of the public on request.
- (4) But the Commissioners may refuse a request under sub-paragraph (3) if the person making the request does not pay a fee specified by the Commissioners.
- (5) The fee must not exceed the reasonable cost (including any indirect cost) of meeting the request.

#### *Profit-sharers*

- 26 (1) Sub-paragraph (2) applies if—
- (a) it appears to HMRC that machine games duty may be chargeable in respect of a machine,
  - (b) no-one is registered in respect of the premises where the machine is located, and
  - (c) either—
    - (i) HMRC do not know the identity of any of those responsible for the premises (see paragraph 12), or
    - (ii) HMRC do know the identity of one or more such persons but none of them is in the United Kingdom.
- (2) HMRC may give a notice under this paragraph to any person they believe to be beneficially entitled to a share of the machine's takings.
- (3) The notice must inform the person to whom it is given (“P”) that P will become liable to pay a share of the duty in accordance with this paragraph unless, within the specified period—
- (a) P provides HMRC with sufficient information to identify a person in the United Kingdom who is responsible for the premises, or
  - (b) P satisfies HMRC that, when P became beneficially entitled to a share of the machine's takings, P took all reasonable steps to ascertain that a registrable person was registered in respect of the premises.
- (4) The specified period is—
- (a) such period of 30 days or more as is specified in the notice, or
  - (b) such other period as may be agreed between HMRC and P.
- (5) If P fails to satisfy sub-paragraph (3)(a) or (b) within the specified period, HMRC may assess to the best of their judgement an amount equal to P's share of the machine games duty that would have been due in respect of the machine for an accounting period on the assumptions set out in sub-paragraph (6).
- (6) The assumptions are—
- (a) that P had been liable for machine games duty in respect of the machine in the accounting period in accordance with paragraph 11,
  - (b) that the machine had been the only machine in respect of which P was so liable, and

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- (c) that the dutiable machine games in respect of which P is beneficially entitled to a share of the takings had been the only dutiable machine games played on the machine.
- (7) P's share is a percentage equal to the share of the machine's takings to which P is beneficially entitled.
- (8) An assessment under this paragraph may relate to more than one machine, more than one set of premises and more than one accounting period.
- (9) But it may not relate to a period that began more than 4 years before the date of the assessment.
- (10) An amount assessed under this paragraph is deemed to be an amount of machine games duty assessed under section 12 of FA 1994 and due from P in accordance with regulations under paragraph 19 of this Schedule.
- (11) P is not entitled to any repayment from HMRC of an amount assessed under this paragraph if HMRC subsequently identify a person responsible for the premises.
- (12) But if, after P has paid such an amount, HMRC make an assessment under section 12 of FA 1994 of an amount of machine games duty due from another person in respect of the same takings from the same machine for the same accounting period, account must be taken in that assessment of the amount paid by P.

#### *Reviews and appeals*

- 27 (1) The decisions mentioned in sub-paragraph (2) are to be treated as if they were listed in subsection (2) of section 13A of FA 1994 (customs and excise reviews and appeals: meaning of “relevant decision”) and, accordingly, as if they were relevant decisions for the purposes mentioned in subsection (1) of that section.
- (2) The decisions are—
  - (a) a decision of HMRC to refuse a request for an agreement under paragraph 14,
  - (b) a decision to give a direction under that paragraph,
  - (c) a decision not to give such a direction,
  - (d) a decision of HMRC under regulations by virtue of paragraph 24(2),
  - (e) a decision of HMRC about security by virtue of paragraph 24(4)(a), and
  - (f) a decision of HMRC about the appointment of a United Kingdom representative by virtue of paragraph 24(4)(b).

#### *Interest*

- 28 (1) This paragraph applies if an order is made under section 104(3) of FA 2009 appointing a day on which sections 101 to 103 of that Act are to come into force for the purposes of machine games duty.
- (2) Interest charged under section 101 of that Act on an amount of machine games duty (or an amount enforceable as if it were machine games duty) may be enforced as if it were an amount of machine games duty payable by the person liable for the amount on which the interest is charged.

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### *Penalties and enforcement*

- 29 In Schedule 24 to FA 2007 (penalties for errors), in the Table in paragraph 1, after the entry relating to remote gaming duty insert—
- |                     |   |
|---------------------|---|
| “Machine games duty | Return under regulations under paragraph 18 of Schedule 24 to FA 2012.” |
|---------------------|---|
- 30 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, after the entry relating to remote gaming duty insert—
- |                     |  |
|---------------------|--|
| “Machine games duty | Obligation under paragraph 20(3) of Schedule 24 to FA 2012 (obligation to register in respect of premises).” |
|---------------------|--|
- 31 In Schedule 55 to FA 2009 (penalty for failure to make returns etc), in the Table in paragraph 1, after item 28 insert—
- |     |                    |   |
|-----|--------------------|---|
| “29 | Machine games duty | Return under regulations under paragraph 18 of Schedule 24 to FA 2012”. |
|-----|--------------------|---|
- 32 In that Schedule, in each of the following provisions, for “28” substitute “ 29 ”
- (a) paragraph 2(1)(b),
  - (b) paragraph 13A(1), and
  - (c) paragraph 13F(1).
- 33 In Schedule 56 to FA 2009 (penalty for failure to make payments on time), in the Table in paragraph 1, after item 11M insert—
- |      |                    |  |
|------|--------------------|--|
| “11N | Machine games duty | Amount payable under The date determined by paragraph 6 of or under regulations under Schedule 24 to FA paragraph 19 of Schedule 24 to 2012 (except an amount FA 2012 as the date by which falling within item 17A, the amount must be paid”.<br>23 or 24) |
|------|--------------------|--|
- 34 In that Schedule, in each of the following provisions, for “11M” substitute “ 11N ”
- (a) items 17A, 23 and 24 of the Table in paragraph 1,
  - (b) paragraph 2(c),
  - (c) paragraph 3(1)(b),
  - (d) paragraph 8A(1), and
  - (e) paragraph 8F(1).
- 35 (1) Contravention of a provision mentioned in sub-paragraph (2) attracts a penalty under section 9 of FA 1994 (penalties) and also attracts daily penalties under that section.
- (2) The provisions are—
- (a) any provision of regulations made under paragraph 18,
  - (b) any provision of regulations made under paragraph 19,
  - (c) paragraph 20(3), and

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- (d) any provision of regulations made under paragraph 24.

#### *Forfeiture*

- 36 (1) A machine is liable to forfeiture if—
- (a) an officer of Revenue and Customs finds it on any premises,
  - (b) the officer is satisfied that it is being, has been or is about to be made available on the premises for use by others for playing dutiable machine games on it, and
  - (c) condition A or B is met.
- (2) Condition A is that—
- (a) no-one is registered in respect of the premises, and
  - (b) there is a serious risk that any machine games duty chargeable in respect of the machine would not be paid.
- (3) Condition B is that the officer is satisfied that an amount of machine games duty has become due and payable in respect of the machine, but has not been paid.

#### *Offences*

- 37 (1) A person commits an offence if the person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion (by that person or any other person) of any machine games duty.
- (2) A person guilty of an offence under this paragraph is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the maximum amount, or both.
- (3) The maximum amount is the greater of—
- (a) [<sup>F5</sup>£20,000,] and
  - (b) three times the duty or other amount that is unpaid or the payment of which is sought to be avoided.
- (4) In the application of this paragraph—
- (a) in England and Wales, in relation to an offence committed before [<sup>F6</sup>2 May 2022], or
  - (b) in Northern Ireland,
- the reference in sub-paragraph (2)(b) to 12 months is to be read as a reference to 6 months.
- (5) Section 27 of BGDA 1981 (offences by bodies corporate) has effect for the purposes of any offence under this paragraph as it has effect for the purposes of [<sup>F7</sup>the offence] mentioned in that section.

#### **Textual Amendments**

- F5** Sum in Sch. 24 para. 37(3)(a) substituted (E. W.) (12.3.2015) for words by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 2 para. 13** (with reg. 5(1))



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- F6** Words in Sch. 24 para. 37(4)(a) substituted (28.4.2022) by The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500), regs. 1(2), 5(1), **Sch. Pt. 1**
- F7** Words in Sch. 24 para. 37(5) substituted (1.12.2014) by Finance Act 2014 (c. 26), s. 198(2)(c), **Sch. 28 para. 31(3)** (with Sch. 29)

### *Protection of officers*

- 38 Section 31 of BGDA 1981 applies in relation to machine games duty as it applies in relation to [<sup>F8</sup>bingo duty].

#### **Textual Amendments**

- F8** Words in Sch. 24 para. 38 substituted (1.12.2014) by Finance Act 2014 (c. 26), s. 198(2)(c), **Sch. 28 para. 31(4)** (with Sch. 29)

### *Orders and regulations*

- 39 (1) This paragraph applies to orders and regulations under this Part of this Schedule.
- (2) Orders and regulations—
- (a) may make provision that applies generally or only for specified purposes,
  - (b) may make different provision for different purposes, and
  - (c) may include transitional provision and savings.
- (3) Regulations may confer a discretion on HMRC.
- (4) Orders and regulations are to be made by statutory instrument.
- (5) For the purposes of making an order under paragraph 8(1)(b)—
- (a) the statutory instrument containing the order must be laid before the House of Commons, and
  - (b) the order ceases to have effect at the end of the period of 28 days beginning with the day on which it was made unless, during that period, it is approved by a resolution of the House of Commons.
- (6) In reckoning the 28-day period, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) the House of Commons is adjourned for more than 4 days.
- (7) An order ceasing to have effect by virtue of sub-paragraph (5)(b) does not affect—
- (a) anything previously done under the order, or
  - (b) the making of a new order.
- (8) A statutory instrument containing an order under paragraph 13(6) or 22(3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (9) Subject to sub-paragraphs (5) and (8), a statutory instrument containing an order or regulations is subject to annulment in pursuance of a resolution of the House of Commons.

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*Transitional provision*

- 40 (1) The Commissioners may by notice direct that regulations under paragraph 24 (procedure for registration, de-registration etc) are to apply in relation to the period before the go-live date with the modifications specified in the notice.
- (2) A notice under sub-paragraph (1) must be published by the Commissioners.
- (3) For a person who, on the go-live date, is responsible for premises where a relevant machine is located, the first accounting period is to be the period beginning with that day and ending with—
- (a) the day before the day on which the next accounting period is to begin by virtue of a direction given under paragraph 14(2), or
  - (b) such other day as is necessary to give effect to an agreement made under paragraph 14(4).

*Consequential amendments*

- 41 (1) Section 1(1) of CEMA 1979 (interpretation) is amended as follows.
- (2) In the definition of “the revenue trade provisions of the customs and excise Acts”, at the end insert—
- “(f) the provisions of Part 1 of Schedule 24 to the Finance Act 2012;”.
- (3) In the definition of “revenue trader”, in paragraph (a)—
- (a) omit “or” at the end of sub-paragraph (ic),
  - (b) after that sub-paragraph insert—
    - “(id) being responsible for premises where relevant machines are located (within the meaning of Part 1 of Schedule 24 to the Finance Act 2012); or”, and
  - (c) in sub-paragraph (ii), for “or (ic)” substitute “, (ic) or (id)”.
- 42 (1) For section 118BC of that Act (inspection powers: gaming duty) substitute—

**“118BC Inspection powers: gaming duty and machine games duty**

- (1) Subsection (2) applies to premises if an officer has reasonable cause to believe that—
  - (a) section 10 gaming is taking place, has taken place or is about to take place on the premises, or
  - (b) machines are located on the premises in respect of which a person is, has been or is about to become liable for machine games duty.
- (2) The officer may at any reasonable time enter and inspect the premises and inspect—
  - (a) accounts, records and other documents in the custody or control of any relevant person, and
  - (b) any relevant equipment.
- (3) Subsection (1) does not permit an officer to enter or inspect a particular part of premises if—
  - (a) the officer has no reasonable cause to believe that paragraph (a) or, as the case may be, (b) of that subsection is satisfied with respect to that particular part, and

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- (b) the part is used solely as a dwelling.
  - (4) An officer may at any reasonable time (whether or not as part of an inspection under subsection (2)) require a relevant person or anyone acting on such a person's behalf—
    - (a) to open relevant equipment, and
    - (b) to carry out any other operation that may be necessary to enable the officer to ascertain whether any gaming duty or machine games duty is payable in respect of it and, if so, how much.
  - (5) A “relevant person” is—
    - (a) in relation to gaming duty, a person who is engaging, or whom the officer reasonably suspects of engaging, in section 10 gaming or in any activity by reason of which the person is or may become liable to gaming duty, and
    - (b) in relation to machine games duty, a person who is, has been or is about to become liable to machine games duty or whom the officer reasonably suspects of being, having been or being about to become so liable.
  - (6) “Relevant equipment” is—
    - (a) in relation to gaming duty, equipment that is being, or the officer reasonably suspects of having been or of being intended to be, used on the premises for or in connection with section 10 gaming, and
    - (b) in relation to machine games duty, any equipment that is, or the officer reasonably suspects of being, a machine in respect of which a person is, has been or may become liable to machine games duty and any other equipment used in connection with such a machine.
  - (7) In this section—
    - (a) “section 10 gaming” means gaming to which section 10 of the Finance Act 1997 applies, and
    - (b) a reference to premises where a machine is located is to be read in accordance with Part 1 of Schedule 24 to the Finance Act 2012.”
- (2) In section 118G of that Act (offences under Part 9A), in subsection (1), for “or section 118B” substitute “, 118B or 118BC(4)”.
- 43 In section 2 of BGDA 1981 (bookmakers: general bets), in subsection (2), omit paragraph (d).
- 44 (1) Section 26H of BGDA 1981 (exemptions from remote gaming duty) is amended as follows.
- (2) After subsection (2A) insert—

“(2B) Subsection (2) does not apply in cases where the other gambling tax is machine games duty.”
  - (3) In subsection (3), before paragraph (b) insert—

“(aa) machine games duty.”
- 45 In Schedule A1 to BGDA 1981 (betting duties: double taxation relief), in paragraph 7, after paragraph (c) insert—

“(ca) machine games duty.”

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- 46 In Schedule 4B to BGDA 1981 (remote gaming duty: double taxation relief), in paragraph 7, after paragraph (c) insert—  
“(ca) machine games duty.”
- 47 In section 12 of FA 1994 (assessment to excise duty), in subsection (2)(c), after “1997” insert “ or Part 1 of Schedule 24 to the Finance Act 2012 ”.
- 48 In section 10 of FA 1997 (gaming duty), for subsection (3AA) substitute—  
“(3AA) This section does not apply to the playing of a game in respect of which—  
(a) bingo duty or lottery duty is chargeable, or would be chargeable but for an express exception, or  
(b) machine games duty is chargeable.”
- 49 In section 7 of the Borders, Citizenship and Immigration Act 2009 (Customs revenue functions of the director), in subsection (2)(e)—  
(a) omit “and” at the end of sub-paragraph (vi), and  
(b) at the end of sub-paragraph (vii) insert “and  
(viii) machine games duty;”.

#### *Interpretation*

- 50 In this Part of this Schedule—  
“appeal tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;  
“cash” has the meaning given in paragraph 2 (and “non-cash” is to be read accordingly);  
“charge”, in relation to a game, means a charge or deduction in money or money's worth, however it is described or levied and whether it becomes due before or after the game is played;  
“the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;  
“dutiable machine game” has the meaning given in paragraph 2, subject to paragraphs 3 and 4;  
“game” does not include a sport;  
“the go-live date” is defined in paragraph 66(5);  
“HMRC” means Her Majesty's Revenue and Customs;  
“machine” means any apparatus that uses or applies mechanical power, electrical power or both;  
“machine game” has the meaning given in paragraph 2;  
“MGD register” has the meaning given in paragraph 20;  
“money” means money in sterling or any other currency;  
“payouts” means prizes paid out to players as a result of playing dutiable machine games on a machine;  
“the payouts”, in relation to a particular taxable person and accounting period, has the meaning given in paragraph 7;  
“premises” includes any place, any means of transport and any stall or other moveable structure;  
“prize”, in relation to a game—

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(a) means a prize in the form of cash or non-cash (or both), however it is described or paid out and whether it is a prize provided by a person making the game available or is winnings of money staked, but

(b) a benefit consisting of nothing more than the opportunity to play the game again does not count as a prize;

“registered” has the meaning given in paragraph 12 (and “registration” is to be read accordingly);

“registrable person” has the meaning given in paragraph 21;

“relevant machine” means—

(a) a machine in respect of which machine games duty is or will be chargeable, or

(b) in relation to a particular taxable person and accounting period, a machine in respect of which that person is liable for machine games duty in that period;

“representative” means a personal representative, trustee in bankruptcy, receiver or liquidator or any other person acting in a representative capacity;

“specified” includes described;

“takings” means charges due from players for playing dutiable machine games on a machine;

“the takings”, in relation to a particular taxable person and accounting period, has the meaning given in paragraph 7;

“taxable person” has the meaning given in paragraph 11;

“total net takings” has the meaning given in paragraph 6;

“United Kingdom” includes the territorial sea of the United Kingdom.

- 51 (1) This Part of this Schedule is to be read in accordance with this paragraph.
- (2) A person “plays” a game if the person participates in the game—
- (a) whether or not there are other participants in the game, and
- (b) whether or not a computer generates images or data taken to represent the actions of other participants in the game.
- (3) A reference to the charge (or the lowest or highest charge) payable for playing a machine game—
- (a) is a reference to the charge (or the lowest or highest charge) payable for a single go at playing the game, and
- (b) includes any charge that entitles the person paying it to play a machine game or to play it at a reduced rate (even if the charge is ostensibly a charge for something else).
- (4) A reference to “paying” a charge is to be read, in the case of a charge in money's worth, as a reference to the provision of the thing, or performance of the service, in money's worth.
- (5) A reference to a prize (or the maximum amount of cash) that can be won from playing a machine game is a reference to a prize (or the maximum amount of cash) that can be won from a single go at playing the game.
- (6) A reference to “paying out” a prize is to be read, in the case of a prize in money's worth, as a reference to the provision of the thing, or performance of the service, in money's worth.

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- (7) A reference to the premises where a machine is located or made available includes, in the case of a portable machine, the premises where the machine is issued to those wanting to play dutiable machines games on it.
- 52 The imposition or payment of machine games duty does not make lawful anything that is otherwise unlawful.

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