Bingo taxation

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Section Business & Transport Section

There are around 400 bingo clubs across the country.[1] In 2012/13 £1.28 billion was staked in clubs, and the tax on this form of gambling – bingo duty – raised £75 million.[2]

Prior to a major reform in October 2003, bingo duty was charged on the total weekly stake money paid to bingo promoters by players as payment for their cards, plus 'added prize money' (the amount – if any – by which the total value of prizes won in the same week's bingo exceeded the weekly stake money, less duty). The tax was set at 10% of stake money plus 1/9th of added prize money,[3] and raised £122 million in 2002/03.[4] Concerns about the growth of online gambling services supplied by companies based outside the UK led to reforms being made to taxes on other forms of gambling – to general betting duty in October 2001, and to pools betting duty in April 2002.

In the 2003 Budget the then Chancellor Gordon Brown announced that the levy on bingo stakes would be replaced with a gross profits tax on bingo companies; the new tax would be introduced from 4 August 2003 at a rate of 15%.[5] Following representation from the industry, the launch was delayed until 27 October 2003.[6] At the time it was estimated that this reform would cost £25 million in its first full year. Industry concerns about the way the new tax would interact with VAT resulted in the legislation being amended during its passage through Parliament, adding £10 million to the projected cost of reform.[7]

Subsequently the bingo sector experienced considerable financial difficulties, and the industry lobbied to have VAT exempted from the participation fees bingo clubs charged players, arguing that this was equivalent to double taxation. For some years the Labour

1 Bingo Association, *Budget 2014 submission*, March 2014

2 HM Revenue & Customs, *Betting, gaming & lottery duties Bulletin*, March 2014 (tables 2 & 3). Information on bingo is on the Gambling Commission's website – including, *Industry statistics*, November 2013.

3 Small scale bingo played in societies, at travelling fairs or at home was exempt from duty; this remains the case (HM Revenue & Customs, *Notice 457: Bingo duty*, April 2010 para 2.2).

4 HM Revenue & Customs, *Betting and gaming factsheet*, December 2013 table 1.3

5 HC Deb 9 April 2003 c278. The Labour Government had raised the possibility of reforming the tax this way the year before (*Budget 2012*, HC 592 April 2002 paras 5.85-6).

6 HC Deb 13 May 2003 c247

7 *Budget 2003*, HC 500 April 2003 p 185; HM Treasury press notice 74/03, *Government boosts bingo with additional £10 million*, 18 June 2003

Government opposed this, arguing that the tax treatment of bingo was not a root cause of the industry's problems, and that removing VAT from participation fees would cost the Exchequer a significant sum of money.

However in his 2009 Budget the then Chancellor, Alistair Darling, announced VAT on participation fees would be scrapped, to simplify the tax regime, while the rate of bingo duty would be increased from 15% to 22% from 27 April 2009. At the time it was estimated that removing VAT would cost £50m in 2009/10, while increasing the rate of duty would raise £35m in the same year.[8] The industry welcomed the removal of VAT, but strongly criticised the new rate of duty. In his Pre-Budget statement on 9 December 2009 Mr Darling, announced that bingo duty would be cut, from 22% to 20%, from Budget 2010.[9]

Over this period gambling regulation was substantially recast by the *Gambling Act 2005*. One element to this reform was to allow remote gaming operators to locate in Great Britain and be regulated under national jurisdiction. In the 2007 Budget the Labour Government announced a new tax, charged on the gaming profits of remote gaming operators.[10] Remote gaming duty was introduced on 1 September 2007, set at a rate of 15%.

The industry has continued to raise concerns over the level of bingo duty, arguing that bingo is disadvantaged compared with other forms of gambling, including bingo played online. In his 2014 Budget speech the Chancellor, George Osborne, announced that the rate would be cut to 10%.[11] The new rate applies for accounting periods starting on or after 30 June 2014. This is estimated to cost £30m in 2014/15, rising to £40m the following year.[12]

This note discusses the development of the current structure of bingo duty, and the current Government's decision to cut the rate of duty to 10%.

Contents

8 *Budget 2009*, HC 407 April 2009 para 5.112, p153
9 HC Deb 9 December 2009 c362
10 *Budget 2007*, HC 342, March 2007 para 5.128
11 HC Deb 19 March 2014 c792
12 *Budget 2014*, HC 1104, March 2014 p76, p57 (Table 2.1 – item 32)

1 Budget 2000 - proposals to reform to gambling taxation

Generally taxes on gambling have been levied either as a proportion of the stake (general betting duty, pool betting duty, bingo duty and the duty charged on National Lottery tickets) or as a duty on the equipment used (amusement machine licence duty). One exception has been the tax on casino gambling – gaming duty – which is a premises based tax on banded profits. The taxation of gambling came under detailed scrutiny in the wake of a wider review of gambling regulation, initiated by the report of the Gambling Review Body in July 2001.[13] (In March 2002 the Labour Government proposed that gambling law would be consolidated "into a single Act of Parliament covering all categories of gambling activity,"[14] and a Bill to this effect was published in October 2004.[15] The *Gambling Act 2005* received Royal Assent on 7 April 2005, though the procedures for licensing bingo remain broadly similar to those previously established under the *Gaming Act 1968*.[16])

In the March 2000 Budget the Labour Government announced that it would consult on reforming general betting duty, "to enable the gambling and racing industries to flourish in the internet age." At this time betting duty was charged on bets placed with a bookmaker at a fixed rate on the value of the stake. Two options were proposed. Under the first, bookmakers would account for duty on all bets placed from the UK, so those who were offshore would still have to register and pay tax on all the bets they took from UK punters (the 'place of consumption' (POC) proposal). Under the second option, which had been suggested by the bookmakers themselves, UK-based bookmakers would account for tax on the balance between bets placed and winnings paid out, so the tax would no longer appear as a separate, additional charge to the customer (the 'gross profits tax' (GPT) proposal).[17]

In its consultation paper, HM Customs & Excise noted that the structure of general betting duty was making it harder for the industry to compete effectively with overseas bookmakers who were now giving punters opportunities to gamble over the internet: "the present system of deductions from stakes may not only encourage UK based bettors to place bets with bookmakers overseas - it may also act as a deterrent to potential overseas customers who may otherwise be attracted to bet in the UK because of its enviable reputation for integrity and probity."[18] In September that year, Customs published some analysis it had commissioned from Nottingham University, which suggested that a gross profits tax regime offered a more efficient way of taxing gambling businesses, over the traditional method of taxing punters' stakes.[19]

As it transpired the Labour Government adopted this approach in reforming general betting duty and in its subsequent reform of pools betting duty. First, in the 2001 Budget the then

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13 DCMS, *Gambling review report*, Cm 5206, July 2001. The report is commonly referred to as the Budd report, after the chairman of the review body, Sir Alan Budd. Chapter 36 of the report provides a short summary of gambling taxes prior to these changes (Cm 5206 pp 189-192).

14 *A safe bet for success: modernising Britain's gambling laws* Cm 5397 March 2002 p 6

15 Further background is given in the Library paper on the final Bill when it was published: [Library Research paper 04/79, 28 October 2004]

16 Gambling Commission *Annual Report 2005-06* para 4.1

17 HM Customs & Excise Budget press notice C&E1, 21 March 2000

18 HM Customs & Excise, *Our stake in the future: the modernisation of general betting duty for the 21st century*, March 2000 pp 4-5. At the time HM Customs & Excise administered all indirect taxes. In April 2005 it was merged with the UK's other revenue authority, Inland Revenue, to form HM Revenue & Customs.

19 Dr David Paton, Professor Don Siegel & Dr Leighton Vaughan Williams, *An economic analysis of the options for taxing betting*, Nottingham University September 2000

Chancellor Gordon Brown announced the introduction of a 15 per cent tax on bookmakers' gross profits (defined as the difference between the stakes laid with them and the winnings they pay out) from 1 January 2002;[20] in the event this measure was brought forward by three months to 6 October 2001.[21] Second, the replacement of pools betting duty with a 15 per cent tax on pools companies' gross profits was announced in the 2001 Pre-Budget Report, and took effect from 31 March 2002.[22] Notably the authors of the Nottingham University study favourably reviewed the introduction of the tax in an article published in June 2002.[23]

The conclusions of the Nottingham study were cited in a short summary of the gross profits approach, in the Labour Government's subsequent consultation on bingo duty:

> **How gross profits tax regimes work**
>
> - Moving to a gross profits regime means replacing a tax on turnover (the total amount of stakes placed by punters) with a tax on profits (the total amount of stakes received less the winnings paid out).
> - According to researchers at Nottingham and Nottingham Trent Universities, a gross profits tax will tend to be "more allocatively efficient than a revenue equivalent turnover tax, the price faced by consumers will be lower, betting turnover higher and the overall tax burden as a proportion of gross profits faced by firms will also be lower."
> - In some cases, such as the betting tax reforms, the gambling company will pass on the tax saving to the punter, giving them better value for their stake, increasing the incentives for them to place bets, and thereby ensuring a growth in total turnover.
> - In other cases, such as the pools tax reforms, the company might pass on the savings by increasing the value of prize payouts or use them to invest in increased marketing, both again having a positive effect on turnover.
> - Allowing gambling companies to offset winnings paid out against stakes received means that the tax burden on them is proportionate to their ability to pay over any particular period.
> - This is particularly important both to encourage new entrants to the market, and to boost the growth of telephone and on-line betting, where margins are generally tighter than on cash betting in shops.
> - Moving away from a tax on stakes also removes the incentive for punters to engage in illegal untaxed gambling, helping both to protect the revenue and to ensure that all gambling takes place within a regulated environment.[24]

Further evidence of the advantages of this approach was presented in a review of the first year of the gross profits tax on betting, published in November 2002:

> A year on from the introduction in October 2001 there are a number of indications that suggest the changes to betting taxation have worked well:
>
> - The major bookmakers re-located their offshore on-line and telephone betting operations to the UK so rapidly that the Government was able to introduce the new tax regime three months ahead of schedule on 6 October 2001;
> - Many smaller on-line betting firms have also re-located to, or started up, in the UK to take advantage of the new system;

[20] HC Deb 7 March 2001 c 304; HM Customs & Excise Budget press notice C&E1, 7 March 2001
[21] HM Treasury press notice 81/01, *Betting tax to be scrapped early*, 13 July 2001
[22] Cm 5318 November 2001 para 5.86; HM Customs & Excise Budget Notice CE6, 17 April 2002
[23] Paton et al. "A policy response to the e-commerce revolution: the case of betting taxation in the UK", vol 112 issue 480 *Economic Journal* June 2002
[24] HM Customs & Excise, *Consultation on the abolition of bingo duty*, August 2002 p 4

- Many new jobs have been created within the UK, both in the traditional high street betting shops and in call centres designed to cater for the growing online and telephone betting markets;
- As forecast, bookmakers were able to absorb the new gross profits tax and remove deductions, meaning that – for the first time since 1966 – punters were able to bet 'tax-free' in high-street betting shops;
- As a result, industry turnover has risen by an average 35-40 per cent, with record betting on events like the Grand National and the football World Cup;
- The betting industry has been able to increase its financial support of racing, and these contributions have also been switched to a gross profits basis;
- The major bookmakers have reported a significant decline in the level of illegal bookmaking activity, as a direct result of removing the tax incentive to use unlicensed bookmakers; and
- Revenues collected to date are in line with expectations.[25]

Following the 2003 Budget, a full evaluation report of the new tax was published in May 2003, concluding that "reform of betting tax is a big success … the new gross profits tax has been proven as more effective, fair and sustainable than the previous regime."[26]

2 Consultation on abolishing bingo duty

In the 2002 Budget the Labour Government confirmed it would "be considering the scope to abolish the tax on bingo stakes and replace it with a gross profits tax on bingo companies."[27] In August 2002 a consultation document on introducing a gross profits tax was published; responses were invited by 31 October that year.[28] The document gave a short summary of the origins of this tax, commenting on the burden it placed on punters:

> With over three million regular players, bingo is one of the most popular leisure activities in the UK, played by one in ten women and one in twenty men, one in ten people aged over 75 and one in fifteen aged under 50 … Despite its continued popularity and considerable innovation and investment by the bingo industry, the number of clubs has halved over the last twenty years. Nevertheless, the 688 licensed bingo clubs remain a central part of many local communities, with bingo especially popular in Wales, where it is played by one in six people, and in Scotland, where it is played by one in five people …
>
> Bingo duty was introduced in its current form in 1969 as a replacement for bingo licence duty, charged both on a percentage of the stake money paid by players and a percentage of the money added to the prize fund by the club. Over successive Budgets in 1980 and 1981, the rates of bingo duty were doubled to their current levels: 10 pence per pound of players' stakes; and 11 pence per pound of added prize money. The fees which players pay in order to play, known in the bingo industry as 'par fees', are also subject to VAT. Combined with this charge, the duty on players' stakes and added prize money makes bingo one of the highest-taxed gambling activities.

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[25] HM Customs & Excise, *The modernisation of gambling taxes: consultation on the evaluation of the gross profits tax on betting – one year on*, November 2002 pp 10-11

[26] HM Customs & Excise, *The modernisation of gambling taxes: a report on the evaluation of the gross profits tax on betting*, May 2003 p 19; HM Customs & Excise press notice 27/03, 14 May 2003.

[27] *Budget 2002*, HC 592 April 2002 para 5.86

[28] HM Customs & Excise Business Brief 24/2002, 28 August 2002

> Customs currently collect £115 million per year in bingo duty, most of it from the tax on players' stakes. In considering the abolition of this tax, the Government is conscious that its burden currently falls heavily and disproportionately on women, older people, people on lower incomes, and particular parts of the country.[29]

Some details on the pattern of bingo playing across the population were given in the Report of the Gambling Review Body, mentioned above:

> Surveys have shown that bingo players are most likely to be older women and in social class V. The ONS survey found that women were twice as likely as men to play bingo. However it also found that bingo was most popular in two age groups: those over 75 and those aged 16-24.[30] The Prevalence Survey shows that, within the last year, 5% of men and 10% of women reported playing bingo. The highest scores were among those aged over 65. The smallest percentage was among the 45-54 year olds.[31] The Prevalence Survey found that of all the gambling types surveyed, playing bingo was most closely related to social class, ranging from 3% in Social Class I to 20% in Social Class V … Bingo is popular in the north (16%) and Scotland (20%),and less so in London (6%)[32].[33]

In its consultation paper the Government set out a number of 'core objectives' to reforming bingo duty:

> In developing and assessing its proposals for reform, the Government has established a number of core objectives. In particular, it wants:
>
> - to provide the right environment for the bingo industry to maintain its role in local communities, and to reach its maximum growth potential;
> - to simplify the structure of bingo taxation, and reduce compliance costs for bingo companies;
> - to reduce or eliminate the burden of tax currently falling on bingo players, and ensure that they get a better deal out of playing bingo; and
> - to ensure that any reforms are affordable, and that the bingo industry continues to make a fair contribution to general tax revenues.
>
> In light of these objectives, and the success of the earlier reforms to betting and pools taxation, the Government proposes abolishing bingo duty in its entirety and replacing it with a tax on the gross profits made by bingo companies. This will naturally require a radical overhaul of the way bingo is currently taxed, and the Government is therefore keen to consult the industry closely on the design of the new tax.[34]

Customs received 25 responses to its consultation document, of which 21 were from bingo operators and one from the Bingo Association, which represents over 90 per cent of the licensed bingo industry. Of these respondents the Association and 19 others supported the Chancellor's plan to introduce a gross profits tax, 4 were cautious and 1 opposed.[35]

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[29] *Consultation on the abolition of bingo duty*, August 2002 p 11

[30] Office of National Statistics, *Attitudes to gambling in Great Britain*, January 2001

[31] K.Sproston B.Erens & J.Orford, *Gambling behaviour in Britain: results from the British Gambling Prevalence Study*, National Centre for Social Research 2000 p 19

[32] ONS, *Attitudes to gambling in Great Britain*, January 2001

[33] *Gambling review report*, Cm 5206, July 2001 p 41

[34] *Consultation on the abolition of bingo duty*, August 2002 p 11

[35] HM Customs & Excise, *The modernisation of gambling taxes: consultation on the abolition of bingo duty - summary of responses*, April 2003 para 2.1

3 Budget 2003 - a new gross profits tax

In his Budget speech on 9 April 2003 the then Chancellor, Gordon Brown, confirmed that bingo duty would be replaced with a 15 per cent tax on the gross profits of bingo companies.[36] Details of how the tax would work in practice were given in a Budget Notice:

> The duty on the stakes paid by players, and the duty on money added to prize funds by bingo clubs ('added prize money') will be abolished and replaced with a duty on the bingo promoters' gross profits. The rate of the new duty will be 15 per cent.
>
> For purposes of the new duty, gross profits will be defined as the total amount players pay (inclusive of stakes) to participate in bingo minus the total value of prizes bingo promoters pay out as winnings. Bingo played in the following premises will be exempt from bingo duty: a domestic dwelling; and, a members' club not licensed under the Gaming Act 1968, where only bona fide members and guests can play.
>
> The playing of bingo will also be exempt from bingo duty if either:
> - the promoter is prohibited by sections 3 and 4 of the Gaming Act 1968 from charging any player any fee or levy to participate in a game of bingo; or
> - winnings paid out by a promoter operating in a location not licensed under the Gaming Act 1968 do not exceed £500 in any one day, or £7,500 in any accounting period.
>
> Additionally the playing of other small-scale bingo shall remain exempt from bingo duty.[37]

The Government's case for reforming bingo duty was set out at length in a paper issued alongside the Budget; an extended extract is given below. It also published estimates of the likely benefits and costs to arise from levying bingo duty on gross profits:

> The new tax system is simpler than the current system because bingo companies will no longer have to calculate the duty on added-prize money … The Government estimates this will save each bingo company, on average, half an hour per month for each club it operates … [Using ONS estimates for the value of a middle manager's time and the hourly cost of an accountant] the Government calculates that this simplified tax calculation will save around £120,000 per year. Bingo companies will benefit further because they will only have to calculate their tax monthly rather than weekly as at present … [saving] a further 1.5 hours per month per club … Therefore the Government believes the annual compliance savings from the abolition of bingo duty will be around £470,000.
>
> Of course, there will be a one-off transitional cost of revising accounting systems and training staff … Based on information from the two major companies, the Government estimates that the cost to them in total will not exceed £500,000. Based upon a survey of several of the remaining 148 bingo companies, the Government estimates that [accounting costs] will not, on average, cost each bingo company more than £500, [while the total costs for reprogramming] each controller unit that runs the industry's bingo equipment … will be around £320,000. Consequently the Government believes the total transitional costs will not exceed £850,000.[38]

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[36] HC Deb 9 April 2003 c 278

[37] HM Customs & Excise Budget Notice CE20, 9 April 2003

[38] HM Customs & Excise, *Regulatory impact assessment: bingo duty*, April 2003 para 5

Reforming Bingo Duty : the Government's case

HM Customs & Excise, *The modernisation of gambling taxes: consultation on the abolition of bingo duty – summary of responses*, April 2003 pp3-8

What should the rate of gross profits tax be?
The Government wanted to set a rate which would encourage industry growth and benefit players, but which was affordable. Consequently it asked bingo companies to describe what impact different rates would have upon their business plans.

The majority supported a gross profits tax at 15 per cent. These respondents believed that this would help the licensed bingo industry by benefiting players, increasing admissions and profits. The supporters of this rate felt any rate higher than 15 per cent while still being beneficial would produce proportionally fewer benefits to players and deliver lower growth. They also felt that coupling this to exempting participation fees from VAT would deliver further benefits. Four respondents wanted a 10 per cent rate and one preferred 5 per cent. In all cases the respondents believed this would help the smaller clubs stay in business. Additionally two respondents wanted tiered rates to give the smaller clubs a financial boost.

The Government has decided to introduce a gross profits tax rate of 15 per cent to replace bingo duty. It believes this rate will benefit all bingo companies, both large and small, deliver benefits to players and is affordable. The Government rejected the option of tiered rates because it could not properly target the smaller clubs without creating disincentives for growth. Further, based upon evidence from its reform of betting tax, the Government believes special measures are unnecessary because the move to a gross profits tax will deliver proportionally more to smaller clubs …

Is there any need to review the scope of bingo taxation?
Every review provides an opportunity to consider the scope of a tax. While the Government saw no need for any change, it was happy to receive the views of respondents.

Of the 15 who answered this question, all but two argued that the Government should broaden the scope of bingo duty. Those who wanted the change believed the current exemption for registered clubs, e.g. British Legion, CIU and Working Men's clubs, who provide bingo gives them an unfair competitive advantage over the smaller licensed operators who do pay bingo duty. Those who advocated change offered two options. The first was to tax all registered clubs who provide bingo. The alternative was to tax only those registered clubs where prizes are or exceed £1,000 per week.

After weighing up the evidence the Government has decided not to broaden the scope of bingo taxation. Although some registered clubs provide bingo, they do so under different rules, which give them less commercial freedom. Consequently, as licensed and registered clubs are not in direct competition, the Government believes there is no compelling case at this time for changing the scope of bingo duty.

How should the national game be treated?
Switching to a gross profits tax regime requires different accounting processes. The Government therefore asked how it should treat the National Game, and other linked and multiple games.

There was universal agreement that under a gross profits tax system the tax treatment of the National Game and other linked bingo should copy the current practice. Consequently each operator should account for the gross profits it earns from any national or linked game in which it participates. Respondents believed this would deliver the same tax without creating extra compliance costs.

The Government accepts the industry's view. Therefore each bingo company will be responsible for accounting for tax on the gross profits it makes by participating in the National Game or a linked game.

What should the definition of 'gross profits' include?

In common with the reforms to betting and pools taxation, the Government wanted to introduce a definition of 'gross profits' ('stakes' minus 'winnings') that accurately reflects the cost of playing bingo and the amount actually won. It was therefore keen to hear what bingo companies thought of the Government's suggested definitions, which were:

- The 'stakes' the customer pays to play bingo would include: the cost of buying cards for main stage bingo; the gross total spent playing mechanised cash and prize bingo; the cost of admission; and, any other charges levied (e.g. membership fees).
- The customers' winnings would include: the value of cash prizes won and paid to the player; and, the cost of any non-cash prizes won and taken by the player.

There was a range of views on this subject. The favourite option was to define 'stakes' as the money spent on cards for main stage bingo and the total amount spent playing mechanised cash and prize bingo, and winnings as the value of cash and non-cash prizes won by players. Advocates believed this would truly reflect what players paid to participate in games of bingo and what they won. Additionally some believed this would be the simplest option in compliance terms, especially if the Government decided to abolish VAT on par fees. A couple of respondents were content with the definition the Government proposed. The rest wanted to be able to offset stakes against other costs, for example the cost of bingo cards and staff. There was no consensus on what the extra costs should be. Advocates of this position believed it would tax the operating profit earned by companies providing bingo.

Having considered the industry's views, the Government has decided to use the industry's favoured definition. Based upon the evidence provided, the Government believes this definition best reflects the financial costs and benefits of players participating in bingo. It also has the advantage of being the same definition as is used for betting, the football pools and casinos.

How should clubs account for the tax?

The Government was keen to hear from bingo companies if there were ways in which it could reduce compliance and cash flow costs and simplify the accounting regime.

Of the 10 who expressed a view, 6 wanted to submit returns quarterly with payment a month in arrears. They believed this would reduce compliance costs and allow operators to align their bingo tax returns with their VAT returns. Of the rest three were happy to continue with monthly returns and one wanted annual returns.

The Government has for the time being decided to keep monthly returns. While sympathetic to the industry's argument, Customs and Excise, as part of the Government's e-programme, is currently working on plans for modernising the administration of the gambling taxes. The Government believes it would be sensible to examine the accounting return issue as part of this process.

When should any reforms be introduced?

While wanting to introduce the reform as soon as possible, the Government recognised that such a major reform could not be introduced immediately because bingo companies would need to amend their accounting systems and train key personnel. It therefore asked the industry how long it would take it to make the necessary changes.

The prevailing view was that the gross profits tax should be introduced three to six months after the Chancellor's Budget announcement. The industry believed this would give them sufficient time to amend and test their accounting systems, train their staff and for HM Customs and Excise to run training seminars. Such preparation would ensure as smooth a transition as possible.

After considering the industry's comments, the Government has decided to introduce the new gross profits tax on Monday 4 August 2003.

In response the industry broadly welcomed a new gross profits tax (GPT), but raised concerns about the way 'par fees' (the fees which players pay in order to play bingo) would be treated for VAT. The original consultation document had asked for views on this question:

> Bingo may be considered unusual among gambling activities in that VAT applies to par fees, whereas the income bookmakers, pools companies, and casinos make from their core betting and gaming activities is all exempt from VAT. Bingo clubs must pay over the VAT charged on par fees to Customs, but – as a result – they may recover more of the VAT incurred in relation to their business costs than other gambling companies. [As a consequence] the Government is keen to consider the impact VAT has on the way bingo companies run their business.[39]

In response the industry argued strongly that VAT should be withdrawn, though the Labour Government did think there was a convincing case for this change:

> **Should there be any change to the VAT treatment of par fees?**
> The Government was keen to consider the impact of VAT on how bingo companies run their businesses. It therefore wanted to know how different VAT recovery rates would affect business costs and business decisions.
>
> The industry argued that the Government should abolish VAT on par fees. The respondents gave four reasons for this:
> - it would reduce further the tax paid by bingo companies;
> - it would simplify bingo taxation;
> - bingo would be taxed in the same way as betting, pools and casinos; and
> - different types of bingo would be taxed in the same way.
>
> Respondents further believed keeping VAT would:
> - limit what could be returned to players through higher prizes or reduced prices when compared to what would happen if par fees became VAT exempt; and
> - it would leave bingo more highly taxed overall than betting, pools and most casinos.
>
> Having considered a range of factors including affordability, value for money and the impact on the industry and players, the Government has decided at present to retain VAT on par fees.[40]

The *Financial Times* reported on industry's concern as follows:

> Bingo operators responded angrily to changes to their tax regime yesterday, criticising them as unfair and inconsistent with the rest of the gaming industry. Under the changes, bingo duty paid by players will be abolished and replaced by a 15 per cent tax on gross company profits. The move was designed to bring bingo in line with tax changes for sports betting and football pools, which both pay 15 per cent tax on gross profits. But bingo operators will still have to pay 17.5 per cent value added tax on their revenues - unlike bookmakers and pools operators, who do not.
>
> John Kelly, chief executive of Gala, the UK's largest bingo operator, said he was irritated. "I believe the Treasury's intention was to bring in a consistent tax regime for gaming businesses across a large number of sectors but this hasn't happened," he

39 *Consultation on the abolition of bingo duty*, August 2002 p 12

40 *The modernisation of gambling taxes: consultation on the abolition of bingo duty – summary of responses*, April 2003 pp 4-5

> said. “I cannot believe this was intended, and assume we will soon get a clarification from the Treasury that will say VAT is being removed.” However, David Boden of Mecca, the UK’s second largest operator, said: “The figures we’ve seen suggest the industry taxation burden will fall by about £25m. When you consider there are 550 bingo clubs, you’re talking about very little difference in prize money.”[41]

The Bingo Association was particularly critical of this aspect of the new tax regime, as they explained in a press notice issued at the time:

> Sir Peter Fry, Chairman of The Bingo Industry said: “The Chancellor has missed the chance to make a real difference for bingo players and the industry. Although this rate would appear to be an improvement on the old 10% duty, the reality for our clubs is that it will make little difference to them.” The industry had put forward proposals for an overall GPT of 15%, bringing bingo into line with betting and the football pools. This rate would have generated an extra £482 million worth of games for players and stimulated a growth in bingo admissions through higher prize money.
>
> Sir Peter continues: “Leaving VAT on participation fees means that clubs will have much less to give back to players in increased prizes … The introduction of GPT at 15% for betting gave a better deal to millions of men who enjoy a flutter. I am sure that our players will be wondering why the Chancellor is unwilling to do the same for the millions of women who enjoy bingo.”[42]

Provisions to reform bingo duty were included in the Finance Bill, and were selected for debate on the floor of the House, at the start of the Bill’s Committee stage.[43] Speaking for the Conservatives, Stephen O’Brien argued that VAT on par fees should be removed, to “put bingo on the same footing as the pools and the betting industry” and moved an amendment to the Bill to this effect:

> The industry favoured a system that made participation fees VAT-exempt and levied GPT—gross profits tax—at a rate of 15 per cent., in line with betting and the pools: "just as" or "in the same way", to keep in line with what the Chancellor was leading the whole industry and all those who play bingo to expect… [However] the tax burden on bingo remains significantly higher than on any other gaming product, at 30.7 per cent. The bingo industry rightly considers that that amounts to discrimination against bingo players.”[44]

In opposing this move, the then Economic Secretary John Healey said the Government would monitor the implementation of the new tax and “be prepared to receive fresh evidence and, if a good case can be made, consider further reform and refinement of the regime that we are putting in place”; however, it did not accept the need to tax all forms of gambling in a neutral fashion:

> Our approach to the reform of bingo taxation is consistent with our approach to betting and pools, but it is not neutral across the gambling regimes because industry-specific factors need to be taken into account. For example, with the challenges faced by the betting and gambling industry, we were mindful of a strong move towards moving betting offshore and on to the web. That consideration clearly applies to that part of the

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[41] “Bingo halls don't see Kelly's eye to eye with Brown over taxation”, *Financial Times*, 10 April 2003
[42] Bingo Association press notice, *Chancellor misses opportunity for business growth*, 9 April 2003
[43] HC Deb 13 May 2003 cc 235-252
[44] *op.cit.* c 236-7

> gambling industry, but not to bingo. Introducing a neutral regime across the different gambling industries is not our policy aim.[45]

The Minister went on to argue that concerns the new regime would penalise smaller bingo clubs were unfounded, and, in the light of this, the expense of removing VAT from par fees – some £60 million – was unjustified:

> There seems to be a claim that some small bingo clubs will be worse off as a result of the reforms … As the reforms cut the tax for all bingo clubs, regardless of size, it is hard to see how that could be the case … The analysis conducted by Nottingham university of the impact on small bookmakers of changes in the betting regime suggests that modelling a gross profits tax in that way on gambling industries would not have the effect of making smaller concerns worse off. In addition, the bingo industry has told the Government consistently that small clubs pay a higher effective rate of tax than larger clubs. That is largely because small clubs' profit margins are narrower. Moving to a profits-based tax would mean that their effective rate of tax would be equalised …
>
> It is true that there is pressure on the bingo industry and that there is a long-term decline. However, it is also true that part of the purpose of our reforms is to try to assist the bingo industry to deal with the challenges presented by those problems … I assure [the industry] … that, first, we shall examine the evidence offered by the industry, as we have done before; secondly, we shall keep the reforms under way, as we have done for the reforms to betting and the pools; and, thirdly, we shall continue to look at the case for further change, as we do every year as part of the Budget process. For this Budget, however, I cannot accept [the Opposition's amendment] … which would cost £60 million and would require us either to increase taxes elsewhere or to reduce the money that we are spending elsewhere.[46]

Mr Healey also announced two changes, on the launch of the new tax, and the way it would be administered:

> When we held consultations on the abolition of bingo duty, we asked bingo operators how long they would need to introduce the changes necessary to comply with a gross profits tax system. The industry's responses were clear: three months from the date of the announcement would be sufficient. We thus announced in the Budget on 9 April that bingo duty would be abolished and replaced by a tax on bingo companies' gross profits from 4 August this year. However, at a meeting held shortly after the Budget to discuss implementation, the industry told officials that previously unforeseen issues had been identified, which meant that it would not be ready to operate the tax by that date. The industry asked the Government to delay the start of the new tax to allow it sufficient time to amend its systems. We have listened to the industry's concerns and are amending the Bill to delay the tax reform until 27 October—the date that the industry now prefers.
>
> In addition, the bingo industry asked whether the start and end of the accounting periods could be amended so that they matched more closely the industry's accounting practices. That would avoid the need for bingo operators to make amendments to their accounting systems. We therefore propose to amend the accounting periods as suggested in the second Government amendment.[47]

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[45] *op.cit.* c 243

[46] *op.cit.* cc 244-6

[47] *op.cit.* c 247. Both Government amendments were adopted, and the Conservative amendment to remove VAT on par fees was negatived (by 336 votes to 134): *op.cit.* cc 249-52.

On a related VAT matter, the Minister acknowledged concerns expressed by the industry about the way in which calculations of the GPT would interact with the treatment of VAT on par fees, and stated that he would consider the issue further.[48] On 18 June the Minister confirmed that the Government would table an amendment to tackle this problem; as a press notice explained, "under the revised tax system, GPT will only be chargeable on any bingo company's gross profits after VAT has been deducted. Prior to the amendment, no allowance was made for any VAT payable and therefore GPT would have been paid on all of the bingo company's gross profits."[49] At the Report stage of the Bill on 1 July Mr Healey moved this amendment, resisting calls to remove VAT entirely from participation fees:

> During discussions with officials after Budget day, the bingo industry argued that the new tax structure would produce an unfortunate consequence in the interaction between the gross profits tax and VAT on the participation fees that bingo companies charge players for running games of bingo, and asked us to consider amending clause 9 to remedy that flaw ... As a result of [those] discussions … amendment No. 4 has been tabled for consideration by the House. It builds on our original reform and will increase the tax cut for the industry from £25 million to £35 million, and reduce the effective tax rate—that is, tax as a percentage of profits—on the playing of bingo from 31 to 24 per cent., similar to the effective tax rates for the national lottery, casinos and gaming machines …
>
> Although we appreciate that the bingo industry wanted a bigger tax cut, we have delivered what we believe will boost bingo, give players a better deal and is affordable in the current situation of fiscal neutrality. To [remove VAT from participation fees] … would require us to increase taxes elsewhere or to reduce spending elsewhere. We are not prepared to do either.[50]

As a consequence of this change, when assessing their total receipts for tax purposes, bingo operators include VAT-*exclusive* participation fees.[51]

On this occasion John Greenway MP asked the Minister why the rate of bingo duty should be set at the same rate as general betting duty:

> The Minister accepts that the placing of a bet in a betting shop carries no VAT, but the stake on a game of bingo, because it involves a participation fee—the entrance fee for the evening's games—attracts VAT. I understand the niceties of that. However, if the bingo industry told the Minister that it would re-examine its charging structure for playing bingo to achieve equivalence with the stake in a betting shop or a gaming machine, would he consider that carefully?[52]

Mr Healey replied:

> It is correct that the gross profits tax on the betting industry is set at 15 per cent, but he will know better than any other Member that that is not the full picture, because bookmakers are required to add a levy from the gross profits that they make on horse racing as a contribution to supporting the industry, thus increasing in many respects

48 *op.cit.* c 247

49 HM Treasury press notice 74/03, 18 June 2003

50 HC Deb 1 July 2006 cc 241-3. The Government's amendment was adopted (*op.cit.* c 248).

51 *Customs Notice 457: Bingo duty*, July 2004 para 4.1. Guidance is now given in, *VAT notice 701/29: Betting, gaming and lotteries*, February 2013.

52 HC Deb 1 July 2006 c 241

> the effective tax rate. Curiously but historically, VAT has been levied on bingo playing, but not betting, since the introduction of the VAT regime.[53]

As noted, the tax was launched on 27 October 2003.[54] In a press notice issued at the time the chairman of the Bingo Association, Sir Peter Fry, said, “the industry has accepted that a new tax structure is in place and that it will provide some relief from the overall burden of tax. However, this still does not fully address the issue of inequality of gaming structures.”[55]

Of related interest, in July 2003 the Labour Government consulted on reforming the tax on gaming machines - amusement machine licence duty (AMLD).[56] The consultation document touched on the recent changes made to bingo duty:

> Despite bingo’s continued popularity and considerable innovation and investment by the industry, the number of bingo clubs has halved over the last 20 years. The overall level of taxation of bingo was previously very high in comparison to other forms of gambling and was particularly complex. In order to address these issues, in Budget 2003 the Chancellor announced the abolition of tax on bingo players’ stakes and added prize money and their replacement with a 15 per cent gross profits tax on the difference between bingo spend and winnings paid out. The new tax will be introduced on 27 October 2003. The Government believes the reform will provide a better tax environment for the bingo sector, and help to establish a good platform from which their businesses can grow.[57]

In Budget 2004 the Labour Government announced that it would defer any reform of AMLD and further major reform of other gambling taxes, to align with its forthcoming consolidation of gambling law.[58] Following the passage of the *Gambling Act 2005*, the Government confirmed that further reform was not anticipated:

> The Government has considered taxation arrangements within the wider context of changes to regulation, technology and gambling markets. It has concluded that the current taxation arrangements for gambling are generally working well at present and that maintaining stability in the overall structure of taxation is desirable in a period of transition. In these circumstances, the Government has therefore decided to maintain the current regimes which are working well for betting, betting exchanges, lottery and bingo, and to retain the system of amusement machine licence duty (AMLD), rather than move to a gross profits tax.[59]

It was also announced that some minor modifications would be made to align the tax regime with the new Act, and further details were published in the 2006 Budget, though none of these changes related to bingo duty.[60]

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[53] HC Deb 1 July 2006 c 242

[54] HM Customs & Excise press notice, *£35 million tax boost for bingo*, 27 October 2003. Secondary legislation was introduced at this time covering the regulation of bingo promoters and payment of the tax (SI 2003/2503).

[55] Bingo Association press notice, *Bingo business as usual, as GPT comes into effect*, 27 October 2003

[56] HM Customs & Excise Business Brief 09/2003, 14 July 2003

[57] HM Customs & Excise, *The modernisation of gambling taxes: consultation on the review of amusement machine licence* duty, July 2003 paras 2.14-6

[58] *Budget 2004* HC 301 March 2004 para 5.111

[59] *Pre-Budget Report* Cm 6701 December 2005 para 5.111.

[60] HM Revenue & Customs Budget Notice BN62, 22 March 2006. As discussed below, the Coalition Government replaced AMLD with a gross profits tax, machine games duty, in February 2013.

4 Further debate on taxing bingo clubs

4.1 The state of the industry

The 2007 Budget did not include any changes to the rate of bingo duty, though the Labour Government confirmed that implementing the *Gambling Act 2005* would require changes to all types of betting and gaming duties legislation:

> The *Gambling Act 2005* will repeal much of the current social law for betting, gaming and lotteries. The tax law for betting, gaming and lotteries depends on many cross-references to the social law for definitions of certain terms and expressions. When the Gambling Act is fully implemented many of these references will become redundant – this is expected to be on 1 September 2007. Legislation to be introduced in *Finance Bill 2007* will make changes to the betting and gaming duties legislation to either update the social law cross-references, or replace them with new free-standing definitions that are independent of the social law.[61]

As the *Financial Times* reported, the industry was strongly disappointed, as it had lobbied for VAT to be removed from participation fees, to compensate clubs for the impact of the forthcoming ban on smoking in public places (which took effect on 1 July 2007):

> Bingo and pub operators have engaged in a concerted lobbying campaign ahead of Wednesday's Budget, warning that the smoking ban will cause closures and job losses unless the chancellor provides tax relief. Both have put forward evidence gleaned from Scotland's ban introduced last year to measure the potential impact when England and Wales implement bans in the summer. The Bingo Association has mounted a petition of more than 100,000 players … [It] has long argued that bingo is the most heavily taxed form of gambling in Britain, hit by the double effect of paying 15 per cent in gross profits tax as well as value added tax ...
>
> Neil Goulden, chief executive of Gala Coral and chairman of the Bingo Association, said double taxation had been unfair for some years. "Given the impact of the smoking ban, now is the time for the chancellor to act," he said. "The industry needs his help. The closure of 189 bingo clubs would be a loss of amenity to a number of communities." … The Treasury said it was not policy to compensate industries for lost revenue through tax relief, adding that adjusting tax policy in the long term for something having a transitory impact like the smoking ban would make no sense. "The charges in question are participation charges for player-to-player games. These are charges made for the provision of a service and there is no difficulty in identifying the VAT-able supply," the Treasury said.[62]

Certainly there was evidence that bingo clubs in Scotland had been significantly affected by the introduction of a smoking ban the year before.[63] In their annual report published in July 2007 the Gambling Commission noted:

> The smoking ban came into effect in Scotland in April 2006. Scottish operators have reported significant losses in revenue for the first six months of trading since the

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[61] HM Revenue & Customs Budget Note BN76, 21 March 2007

[62] "Bingo halls seek VAT relief to offset effects of smoking ban", *Financial Times*, 19 March 2007. See also, *Smoking in Public Places: the ban in force*, Library standard note SN4414, 20 May 2011.

[63] see for example, "Is bingo's number up?", *Financial Times*, 10 February 2007

introduction of the smoking ban.[64] A number of operators in Scotland have already ceased trading and the Bingo Association predicts that this trend is likely to follow across England (from 1 July 2007) and Wales (from 1 April 2007) once the smoking ban comes into full effect.[65]

In its annual report the following year, Commission noted that the ban was one factor in the expected decline of the gambling sector as a whole:

> The full impact of the 2005 Act on the gambling industry has yet to emerge. Further, the gambling industry operates in the changing economic environment and has also been subject to particular issues following the introduction of the smoking ban. The Commission's original forward plans assumed a low level of growth in the industry. It is now assumed that the number of operators will contract during the next three years.[66]

Following the Budget Members debated the 'double taxation' of bingo when the House considered the provision in that year's Finance Bill to set the rates of gaming duty. Paul Goodman and Rob Marris both referred to this issue, and the then Financial Secretary, John Healey, responded as follows:

> Both the hon. Gentleman [Mr Goodman] and my hon. Friend the Member for Wolverhampton, South-West (Rob Marris) raised what they described as the "Mecca bingo" question. That is a little beyond the scope of the clauses and the schedule under discussion, but … I shall comment on it. As the Committee would expect, I regularly meet representatives of the Bingo Association and bingo operators, including Mecca. I am acutely aware of the situation that bingo operators face in Scotland after the smoking ban. They must make commercial decisions on whether to continue or to close the clubs.
>
> At root, this is not principally a tax problem with a tax solution; it is the product of a complex combination of changing demographics and changing tastes in leisure activities. In addition, the policy of applying VAT and duty to bingo participation fees is entirely consistent with our treatment of other player-to-player games in licensed premises, such as poker played in casinos.[67]

Similar arguments were made in answer to PQs on the topic,[68] although this was factually wrong. Casinos are liable for gaming duty on their 'gross gaming yield' (ggy), and for games in which the house is the banker, ggy consists of the total value of stakes minus players' winnings.[69] In a written statement some months later, the then Exchequer Secretary, Angela Eagle, confirmed that Ministers statements had been based on "an incorrect understanding of the effect of the legislation relating to gaming duty as set out in the Finance Act 1997":

> **The Exchequer Secretary to the Treasury (Angela Eagle):** On 30 April 2007, during the Committee of the whole House debate on clause 7 of the Finance Bill, my hon.

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64 Rank Group plc, *Annual review and summary of financial statements*, 2006

65 HC 680 July 2007 p 29

66 HC 726 July 2008 p30

67 HC Deb 30 April 2007 c 1303. The issue was also raised in two Early Day Motions at this time (EDM 1631 of 2006-07, 6 June 2007; EDM 1804 of 2006-07, 29 June 2007).

68 At this time the then Paymaster General, Dawn Primarolo, said "the Government's policy of applying VAT and duty on bingo participation fees is consistent with our treatment of other player-to-player gaming in a bricks and mortar environment, such as player-to-player card games in casinos" (HC Deb 28 March 2007 c 1593W).

69 HM Revenue & Customs, *Gaming duty : Notice 453*, October 2013 para 2.1. For games in which the bank is shared by the players, ggy consists of participation charges – 'table money' – exclusive of VAT.

Friend the Member for Wentworth (John Healey), the then Financial Secretary to the Treasury, made a statement concerning the taxation of bingo. He said:

"The policy of applying VAT and duty to bingo participation fees is entirely consistent with our treatment of other player-to-player games in licensed premises, such as poker played in casinos". [Official Report, 30 April 2007; Vol. 459, c. 1303.].

Similar statements have also been made in response to numerous letters and parliamentary questions from hon. Members.

I regret to inform the House that these statements were based on an incorrect understanding of the effect of the legislation relating to gaming duty as set out in the Finance Act 1997. In fact the Finance Act 1997 does not apply gaming duty to participation fees for poker played in casinos, so participation fees for poker played in casinos are liable only to VAT. I apologise to the House for this misunderstanding. I can, however, assure the House that HMRC have, nevertheless, been applying the law correctly, and casinos have not been required to account for gaming duty on participation fees for poker. In the light of the effect of the current legislation relating to gaming duty, I will be looking again at the tax treatment of participation fees for player-to-player gaming in casinos.[70]

Over the next two years, the industry continued to lobby for a change in the tax system, and Members continued to raise the issue in the House.[71] At Treasury Questions in January 2008, Malcolm Moss argued that removing VAT "would be tax revenue-neutral, would prevent further club closures and would secure this popular leisure activity for thousands of people." The Exchequer Secretary replied:

It is not at all clear that removing VAT on participation fees would be enough to make some of the marginal clubs viable. I must correct the hon. Gentleman, as bingo is not the only gambling sector to face both duty and VAT. Gaming machines are liable to VAT and amusement machine licence duty. I must also tell the hon. Gentleman that in 2003, bingo saw a big reduction in its effective tax rate from 35 per cent. to a rate that ranges between 20 and 25 per cent. That is in line with all the other tax impositions on other forms of gambling.[72]

More details on the tax rates for different forms of gambling were given in a subsequent PQ:

Mr. Betts: To ask the Chancellor of the Exchequer what the effective tax rate is for (a) bingo clubs, (b) casinos, (c) local betting offices and (d) adult gaming centres.

Angela Eagle: It is not possible to give an accurate estimate of the effective tax rate on each premises type as it depends on a range of factors. These include: the types of gambling activity each type of premises offers; the tax liability each gambling activity incurs; and the relative mix of these different activities. However, the average effective rates of taxation on bingo, casino gaming and gaming machines are between 20 and 25 per cent. The rate of general betting duty is 15 per cent.[73]

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70 HC Deb 10 September 2007 c 114WS. Sections 10-15 of the *Finance Act 1997* made a number of administrative changes to the tax on casino gambling, including the tax being renamed gaming duty (HM Customs & Excise press notice, *Deregulation for casinos*, 26 November 1996).

71 "Darling urged to ease bingo tax burden", *Financial Times*, 5 January 2008. See also EDM 132 of 2007-08; EDM 939 of 2007-08; and, EDM 12 of 2008-09.

72 HC Deb 24 January 2008 c1615. See also, HC Deb 3 March 2008 c2192W

73 HC Deb 18 February 2008 c369W

In this context, effective tax rates for gambling products are calculated as: total tax divided by the tax base. Total tax is equal to duty receipts, plus net VAT where applicable (bingo and gaming machines), while the tax base is gross profits (stakes minus winnings ie, net stakes).[74]

In the 2008 Budget the Labour Government announced that duty rates for AMLD and duty bands for gaming duty would go up by inflation, but made no mention of VAT on participation fees.[75] The Bingo Association was strongly critical, citing a survey that had found a large number of clubs being at risk of closure:

> The Bingo industry responded with disbelief at the Chancellor's decision not to remove VAT from bingo charges, but rather to increase the tax burden for bingo through higher rates of amusement machine license duty (AMLD) …
>
> Recent studies by the Henley Centre have underlined the precarious position of many clubs, identifying 108 across the country at risk of closure, and the profound impact club closures have on players. Many described feelings similar to bereavement. Bingo is well known for providing valuable social benefits as well as a safe and affordable pastime, with many clubs at the heart of small communities. It is these clubs which are most at risk.[76]

The *Financial Times* reported that the two major operators expected to close a number of clubs in the near future, and that the Minister had written to the industry, suggesting that the tax system not the 'root of bingo's problems':

> One in five bingo clubs could face closure after the chancellor turned a blind eye to intense lobbying for a relaxation of their tax burden, industry leaders warned last night. Several loss-making independent clubs and a clutch run by Rank Group and Gala Coral, the dominant bingo operators, were staying open in the hope that Alistair Darling would sympathise with the industry's claim that it was the only part of the gambling sector to be double taxed. Instead, bingo's revenue contribution to the Treasury increased yesterday when the chancellor announced an index-linked rise in duty on gaming machines …
>
> Bingo clubs pay a gaming duty of 15 per cent and value-added tax of 17.5 per cent. But Angela Eagle, Treasury minister, yesterday wrote to bingo industry leaders saying taxation was neither the root of bingo's problems nor the solution. Ian Burke, chief executive of Rank, said bingo's cause had been taken up by backbench MPs, many of whom recognised the social importance of bingo clubs in their local communities. "I am not saying bingo hasn't got problems, some of its own making," he said. "But I think it's not logical and not fair to have two revenue taxes in one business."[77]

Bingo clubs were the subject of a Westminster Hall debate in February 2009 instigated by John Hemming MP. On this occasion Mr Hemming took issue with the argument was tax was not the root cause of the industry's problems:

> Another issue that is raised time and again by the Treasury is that the root of bingo's problems is not fiscal and that other factors such as the smoking ban have had a

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74 HC Deb 27 February 2008 c1643W

75 *Budget 2008*, HC 388 March 2008 para 4.44

76 Bingo Association press notice, *No Budget Lifeline For Bingo*, 12 March 2008

77 "Closure risk for 'one in five bingo clubs'", *Financial Times*, 13 March 2008. See also, HC Deb 18 June 2008 c990W & Public Bill Committee (Finance Bill), *Twenty fourth sitting*, 19 June 2008 cc935-7.

> significant impact on bingo. It is worth noting that it has never been claimed that double taxation is the industry's only problem. I agree that the smoking ban has had an impact on the industry, as it has in other areas, but the ban was not opposed by the industry, which actively supported the Government. However, the key point is that although the smoking ban had a negative effect on our nation's bingo clubs, it has no bearing on the fact that those clubs remain subject to a burdensome system of taxation that is more severe than that applied to betting shops, casinos, online bingo, online casinos and poker, online betting, football pools and gaming machines.[78]

In response the Minister, Ms Eagle, noted that the trend for clubs closing was not a new phenomenon:

> Information recently provided by the Bingo Association suggests that 25 clubs closed in 2008, compared with 37 in 2007. Obviously, club closures are alarming, especially for those individuals and communities closest to them, but closures do not represent a new trend or a fault with the current tax treatment of bingo. In fact, an average of 17 clubs closed every year between 1994 and 2004, highlighting the long-term structural changes that have affected the sector.

She went on to argue that should VAT be removed from participation fees, the cost in lost revenues would have to be recovered in another way:

> Bingo participation fees cannot be removed at a relatively small cost—it would certainly be much higher than the £10 million mentioned by hon. Members today. In any Budget-making process, a balance must be struck between cutting taxation and getting revenue in, as all hon. Members know. We could always cut VAT on one particular form of gambling over another, but we would have to justify doing so and think about how to recoup the money. In the run-up to Budgets, those decisions must be balanced.[79]

4.2 The legal challenge regarding mechanised bingo

A second issue at this time was a legal challenge to the VAT treatment of 'mechanised cash bingo' – coin operated bingo machines often played in clubs in the intervals between bingo games. Briefly, the VAT base across all Member States is determined by European VAT law, which establishes which goods and services have to be exempt from the tax.[80] Under these provisions Member States must exempt "betting, lottery and other forms of gambling, subject to the conditions and limitations laid down in each Member State."[81] In UK the approach has been to include the takings from gaming machines in the scope of VAT, to make it easier for pubs and clubs accounting for VAT on their sales.

With the implementation of the *Gambling Act 2005*, the Labour Government aligned the definition of these devices for tax purposes, bringing some machines into VAT which had previously been exempted: specifically, 'fixed-odds betting terminals', and 'section 16/21 games' – on which mechanised cash bingo can be played.[82] Prior to this, UK VAT law drew a distinction between devices that generated the element of chance for the player – classified

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78 HC Deb 25 February 2009 c127WH

79 HC Deb 25 February 2009 c132WH

80 For more details see, *VAT : European law on VAT rates*, Library standard note SN2683, 28 August 2013

81 Under Article 135 of EC Directive 2006/112/EC

82 HM Revenue & Customs Business Brief BB23/05, 5 December 2005

as gaming machines, and liable to VAT – and, those machines electronically connected to a random number generator. In the latter case, as the element of chance was not actually created by the machine itself, the device did not meet the test for a gaming machine, and thus VAT-exempt. Some operators had exploited this difference by reconfiguring their existing stock of machines so as to avoid VAT on their takings. This change was made by secondary legislation, with effect from 6 December 2005.[83]

In February 2005 the European Court of Justice had considered two joined cases on the way Member States applied the EU VAT exemption on gambling. Although the Court upheld the power of countries to set the limits to the exemption, it stated that in doing so, countries had to comply with the principle of fiscal neutrality: that similar goods and services, which would be in competition with one another, have to be treated equally with regard to VAT.[84] The gaming business Rank challenged the VAT paid on both mechanised cash bingo games and slot machines *before* 6 December 2005, on the grounds that in treating similar bingo games and gaming machines differently for VAT purposes, the UK had been in breach of this principle.[85] Both appeals were upheld by the Tribunal,[86] and in turn, by the High Court in June 2009.[87] The amounts of money at stake are considerable.[88]

Over the summer HMRC announced it would consider claims from clubs for over paid VAT, although it would appeal the decision.[89] Subsequently the department said it would also consider claims for overpaid VAT in relation to other bingo participation games, pending a judgement from the Court of Appeal.[90] One of HMRC's objections to Rank's case was that there had been no evidence that the different VAT treatment accorded bingo machines had affected *competition* between them. However in November 2011 the European Court of Justice ruled that in assessing whether this principle had been infringed, it was sufficient to show that the supplies treated differently for VAT were identical or similar, from the consumer's point of view, and that their provision met the same consumer need.[91]

In October 2013 the Court of Appeal ruled that, contrary to the approach taken in the past by HMRC and bingo clubs, it had been a misreading of the law to think that random number generation made any material difference to the correct classification of these devices, and that *both* types of machine should have been *standard-rated*. Given this, the argument over fiscal neutrality was irrelevant.[92] In January 2014 the department announced that they would

83 Sixth Standing Committee on Delegated Legislation, *Value Added Tax (Betting, Gaming & Lotteries) Order 2005*, 10 January 2006)

84 *Linneweber* C-453/02 & *Savvas Akriditis* C462/02

85 VTD 20688, 27 May 2008 and VTD20777, 19 August 2008. The next year the Tribunal released a decision with respect to a second aspect of the slot machines case (TC00301, 11 December 2009). These cases have come to be known as 'Slots 1' & 'Slots 2'.

86 HC Deb 25 February 2009 c127WH. see also, "VAT ruling to bring windfall for Rank", *Financial Times*, 27 August 2008.

87 *Revenue & Customs Commissioners v Rank Group* [2009] EWHC 1244 (Ch); see also, "Taxman 'faces £500m bingo bill'", *BBC News site*, 8 June 2009

88 HMRC has put the cost of meeting these claims at over £1bn (see, *HMRC v Rank Group* [2013] EWCA Civ 1289 para 4).

89 HMRC VAT Brief 40/09, 13 July 2009 & HMRC VAT Brief 55/09, 20 August 2009

90 HMRC VAT Brief 75/09, 10 December 2009

91 Cases C-259/10 & C-260/10. see, "VAT focus: Rank and fiscal neutrality", *Tax Journal*, 18 November 2011. In the light of the Court's judgement, the Upper Tribunal remitted the 'Slots 2' case back to the First Tier Tribunal: [2012] UKUT 347 (TCC), 4 October 2012.

92 *HMRC v Rank Group* [2013] EWCA Civ 1289. In its appeal HMRC took the position that its approach to exempting some machines before December 2005 had actually been wrong. See also, "VAT focus: Rank – VAT and gaming machines", *Tax Journal*, 15 November 2013

contact all affected businesses to recover the monies each business had previously claimed from HMRC.[93]

5 Budget 2009 - removing VAT & increasing the duty rate

In *Budget 2009* the Labour Government that to simplify the tax regime it would remove VAT from participation fees, and increase the rate of bingo duty from 15% to 22% from 27 April 2009. Details were given in a Budget Note, along with a number of other miscellaneous changes to gambling taxation; an extract is given below:

> **General description of the measure**
>
> These measures:
>
> - remove VAT on participation fees for playing bingo and other games of chance (participation fees are charges that a gaming operator makes to customers for participating in gaming);
> - increase the money prize limit for bingo duty exemption that may be offered on small scale amusements provided commercially at, for example, family entertainment centres and adult gaming centres from £50 to £70;
> - increase the rate of bingo duty to 22 per cent; …
>
> **Operative date**
>
> - VAT will be removed from participation fees on and after 27 April 2009.
> - The increase in the money prize limit for small scale amusements will have effect for bingo played on and after 1 June 2009.
> - The bingo duty increase will have effect for any accounting period beginning on or after 27 April 2009.[94]

Provision to set the new rate of bingo duty, and remove VAT from participation fees, was made by the *Finance Act 2009* (s20 & s113 respectively). The rise in bingo duty was estimated to raise £35m in both 2009/10 & 2010/11; the removal of VAT was estimated to cost the Exchequer £50m in 2009/10, rising to £55m in 2010/11 – suggesting a net benefit to the industry of some £15-20m.[95] The Treasury's estimate of the industry's gain from the removal of VAT was based on the assumption that VAT *is* charged on interval bingo; as noted above, this continues to be the subject of a legal challenge.[96]

Unsurprisingly, the industry was disappointed by the proposals:

> Bingo operators received mixed blessings from the Budget when the chancellor bowed to the industry's demand for an end to "double-taxation", but stifled its joy with a rise in duty on their profits. The industry, which has retracted in the past 18 months as a result of the smoking ban, regulatory changes and the economic downturn, was alone in the gambling sector in paying a 15 per cent value added tax levy on top of a 15 per cent

93 HMRC VAT Brief 01/14, 23 January 2014. Rank has been allowed to appeal the decision to the Supreme Court (Supreme Court, *Permission to Appeal results*, April 2014).

94 HM Revenue & Customs Budget Note BN73, 22 April 2009

95 HC 407 April 2009 p153

96 When this change was debated, the Exchequer Secretary confirmed that the Treasury's costings "work from the law as it stands prior to the changes in the Budget. The law refers to the status quo of having VAT on participation fees, notwithstanding the results of the tribunal, which are still due as the considerations are ongoing" (HC Deb 13 May 2009 c965).

gross profits tax. Alistair Darling announced that VAT on bingo would be scrapped - a cost to the Treasury of £50m - but said the GPT rate would increase to 22 per cent, clawing back £35m. The net benefit for bingo operators is likely to vanish because of Mr Darling's decision to increase machine duty by 9 per cent, which will cost the gambling industry an extra £20m.

Along with a rise in casino card room duty, the cumulative effect of the Budget changes is a net increase in the Treasury's yield from gambling of £10m this year, although next year it will be neutral and in 2011-12 the effect is a net loss of £5m. Mr Darling's changes go some way towards simplifying the complicated tax regime in the gambling industry. The government also said it would consult on moving the taxation of gaming machines to a gross profits tax basis. The Bingo Association said it was disappointed and surprised by the chancellor's measures. "We have lobbied long and hard about inequality for bingo, but the chancellor has given with one hand and taken away with the other," the association said. It believed that the impact would damage smaller operators and prove neutral for the bigger players. Gala Coral, which runs gaming machines in its betting shops, bingo clubs and casinos, said it was disappointed with the 9 per cent rise in gaming duty and the increase in bingo duty.[97]

Several Members raised this issue during the Budget debates: for example, John Hemming asked, "admittedly, the Government have scrapped VAT on a lot of bingo costs, but why have they decided to highlight bingo as an area of gambling to be more heavily taxed with the increase in bingo duty in the Budget?"[98] Graham Stuart suggested that "in the next three years £105 million extra will be taken from bingo players … That is more than the amount that the Government are putting into housing."[99] In answer to this point, Stephen Timms, the Financial Secretary observed "[in addition to] the change in bingo duty to which the hon. Gentleman referred, the Budget removes VAT on participation fees. That reduces the overall rate of tax on bingo from 25 to 22 per cent., thus providing support."[100]

The issue was also raised during the second reading of the Finance Bill on 6 May 2009. Speaking for the Conservatives, Philip Hammond noted that the Bill would increase the duty "by almost 50 per cent":

[This] is a blow to an already beleaguered industry, although the Government say that the increase is offset by the impending removal of VAT as a result of a VAT tribunal decision that is in the final stages of resolution in the High Court. The industry has long campaigned for the removal of VAT, which is not levied on other forms of gambling, but Ministers, facing defeat in the courts, appear to have pre-empted the legal process and neutered its likely result. The industry is horrified, and they were even more horrified to hear the Financial Secretary on 23 April describe the package as "welcome to the industry". I assure him that it is anything but.[101]

Stewart Hosie was also critical of the duty rate increase:

Bingo is a massively significant sector for many communities. Well run, licensed bingo clubs and halls provide a safe social environment, particularly for women in working class communities. It is deeply unfair that when other forms of gaming—perhaps I

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97 "Unlucky for some", *Financial Times*, 23 April 2009; see also, "Bingo groups feel betrayed by tax switch", *Sunday Times*, 26 April 2009

98 HC Deb 27 April 2009 c602

99 HC Deb 23 April 2009 c434

100 HC Deb 27 April 2009 c671

101 HC Deb 6 May 2009 c201

should call it “gambling” now—are effectively taxed at 15 per cent., licensed bingo clubs should be singled out for a 22 per cent. rate. I am sure that we will address that issue as the Bill progresses.

Responding to these points at the end of the debate, the then Financial Secretary, Stephen Timms, simply said, “on bingo, which came up in the debate, we have increased the rate of bingo duty, but withdrawn VAT on participation fees. The overall consequence of that is to reduce the rate of tax on bingo from 24 or 25 per cent. to 22 per cent. I am sure that change will assist those in the bingo industry.”[102]

Provision in the Bill to set the rate of bingo duty at 22% was debated on the floor of the House on 13 May 2009. Several Members raised concerns about the social impact of clubs closing, drawing a distinction, as Eric Illsely did in the debate, between “other, harder forms of gambling” and bingo, “one of the softest and least damaging forms of gambling.”[103] Amendments were put down to freeze the duty rate at 15% (the SNP), suspend the duty increase until the outcome of the High Court’s decision on the VAT liability of interval bingo (the Conservatives), and to require the Government to publish a report on the impact of the new higher rate (the Liberal Democrats). However, the then Exchequer Secretary, Angela Eagle, opposed all these amendments, reiterating that the effective rate of tax on bingo would fall, as a consequence of these changes: “the effective tax rate on bingo is now 22 per cent. … comparable to the average rates of tax on casinos, gaming machines and the lottery. It is not clear why the Government should await the conclusion of a court case before deciding on an appropriate rate of tax for the bingo industry.” In the event the House voted to leave the clause unamended.[104]

Provision in the Bill to remove VAT from participation fees was debated in Public Bill Committee on 25 June 2009. Although there was general support for this change, and the clause was approved without a division, several Members reiterated concerns about the increase in bingo duty. Speaking for the Conservatives, Greg Hands took issue with the Government’s suggestion that the industry would gain from these changes, in the light of the High Court’s decision regarding VAT on interval bingo – mentioned above:

> Since we debated clause 20, the High Court has ruled against HMRC. The Government have lost their case. In the Court’s view, the VAT that clause 112 proposes to lift from interval bingo should never have been applied in the first place. That is the crux of the matter. Furthermore, the ruling has also been interpreted as giving strong support to the view that VAT on any form on bingo is impermissible under EU fiscal neutrality rules … We are not aware of any major operator paying VAT on interval bingo at present. After the Court ruling, it is hard to believe that any operators would contemplate doing so. A number of operators are withholding VAT receipts on main-stage bingo, feeling—as may turn out to be correct—that main-stage bingo is equally affected by the ruling. That number would, I believe, now swell. It is reasonable to conclude that actual receipts [from removing VAT on participation fees] … could now potentially be zero—so not the £50 million that is outlined in the Red Book.[105]

In response the then Exchequer Secretary, Sarah McCarthy-Fry, confirmed that HMRC were considering an appeal, before going on to reiterate the point made by her predecessor as to

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[102] HC Deb 6 May 2009 c311
[103] HC Deb 13 May 2009 c970
[104] HC Deb 13 May 2009 c980
[105] Public Bill Committee (Finance Bill) 25 June 2009 c608, 610

the basis of the Red Book's estimates, and gave a little detail into how the projected receipts from the duty rise were split between the different types of bingo:

> Red Book figures must be based on the law as it stands at the time, and the figures in it are based on that … The £50 million is made up of the cost of recovering VAT on mainstage bingo, interval bingo and card rooms. The roundings are to the nearest £5 million, so although £20 million, £25 million and £5 million are not exact figures, they show the proportions.[106]

The issue was debated a third time at the Report stage of the Bill, when Stewart Hosie, speaking for the SNP, put down another amendment to freeze the rate of bingo duty, as well as an alternative amendment to delay the rise in the duty change until 2010. Speaking for the Liberal Democrats, Jeremy Browne supported the amendments; for the Conservatives, Greg Hands simply acknowledged that taxing bingo at 22%, and other forms of gambling at 15% was an anomaly which should be "rectified as soon as time and the public finances allow it."[107] In response the Exchequer Secretary acknowledged "the importance of bingo [as] … has been pointed out by all those who have spoken this afternoon" and said that she would "continue to engage with the industry." However, she opposed the amendments, and the House voted to keep the provision unamended, by 283 to 83 votes.[108]

At this time Members continued to raise the impact of the Budget 2009 changes in the House.[109] In an adjournment debate in November 2009, Philip Davies, argued that the new 22% duty rate was "the final nail in [the industry's] coffin":

> A number of Government decisions have had a significant impact on bingo, resulting in more than 100 clubs closing since 2003. More have closed so far in 2009 than in the whole of 2008. For example, there has been the smoking ban, which had a devastating impact on bingo clubs, and the reregulation of machines. In that context the latest Budget, which removed VAT and increased the gross profits tax on bingo from 15 to 22 per cent., is the final nail in their coffin ...
>
> As the Exchequer Secretary knows, the Bingo Association commissioned Ernst and Young to understand the impact of the 2009 Budget on the bingo industry and seek clarity as to what the correct level of GPT should be to ensure consistency with the Red Book projections. The main findings of the Ernst and Young report were, first, that to achieve the Exchequer yield anticipated in the Red Book, the rate of GPT should have been set at 18 per cent. rather than 22 per cent.; secondly, that even the smallest single bingo club companies, which are the most vulnerable to closure, particularly in the current economic climate, will suffer an increased tax burden; and thirdly, that the effective rate of tax for bingo operators has increased from 23.6 per cent., which I believe was already too high, to 25.2 per cent.[110]

On this occasion the Exchequer Secretary noted that the "Government recognise the importance of bingo clubs to their local communities" and that it kept "all aspects of the tax system under continuous review." The Minister also suggested that the Treasury's estimates

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106 PBC 25 June 2009 c618

107 HC Deb 8 July 2009 c1020-1, c1031

108 HC Deb 8 July 2009 c1041-2. In the event the Conservatives largely abstained from the vote.

109 Bob Spink MP put down an EDM critical of the 22% rate at the start of the 2009-10 Session, which 66 Members signed (EDM 46 of 2009/10, 18 November 2009).

110 HC Deb 5 November 2009 cc1096-7

of the effective tax rate on bingo might need revision, in light of work the Bingo Association had commissioned from the consultancy Ernst & Young:

> We should remember that the effective tax rate for bingo in 2003 was about 35 per cent., and before the Budget was estimated to be about 24 to 25 per cent. Those estimates were formed from information provided by the bingo industry ... Over the summer, the Bingo Association provided more information to my officials on the impact of taxation on the bingo industry, including the Ernst and Young report that the hon. Gentleman mentioned. I had a meeting two or three weeks ago at which we discussed the content of that report. I am sure that the hon. Gentleman understands that we need to analyse that information in detail and to take our time to ensure that it is accurate, given that the bingo industry is now saying that the information that it gave us before the Budget might not have been accurate ... It is being analysed by my officials as we speak, and will of course be taken into account.[111]

In his Pre-Budget statement on 9 December 2009 the then Chancellor, Alistair Darling, announced that bingo duty would be cut in 2010: as Hansard record shows, the Chancellor's statement was warmly welcomed by many Members: "I can also tell the House that, from the time of the Budget, I will cut bingo duty from 22 to 20 per cent.- [*Interruption.*] Obviously a popular measure."[112] The *Pre-Budget Report* did not discuss the change at any length, but suggested the reason for the Government's change of heart: "The Government has reviewed new evidence provided by the bingo industry regarding the impact of taxation on bingo clubs. Bingo duty will be reduced at Budget 2010 to 20 per cent." The report estimated this would cost £5m in 2010/11, rising to £10m in 2011/12.[113]

The Bingo Association welcomed this, but said, "the fight continues to get bingo back to the 15% rate of GPT that it was paying before the [2009 Budget] and paying the same rate of GPT as other gambling sectors."[114] Commentary on the Chancellor's statement focused on the state of the economy, and the Government's proposals for reducing the deficit, though an editorial in the *Financial Times* noted that the cut in bingo duty "at an annual cost to the Exchequer of just £10m has earned Mr Darling some positive headlines at a low cost."[115]

Mr Darling presented his Budget on 24 March 2010, confirming the new duty rate would come into effect from 29 March 2010.[116] Provision to do this was included in the Finance Bill published after the Budget, though, due to the timing of the 2010 General Election, the whole Bill was debated, and approved, in a single day, without this clause being discussed.[117]

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[111] HC Deb 5 November 2009 cc1110-11

[112] HC Deb 9 December 2009 c362

[113] Cm 7747 December 2009 p94, p173. These figures were confirmed in *Budget 2010* (HC 451, March 2010 p121, Table A2 – item t).

[114] Bingo Association press notice, *GPT (Bingo Duty) will be reduced at the Budget 2010*, 9 December 2009

[115] "Leader: Darling's route to austerity still shrouded in fog", *Financial Times*, 10 December 2009. See also, "Bingo! Persistence pays off for gaming industry but others are not so lucky", *Times*, 10 December 2009

[116] *Budget 2010*, HC 451, March 2010 p135

[117] HC Deb 7 April 2010 cc 1058-1105 The 20% rate is set by s19 of *FA 2010*.

6 The Coalition Government's approach

6.1 Budget 2012 - introducing machine games duty

As noted above, in 2003 the Labour Government consulted on replacing the tax on gaming machines – Amusement Machines Licence Duty (AMLD) – with a gross profits tax, but, in the event, decided not to proceed. In 2009 it decided to revisit the issue; in its consultation, the Government argued that AMLD was inefficient and unfair:

> The current tax treatment of gaming machines comprises of a licence fee, with different rates applied to a range of machine categories, and VAT … An AMLD licence must be taken out before a gaming machine is made available for play. The licence fee does not vary with machine gross profit, nor is it dependent on whether or not the machine is actually made available for play. In addition to the AMLD due, the net takings of gaming machines are subject to VAT at the standard rate …
>
> As a licence fee, AMLD represents a "lump sum" fixed cost to machine operators. The licence fee could be considered to be a barrier to entry into the gaming machine market for some potential machine operators, which causes inefficiency and acts in favour of incumbents in high turnover locations. As a result low turnover machines may be underprovided, as high AMLD costs act as a barrier to their introduction ...
>
> Perhaps a greater concern is the lack of fairness in the present AMLD system. For machines of a given category, AMLD tax liability is the same regardless of profit and results in a wide range of effective tax rates. This could be considered unfair as it benefits the operators with the most profitable machines, as the most profitable machines have the lowest effective tax rates (i.e. net VAT and AMLD paid as a proportion of the gross profit taken by the machine).[118]

The consultation was interrupted by the 2010 General Election, but in December 2010 the Coalition Government announced that it would proceed with this reform.[119] A second consultation was conducted on the design of a gross profits tax,[120] and in Budget 2012 the Government confirmed that machine games duty (MGD) would be introduced from 1 February 2013.[121] The standard rate of tax would be 20%, with a 5% lower rate for games with smaller stakes & payouts.[122] The tax is forecast to raise £502m in 2013/14.[123]

Provision to introduce the new regime was made by s191 & schedule 24 of the *Finance Act 2012*; when these provisions were debated in Committee the then Economic Secretary, Chloe Smith, set out the rationale for reform as follows:

> The benefits of introducing a gross profits tax are as follows: amusement machines face a more complex regime, as they are subject to amusement machine licence duty, a licence fee for each new gaming machine and VAT on net takings. Compared with other gambling regimes, it is inconvenient to pay and a cash-based system is not able to deal with technological changes, or changes to social regulations, with the same

118 HM Treasury, *Taxation of gaming machines: consultation on a gross profits tax*, July 2009 pp9-10

119 *Government response to the consultation on a gross profits tax on gaming machines*, December 2010

120 Details of the consultation exercise that lead to the introduction of MGD are collated on Gov.uk.

121 *Budget 2012*, HC 1853, March 2012 para 2.141

122 The lower rate applies for machines where the maximum cost per game (the 'maximum stake') is 20 pence, and the cash prize is £10.00. For details see, *Machine Games Duty*: Notice 452, February 2014.

123 HMRC, *Betting & gaming statistical bulletin*, March 2014. Receipts of AMLD or MGD by category of machine are not available (HC Deb 6 January 2014 c165W).

> flexibility. Machines making equal profits can also pay different levels of duty if they are in different categories ... The VAT treatment of gaming machines has been challenged in the courts, as some Members will be aware, and any Government have to respond to such challenges … Introducing machine games duty and exempting dutiable machine games from VAT will protect tax revenues, and will ensure that operators of those machines continue to make a fair contribution to tax receipts. MGD will also support the objective of a fairer tax system by ensuring that the taxation of machine games is more closely linked to machine takings.[124]

The Minister went on to address the concerns raised by several Members on the Committee as to whether the proposed rates of duty were not too high:

> The Government have also published a technical note … describing the data and methodology used to calculate the standard and lower rates of MGD in greater detail. The note shows how, based on a thorough analysis of all the available evidence, the rates are set in a way that is intended to achieve revenue neutrality for the Exchequer. The industry is saying, "Well, are you sure about that?" and yes, I am sure about that. The data used in HMRC's modelling has been collected from many sources. Statistics from the Gambling Commission underpin many of the inputs, although those have been corroborated by and adjusted for other sources of information.[125]

This issue was also raised in PQs, although the Government's response was to refer to the earlier work cited by Ms Smith, carried out by HMRC, on the calculation of duty rates.[126] It is notable that in a survey of the new tax published in the technical journal, *Taxation*, one practitioner suggested that there has been a compelling case for replacing AMLD:

> AMLD had become complex, with different licence rates for different machines, and licences that could range from one month to 12 months. Technological advances also meant that the machines offered in a retail environment were constantly changing and the liability to duty and VAT could be unclear. This was compounded by court challenges to the VAT treatment on some machines. No wonder, then, that a simple gross profits tax has been introduced.[127]

At this time the Culture, Media & Sport Committee published a report on the reforms made to gambling legislation in 2005, and as part of this, reiterated the industry's concerns about the financial burden imposed by the new duty:

> The Association of British Bookmakers reacted to the [introduction of MGD announced in Budget 2012] … by saying that [the standard 20% rate] … "is significantly higher than the rate we had calculated as being fiscally neutral for the industry and has an extra bottom line cost on our business sector of over £300 million over the next five years."
>
> Before the Budget, the Gala Coral Group had argued that the move away from charging VAT on gambling "means that VAT on capital investment is less and less recoverable thus destroying the case for investment in long term growth and job creation". It suggested that Gross Profits Tax should be off-settable against VAT on

[124] Public Bill Committee (*Finance Bill*), Fourteenth sitting, 19 June 2012 c538
[125] *op.cit.* c541
[126] eg, HC Deb 3 July 2012 c567W. see HMRC, *Setting the Rates of Machine Games Duty - Technical Background*, May 2012
[127] "All the sevens …", *Taxation*, 5 September 2013. As noted above, HMRC's current position regarding the legal challenges to the VAT treatment of these machines is set out in HMRC Brief 01/14, 23 January 2014.

capital investment. This would mean that the cost of new machines would be recoverable against the GPT paid on machine profits. The Government stated, in its consultation response document on machine games duty, that such measures—to limit the impact of the removal of VAT—could not currently be implemented as they were "either not permissible under EU law, would be highly complex to introduce, or would lead to significant avoidance risks".

We are not convinced by arguments from the Treasury that measures to allow the offsetting of Gross Profits Tax against VAT on capital investment for gambling machines cannot currently be implemented. The Treasury should carry out further work in this area and identify a means by which such offsetting could be achieved. We also recommend that the Treasury make judicious use of industry analysis of the likely impacts of its proposed taxation measures.

As it is in the public interest to maximise the tax take from the gambling industry, the Treasury should set tax at a level which allows investment in the industry and does not stifle growth. We recommend that the Treasury also take into account the likely impact on investment by the gambling industry in future tax-rate calculations. We recommend that any changes to machine gaming duty should be revenue neutral as the Economic Secretary to the Treasury assured us that they would be. If the rate of machine gaming duty raises more than a revenue neutral figure, the Chancellor should reduce the new rate to ensure that revenue neutrality is achieved.[128]

In its response to the Committee's report, published in January 2013, the Government reiterated its position with regard to these changes being revenue-neutral for the Exchequer:

The Government decided not to adopt the proposal to allow businesses to offset otherwise irrecoverable VAT against MGD liabilities. Doing so would complicate the legislation for MGD, and increase administrative burdens. Recoverable input VAT was taken into account by the Government when MGD rates were set. If that had not been done, MGD rates would have been set at higher levels.

The rates of MGD have been set in a way which is intended to achieve revenue neutrality for the Exchequer, based on a thorough analysis of all the available evidence, including industry analysis. The policy costings document published alongside the Budget outlines how rates have been calculated. The costings have been independently scrutinised by the Office of Budget Responsibility. The Government has also published a technical note describing the data and methodology used to calculate the lower and standard rates of MGD in greater detail.

The data used in HMRC's modelling has been collected from many sources. Data from the Gambling Commission underpin many of the inputs, where necessary corroborated by and adjusted for other sources of information, including consultation responses.[129]

In his 2014 Budget the Chancellor George Osborne announced that the MDG rate would be increased to 25%: "fixed odds betting terminals have proliferated since gambling laws were liberalised a decade ago. These machines are highly lucrative, and therefore it is right that we now raise the duty on them to 25%."[130] The Budget report noted that this change was being made alongside a review of the regulatory treatment of B2 gaming machines being

[128] *The Gambling Act 2005: a bet worth taking?*, HC 421 of 2012-13, 24 July 2012 paras 107-9
[129] Cm 8531, January 2013 pp15-16
[130] HC Deb 19 March 2014 c791

undertaken by DCMS.[131] The review was published in April, setting out a number of changes to increase controls by local authorities over the establishment of new betting shops, and to improve player protection on fixed odds betting terminals.[132]

HMRC's assessment of the impact of this change was set out in a note accompanying the Budget, from which the following is taken:

> The measure will create a new 25 per cent rate of machine games duty (MGD) due on the net takings from gaming machines where the charge payable for playing can exceed £5 … This measure will increase the fairness of the tax system by making the more profitable high street gaming machines pay a higher rate of duty.
>
> **Impact on individuals and households:** The impact on individuals and households is expected to be negligible as this measure is not expected to have a significant impact on the availability, price and payouts of machine games. Furthermore, only a small proportion of the population play machine games.
>
> **Impact on business including civil society organisations :** The higher rate of MGD will affect in the region of 400 businesses providing gaming machines where the charge payable for playing can exceed £5. There will likely be negligible one-off costs associated with familiarisation with the new tax rate. There will also be negligible administrative burden for some businesses, as they will need to collect and report data in a more disaggregated way. The measure is expected to have no impact on civil society organisations.[133]

The Treasury's *Budget Costings* publication gives more details of its assessment of how consumers and bookmakers are expected to response to the new rate.[134]

The industry has been strongly critical of this change,[135] though it was not a major feature of the press coverage of the Budget.[136] Provision to set the new rate of duty is made by clause 117 of the *Finance Bill 2014*, which was debated in Committee on 10 June.[137]

Speaking for the Opposition Catherine McKinnell argued the new controls on high-stakes gaming machines, taken with the higher rate of duty, "do not go far enough in addressing the concerns of local people and local authorities about protecting at-risk gamblers and high streets." Ms McKinnell also asked how machines offering low and high stakes games would be charged duty, and whether the purpose of the higher rate was to dissuade the misuse of high stakes games "or just a revenue raiser."[138] In response the Exchequer Secretary, David Gauke, said the new duty rate "reflects the profitability of B2 machines and the progressivity

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131 *Budget 2014*, HC1104, March 2014 para 2.147

132 DCMS press notice, *Gambling protections and controls published*, 30 April 2014. The review – available on Gov.uk – does not discuss the higher rate of MGD.

133 *Machine games duty: introduction of a new higher rate*, March 2014

134 *Budget 2014 – Policy Costings*, March 2014 p29. Both documents were cited in answer to a PQ, asking for the Government's assessment of the new rate of duty on betting shops and the number of people employed in them (HC Deb 27 March 2014 c342W).

135 For example, Association of British Bookmakers press notice, *MGD tax increase puts jobs in danger, 19 March 2014* & *One million betting shop customers and staff sign Downing Street petition*, undated.

136 "Relief for bingo but bookies bit by betting move", *Financial Times*, 20 March 2014. During the second reading of the Finance Bill, William Bain welcomed this on the grounds that, "anything that discourages people from spending their hard-earned wages on those machines … should be welcomed" (HC Deb 1 April 2014 c799).

137 PBC (Finance Bill), *Eleventh sitting*, 10 June 2014 cc437-450

138 *op.cit.* c438, c442

of the machine games duty regime … we believe the changes will improve the fairness of the tax system, and DCMS will reach its own conclusions about consumer protection as part of this process.” The Minister went on to explain how the rate would apply to machines that offered both low stake and high stake games:

> It is well understood that gaming machines can have a dual content. The current structure on machine games duty recognises that, provided there is mixed content, the higher of the rates will apply to the machine in question. This is the same approach that is used already for machines that have content that straddles the boundary for the lower rate and the standard rate. It is also worth pointing out that the new 25% rate of MGD will apply only to machines that offer the high-stake games with stakes over £5. It is possible for a bookmaker, if they choose, to remove their existing B2 machines from their properties and replace them with lower-stake machines such as B3 machines, which will continue to be subject to the 20% rate. So it is not an anomaly; it is consistent with our machine game duty that currently exists.

Mr Gauke opposed an Opposition amendment for a formal review of the impact of the new higher rate, on the profitability and prevalence of high stake machines: first, because “the Treasury keeps taxes under review at all times”, and second, the amendment called for the review to be completed 3 months after Royal Assent, although the higher rate is not to come into effect until 1 March 2015. The Minister agreed to provide more detail on the assumptions underlying the Treasury’s costing of the measure, but Ms McKinnell put the amendment to a vote as “Opposition Members still believe that there needs to be a more informed basis for these decisions.” The Committee opposed the amendment 13 votes to 10, and the clause agreed without any change.[139]

6.2 Budget 2014 - a new 10% duty rate

While the Coalition Government reviewed the way that gaming machines were taxed, it did not make any formal announcement regarding bingo duty.

In their 2012 review of gambling regulation, mentioned above, the Culture, Media & Sport Committee concurred with the industry’s calls for cutting the duty rate to 15%:

> Bingo operators still hold that they are charged an unfair level of tax compared to the rest of the gambling industry. The UK online industry paid Gaming duty at 15%, whilst casinos paid between 15 and 50%, depending on their gross gaming yield. Gala Coral Group stated that "it is patently unfair that the 'softest' of all forms of gambling (bingo) is charged the very highest base rate of Gross Profits Tax (20%)".
>
> Paul Talboys of the Bingo Association blamed the current tax situation for creating a "hostile" investment environment. Chloe Smith, the Economic Secretary to the Treasury, argued that the bingo tax rate was within the same "effective tax rates as the National Lottery and casinos". The National Lottery pays lottery duty at the rate of 15%. She also told us that "a reduction in bingo duty to, for example, 15%, would cost the Government around £25 million to £30 million per annum". However, an Ernst and Young policy paper argued that a reduction in tax for bingo to 15% would actually lead to an increase in the overall tax take from the sector, resulting in a net benefit to the Treasury "of over £65 million over the period 2011 to 2014".
>
> We recognise that the Bingo sector remains highly taxed in comparison with other sectors despite its status as one of the softest forms of gambling. In principle we

[139] *op.cit.* c447, c450

believe that bingo should be taxed in line with other forms of gambling at 15%. Moreover, we recommend that the Treasury make an assessment, within the next financial year, of the likelihood that a reduction in bingo duty, to 15%, would result in increased investment in the bingo sector and a rise in net tax take.[140]

In its response to the Committee's report, published in January 2013, the Government were non-committal as to cutting the duty rate:

> The rate of bingo duty was set by the previous Government. When it comes into effect in February 2013, the standard rate of Machine Games Duty (MGD) of 20% will be the same as the rate of bingo duty.
>
> The Government keeps all taxes under review and currently estimates that a reduction in the rate of bingo duty to 15% would cost the Exchequer approximately £30 million per annum.
>
> The Government continues to actively engage with the bingo industry as part of the usual budget process. Ministers and officials have met with representatives of the industry, and consider all representations received on the impact of duty changes on the industry.[141]

In the 2012 Budget the Government had stated that, subject to an informal consultation, it would relax the restrictions on combined bingo set by the duty regime.[142] Combined bingo is played simultaneously in more than one place and promoted by more than one person – something that happens when bingo clubs collaborate to offer larger prizes. Provision is made to avoid receipts being doubled-counted for duty purposes, provided all participants are clubs are based in the UK. Removing this restriction would allow UK clubs to offer games with non-UK clubs, but without the UK bingo operator incurring additional duty. This change was made by s184 of the *Finance Act 2013*. When debated in Committee, Catherine McKinnell moved a new clause to require the Government to formally review the impact of the tax regime on the bingo sector:

> The industry has argued for a reduction of GPT to 15% … for bingo taxation to be put on the same footing as the taxation on other gaming industries. It states that its target level of 15%, which it believes to be a fair amount, would lead to further capital investment. Gala is planning £29 million of capital investment, and Mecca Bingo has pledged to open new clubs if the tax rate is reduced to that level …
>
> We do not wish, with this proposed new clause, to suggest that other areas of the leisure or gaming sector are receiving a good deal compared with bingo. We are merely trying to probe and establish whether bingo is receiving a poorer deal in comparison.[143]

Several Members spoke in support of the industry's case, but in response the then Economic Secretary, Sajid Javid, simply confirmed that the Government had estimated cutting the duty rate would cost "approximately £30 million a year [and] if that is the case, clearly we would

140 *The Gambling Act 2005: a bet worth taking?*, HC 421 of 2012-13, 24 July 2012 paras 103-4
141 Cm 8531, January 2013 p15
142 *Budget 2012*, HC 1853, March 2012 para 2.145. see also, HMRC, *Combined bingo*, December 2012
143 PBC (Finance Bill), *Seventeenth sitting*, 18 June 2013 cc559-560

have to find a way to fund the reduction in revenues already assumed in Government finances."[144]

However, in his Budget speech on 19 March 2014, the Chancellor announced a new higher rate of machine games duty – discussed above – *and* a cut in the rate of bingo duty:

> Turning to gambling duties, fixed odds betting terminals have proliferated since gambling laws were liberalised a decade ago. These machines are highly lucrative, and therefore it is right that we now raise the duty on them to 25%. We will also extend the horserace betting levy to bookmakers who are based offshore, and we will look at wider levy reform and at introducing a "racing right" to support the sport.
>
> While the number of betting machines have grown, the number of bingo halls has plummeted by three quarters over the last 30 years, yet bingo duty has been set at the high rate of 20%. Now that fuel duty is frozen, my hon. Friend the Member for Harlow (Robert Halfon) has turned his energy and talent into a vigorous campaign to cut bingo duty, ably assisted by my hon. Friend the Member for Waveney (Peter Aldous). They want the rate cut to 15%. I can go further. Bingo duty will be halved to 10% to protect jobs and to protect communities.[145]

The new rate applies for accounting periods starting on or after 30 June 2014. This is estimated to cost £30m in 2014/15, rising to £40m the following year.[146] The Treasury's *Policy Costings* suggests that the behavioural impact of the rate cut will be small:

> Two expected behavioural responses were taken into account in the costing. First, the proportion of the tax cut which is passed on to consumers via lower prices for bingo will increase the demand for bingo (own-price elasticity). Second, the relative price of bingo compared with other types of gambling will be lower, causing substitution away from other forms of gambling towards bingo, which will reduce receipts from other gambling taxes (crossprice elasticity). Because the elasticities are small, the combined effect of these behavioural responses is small.[147]

The Government also announced that the statutory exemption which applies to small-scale bingo games offered at family entertainment centres would be updated, as the test refers to a gaming centre being liable to AMLD rather than MGD.[148] In general the bingo sector strongly welcomed the announcement, although bookmakers were critical of the higher rate of duty on fixed odds betting terminals, which appears to have been quite unexpected.[149] Several Members welcomed the announcement during the debates on the Budget statement.[150]

Provision to set the 10% rate, and update the small-scale exemption, is made by clauses 115 & 116 of the *Finance Bill 2014*. When debated in Committee Catherine McKinnell, speaking

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[144] *op.cit.* c565

[145] HC Deb 19 March 2014 c791. Mr Halfon had put down an EDM in January 2014, in favour of a 15% duty rate, which 23 Members signed (EDM959 of 2013-14, 15 January 2014). Mr Halfon and other Members had also participated in the industry's 'Boost bingo' campaign.

[146] *Budget 2014*, HC 1104, March 2014 p76, p57 (Table 2.1 – item 32)

[147] *Budget 2014 – Policy Costings*, March 2014 p28

[148] HMRC, *Bingo duty : reduction in rate*, March 2014. This type of bingo is exempt from bingo duty, as is bingo played at home and bingo played on a non-profit basis (HMRC Notice 457, April 2010 para 2.2)

[149] "Bad news for bookers, better for bingo …", *Guardian*; "Bingo bonanza, but bookmakers cry foul", *Times*; & ""Relief for bingo but bookies hit by betting move", *Financial Times*; 20 March 2014. See also, Bingo Association press notice, *House! Bingo Celebrates a Huge Boost from the Chancellor*, 19 March 2014

[150] eg, Ian Swales (19 March 2014 c811), Mrs Cheryl Gillan (c826), Meg Hillier (c836), Russell Brown (c839) James Duddridge (c851), Christopher Pincher (HC Deb 20 March 2014 c1001), & Richard Graham (c1003).

for the Opposition, welcomed the cut in the duty rate, but was strongly critical of the way Budget decisions on beer and bingo duty had been presented in Conservative Party campaign literature.[151] Ms McKinnell also asked that as MGD had been introduced from 1 February 2013, if any bingo clubs would be disadvantaged by the delay in amending the legislation. In response to these points, the Exchequer Secretary said the following:

> According to industry figures, there were 43 million visits to bingo clubs in 2012 and 6 million people are retail members of the Bingo Association. Earlier this year, more than 300,000 bingo players signed a petition that was delivered to 11 Downing Street asking the Chancellor to cut bingo duty. Their slogan was "Boost bingo", because they wanted bingo duty to be cut to 15% to boost the industry. I am happy to say that the Government have been able to go further: clause 115 halves the duty to 10% … [As to criticisms of Conservative Party advertisements being patronising], not for the first time this week, the Opposition are more interested in process than substance …
>
> Clause 116 addresses a related issue: bingo provided commercially, on a small scale, in adult gaming centres … [It substitutes] the requirement for an amusement machine licence with a requirement that a machine subject to machine games duty is also provided for play on the premises. Businesses that were covered by the exemption when AMLD was in force will generally be covered after this update. The Government's intention is clear: such businesses are exempt from bingo duty. HMRC will not be pursuing any bingo duty in respect of such clubs, so there will be no effect on them.[152]

[151] See, "Labour calls on Treasury to reveal if it was involved in bingo and beer poster", *Guardian*, 23 March 2014
[152] PBC (Finance Bill), *Eleventh sitting*, 10 June 2014 c435, c437