EXPLANATORY MEMORANDUM TO

THE MACHINE GAMES DUTY (EXEMPTIONS) ORDER 2012

2012 No. 2898

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

2. Purpose of the instrument

2.1 This instrument effectively exempts receipts from dutiable machine games from Machine Games Duty ("MGD") in specified circumstances. These circumstances are play at charitable events, tournament play and play on a "lottery machine" (a specific category of gaming machine).

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

3.1 None.

4. Legislative Context

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

4.2 This instrument is made under paragraphs 8 and 39(2) of the Schedule. Paragraph 8 provides that, in calculating duty liability, receipts from dutiable machine games should be left out of account in any circumstances specified in a Treasury Order. This instrument will effectively exempt these receipts from MGD.

4.3 This instrument specifies three such circumstances: play at charitable events, tournament play and play on a lottery machine. This is the first use of these powers.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Sajid Javid MP, the Economic Secretary to the Treasury has made the following statement regarding Human Rights:

> "In my view the provisions of the Machine Games Duty (Exemptions) Order 2012 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 The Government's reform of gaming machine taxation aims to put tax revenues from gaming machines on a more sustainable footing. The VAT treatment of gaming machines has been challenged in the Courts. Introducing MGD and exempting dutiable machine games from VAT will protect tax revenues going forward, and will ensure that operators of gaming machines continue to make a fair contribution to tax receipts.

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

7.3 The effect of this instrument is to provide certain exemptions from MGD by leaving takings and payments out of account in the specified circumstances described below.

Circumstances	*Reasons*
Charitable events (with the provision that the event must be for a not-for-profit organisation with none of the proceeds going to private gain. The playing of machine games must not be the only or main reason for attending the event)	Takings from the playing of machine games can make a contribution to achieving the charitable objectives of not-for-profit organisations. There is no current intention to make these games liable to VAT or MGD.

Circumstances	*Reasons*
Play in a tournament (with "tournament" defined as involving two or more real people (but not a person registrable for duty or his representative) competing against each other for a prize)	Tournament play is qualitatively different from "normal" play in that players compete against each other (rather than the machine itself) to win from a single prize-pot. The normal functionality is typically turned off and the outcome determined by the player's relative scores. Tournament play may still be liable to VAT.
Participating in a lottery on a B3A machine (B3A is the social law/ regulatory categorisation of so-called "lottery machines"). Social law restricts the location of such machines to certain private members clubs.	B3A machines are currently not subject to either AMLD or VAT. There is no intention to extend their liability to indirect tax.

7.4 The instrument also provides that those benefitting from exemption under these provisions must make appropriate records before leaving amounts out of account. This will ensure that HMRC has the means to look in more detail, if necessary, at the circumstances in which the dutiable machine games were played and whether these circumstances were as set out in legislation.

- **Consolidation**

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

8. Consultation outcome

8.1 In a consultation document, "Implementing a Machine Games Duty: consultation on policy design", published in May 2011, the Government published a draft of the Finance Bill provisions and sought views on the design characteristics of MGD. Comments received were considered in drafting the MGD legislation.

8.2 In line with the Government's Tax Policy Framework, this instrument was published for consultation in draft (in December 2011) in advance of making and laying before the House of Commons. The latest Tax Information and Impact Note was published on 21 March 2012 with the legislation for the Finance Bill and remains accurate.

9. Guidance

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

10. Impact

10.1 The impact of this instrument on business, charities and voluntary bodies will be a reduction in the additional burden which will follow from the introduction of MGD. The provision of machine games for play for charitable purposes at events, in tournaments, or on a lottery machine will not be subject to MGD. Therefore, businesses which provide machine games for play in these circumstances will not be subject to the administrative burden resulting from the introduction of MGD. However, some records will need to be made by such businesses in order to ensure that there is sufficient information available for the purpose of protecting revenue. Although these requirements will be relatively light, they will impose an increase in administrative burden to those operators who are currently exempt from AMLD and VAT.

10.2 This instrument will not result in any impact on the public sector.

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

11. Regulating small business

11.1 The legislation applies to businesses including small business.

11.2 The Government has considered whether it would be appropriate to make provision to ameliorate the effect of this instrument on small businesses employing up to 20 people. On balance, and despite the fact that there may some additional complexity notably for the limited number of small businesses who have machines capable of running both VATable tournaments and MGDable machine games, this measure relieves burden because it provides for an exemption from duty.

11.3 Small businesses were consulted on this instrument and on MGD more generally. Comments were received but none of these were concerned with the substance of the instrument.

12. Monitoring & review

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

13. Contact

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