

Gaming machines and VAT

David Clifton, director of Clifton Davies Consultancy Limited, comments on some unwelcome correspondence from HM Revenue & Customs

If you operated gaming machines between November 1998 and December 2005 and have previously received repayments of VAT from HM Revenue & Customs in respect of overpaid VAT on gaming machine takings, you may well already have received an unwelcome letter from HMRC, asking you to repay the amount you received, plus interest at 3% per annum. If you haven't yet had such a letter, I'm afraid you can expect one soon.

The letter will include guidance about how to repay the money. That may not be too much of a problem for those of you who will have set aside the refunded monies you received previously from HMRC.

However, it's not quite as straightforward as that, according to David Jones, managing director of DRJ Accountants and chairman of the Association of Licensed Trade Accountants (ALTA). He says: "HMRC have confirmed that it will 'pursue either the tenants or pubcos for the money depending on who made the original claim'. In every case, it was the pubcos that collated the information and made the claim, but HMRC made payments direct to the tenants involved. Since 2011, a significant number of those will no longer be trading, some could even have gone bankrupt. I wonder what impact this will have on the pubcos."

Jones also makes the good point that it seems very unfair that recipients of demands for repayment should be charged interest of 3% when there would have been little chance of them receiving an equivalent amount themselves, even if they had put the money to one side as many were advised.


If you are affected but unable to make the full payment by the due date specified in the letter, you should contact HMRC and explain why you are unable to pay on time. HMRC should then discuss your circumstances with you. This may lead to agreement on the part

of HMRC to allow you a longer time to repay than its usual 30 days, although in such circumstances you should expect them to demand that you pay a greater sum in respect of accrued interest.

This has all arisen as a result of a Court of Appeal judgment in October last year following a long-running dispute between HMRC and the Rank Group relating to the VAT treatment of gaming machine takings.

In short, the Court of Appeal found that gaming machines, including multi-player terminals served by a single, separate random number generator, previously found not to have fallen within the legal definition of a gaming machine, did fall within the definition and so their takings at the time were taxable at the standard rate of VAT in the same way as other gaming machines.

It is not necessarily the end of this particular story, as Rank has petitioned the Supreme Court to be allowed to appeal the Court of Appeal decision. If Rank succeeds in reversing the Court of Appeal judgment, you may yet find that HMRC will once again repay the VAT monies to you. Good luck though in claiming that HMRC should pay you interest in such circumstances! The Court of Appeal judgment was in line with other recent tax cases and, recognising the potential for taxpayers to easily escape tax, it avoided adopting a very literal interpretation of the VAT legislation, preferring instead to concentrate on its purpose. Any appeal to the Supreme Court is likely to revolve

around whether the Court of Appeal was correct in finding that the definition of "gaming machine" in the Value Added Tax Act 1994 was drawn directly from the definition under the then applicable gaming legislation, the Gaming Act 1968. 



Clifton Davies Consultancy Ltd



Clifton Davies Consultancy Limited is a consultancy business (not a law firm) which specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. David Clifton and Suzanne Davies are also consultants to Joelson Wilson LLP. The views expressed are given without any assumption of responsibility on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct.

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Questions & Answers



Q: The police are opposing my variation application to enable my bar to stay open later at night, saying that this will lead to an increase in violent crime. Is there any argument I can put forward against that?

A: Much will depend on the local circumstances and the police records of violent crime at, and in the vicinity of, your premises, which you should ask them to provide in advance of the hearing. However, recent academic research found no evidence that a national policy increasing the physical availability of alcohol affected the overall volume of violence, although it may be associated with changes to patterns of violence between 3am and 6am. Please contact me if you need further help.

Q: Can I accept the new DVLA plastic driving licence as proof of age?

A: Yes you can. The new licence can be distinguished as the photograph is in black and white rather than colour. It also incorporates enhanced security features not available on the older licence, including a new security holograph, raised surface pattern and an Optical Variable Ink designed to help in the fight against fraud.

Q: I hold a Scottish personal licence valid for 10 years. Do I need to undertake refresher training?

A: Yes you do. All holders of such a licence must complete refresher training within five years from its original issue. Most personal licences will be deemed to have been issued on 1 September 2009 when the new Scottish licensing regime came into force. This means that refresher training must be completed by 1 September 2014 and, importantly, evidence of that training given (in a prescribed form) to the relevant Licensing Board by 1 December 2014. However, if your personal licence was issued after 1 September 2009, you will have your own personal deadline. If you forget or ignore the relevant deadlines, you should expect the Board to revoke your personal licence.