



ANALYSIS

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1991, No. 148

An Act to amend the Gaming Duties Act 1971

[20 December 1991]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and application—(1) This Act may be cited as the Gaming Duties Amendment Act 1991, and shall be read together with and deemed part of the Gaming Duties Act 1971 (hereinafter referred to as the principal Act).

(2) This Act shall, with respect to gaming machine duty, apply to all dutiable games played on or after the 1st day of March 1992 by means of a gaming machine.

(3) This Act shall, with respect to casino duty, apply to all casino wins arising on or after the date on which this Act receives the Royal assent.

2. Interpretation—Section 3 of the principal Act is hereby amended by adding the following sentence:

“Terms defined in sections 12B and 12M of this Act have the meanings so defined.”

3. New Parts inserted—The principal Act is hereby amended by inserting, after Part II, the following Parts:

“PART IIA

“GAMING MACHINE DUTY

“12B. **Interpretation**—In this Part, unless the context otherwise requires,—

“‘Dutiable game’ means any game played by means of a gaming machine that is—

“(a) A game of chance; or

“(b) A lottery; or

“(c) A prize competition; or

“(d) An instant game,—

as those terms are defined in section 2 of the Gaming and Lotteries Act 1977; but does not include any authorised game within the meaning of the Casino Control Act 1990 that is conducted in any casino licensed under that Act:

“‘Gaming machine’ has the same meaning as in section 2 of the Gaming and Lotteries Act 1977:

“‘Gaming machine operator’ means—

“(a) Any society licensed pursuant to the Gaming and Lotteries Act 1977 to conduct any dutiable game; and

“(b) Any person who conducts, otherwise than pursuant to a licence issued under that Act, any dutiable game;—

and, in relation to any return period and to the obligations and liabilities under sections 12D to 12F and section 12K of this Act of any person who was at any time during that period a gaming machine operator, includes any such person notwithstanding that the person may have ceased during or after that return period to be a gaming machine operator within the meaning of paragraph (a) or paragraph (b) of this definition:

“‘Gaming machine profits’, in relation to any gaming machine operator and any return period, means an amount (not being less than zero) calculated in accordance with the following formula:

$$a - b$$

where—

“a is the total amount of all machine income of the gaming machine operator in respect of all dutiable games conducted by the gaming machine operator that are played during the return period; and

“b is the total amount of all prizes paid during the return period in respect of those dutiable games:

“ ‘Machine income’, in relation to a gaming machine operator, means the amount in money or money’s worth, whether in the form of cash or tokens or credits won and played, or by payment of money or money’s worth by any other means, paid or payable to play any dutiable game conducted by the gaming machine operator:

“ ‘Play’, in relation to any dutiable game, includes participate in or commence that game; and ‘played’ has a corresponding meaning:

“ ‘Prizes paid’ means any amount in money or money’s worth, whether in the form of cash or tokens or credits won, or by payment of money or money’s worth by any other means, paid or returned as winnings by any gaming machine to persons playing dutiable games:

“ ‘Return period’ means any period of one calendar month in respect of which a statement of gaming machine profits and gaming duty payable is required to be delivered under section 12D (1) of this Act; and includes any period in respect of which a statement is required to be delivered under section 12D (2) of this Act:

“ ‘Society’ has the same meaning as in section 2 of the Gaming and Lotteries Act 1977.

“12C. **Gaming machine duty**—There shall be paid to the Crown a duty (in this Act referred to as gaming machine duty) at the rate of 20 percent of the gaming machine profits in respect of dutiable games played on or after the 1st day of March 1992.

“12D. **Monthly returns to be furnished to Commissioner**—(1) Every gaming machine operator shall, on or before the 20th day of each month in each year, deliver to the Commissioner a statement in the prescribed form of—

“(a) The gaming machine profits of the gaming machine operator for the previous month; and

“(b) The gaming machine duty payable by the gaming machine operator in respect of those gaming machine profits for that previous month.

“(2) Where, in any month, the licence of a gaming machine operator licensed under the Gaming and Lotteries Act 1977 is cancelled, or any application for renewal of the licence is refused, the gaming machine operator shall deliver to the Commissioner, within 7 days after the date of the cancellation or refusal to renew, a statement in the prescribed form of—

“(a) The gaming machine profits of the gaming machine operator for the period commencing on the 1st day of the month in which the cancellation or refusal to renew occurred and ending on the day following the date of the cancellation or refusal to renew; and

“(b) The gaming machine duty payable by the gaming machine operator in respect of those gaming machine profits for that period.

“(3) A statement of gaming machine profits and gaming duty payable in respect of any return period that purports to be made by or on behalf of any gaming machine operator shall for all purposes be deemed to have been made by that gaming machine operator, or by that gaming machine operator’s authority, unless the contrary is proved.

“12E. **Payment of gaming machine duty**—Every gaming machine operator shall, not later than the last day allowed under section 12D of this Act for the delivery of the statement of gaming machine profits and duty payable in respect of any return period, pay to the Commissioner the gaming duty payable in respect of that return period.

“12F. **Interest on unpaid gaming machine duty**—
 (1) Interest at the rate of 5 percent for every month or part of a month shall be payable on the amount of all gaming machine duty unpaid (other than any amount of deferrable duty within the meaning of the provisions applying by virtue of section 12J (2) (b) of this Act) at the due date specified in section 12E of this Act, and shall be calculated from the expiration of that due date.

“(2) For the purposes of recovery, all interest payable under this section shall be deemed to be gaming machine duty.

“12G. **Assessment of duty**—(1) Subject to subsection (4) of this section, where—

“(a) Any person makes default in delivering any statement required to be delivered by that person pursuant to section 12D of this Act; or

“(b) The Commissioner is not satisfied with any such statement delivered; or

“(c) The Commissioner is not satisfied that the amount of any gaming machine duty paid by any person is the correct amount; or

“(d) The Commissioner has reason to suppose that any person, although the person has not delivered a statement under section 12D of this Act, is liable to pay gaming machine duty,—

the Commissioner may make an assessment of the amount of gaming machine profits on which, in the Commissioner’s judgment, gaming machine duty ought to be paid or to have been paid by the person, and of the amount of gaming machine duty payable and, if appropriate, the amount of any interest payable under section 12F of this Act.

“(2) The Commissioner may from time to time and at any time make all such alterations in or additions to an assessment made under this section as the Commissioner thinks necessary to ensure its correctness, notwithstanding that gaming machine duty already assessed may have been paid.

“(3) The Commissioner shall cause written notice to be given to the person of any assessment or amended assessment made under this section, but the omission to give any notice under this subsection shall not invalidate the assessment or in any manner affect its operation.

“(4) Where a person has delivered a statement pursuant to section 12D of this Act in respect of any return period, and has paid or been assessed for gaming machine duty in respect of that return period, it shall not be lawful for the Commissioner—

“(a) Where an assessment has not been made in respect of the return period, to make an assessment; or

“(b) Where an assessment has been made in respect of the return period, to alter the assessment so as to increase the amount thereof,—

after the expiration of 4 years from the end of the month in which the statement was delivered or, as the case may be, the assessment was made, unless, in the opinion of the Commissioner, the person knowingly or fraudulently failed to make a full and true disclosure of all the material facts necessary to determine the amount of gaming machine duty payable in respect of the return period.

“12H. Assessments deemed correct except in proceedings on objection—(1) Except in proceedings on

objection to an assessment under section 12j of this Act, no assessment made by the Commissioner shall be disputed in any Court or in any proceedings (including proceedings before a Taxation Review Authority) either on the ground that the person so assessed is not a person liable to pay gaming machine duty or on any other grounds; and, except as aforesaid, every such assessment shall be conclusively deemed and taken to be correct, and the liability of the person so assessed shall be determined accordingly.

“(2) The production of any document under the hand of the Commissioner or a District Commissioner purporting to be a copy of or extract from any assessment or any statement delivered pursuant to section 12D of this Act shall in all Courts and in all proceedings (including proceedings before a Taxation Review Authority) be sufficient evidence of the original, and the production of the original shall not be necessary, and all Courts and Taxation Review Authorities shall in all proceedings take judicial notice of the signature of the Commissioner or District Commissioner either to the original or to any such copy or extract.

“12I. **Objections to assessments**—(1) Any person who has been assessed for gaming machine duty may object to that assessment by delivering or posting to the Commissioner a written notice of objection stating shortly the grounds of that person’s objection, within such time as may be specified in that behalf in the notice of assessment, not being less than 28 days after the date on which that notice of assessment is given:

“Provided that, where the assessment is an amended assessment, the person so assessed shall have no further right of objection than that person would have had if the amendment had not been made, except to the extent that by reason of the amendment, a fresh liability in respect of any particular is imposed on that person or an existing liability in respect of any particular is increased.

“(2) No notice of objection given after the time specified in the notice of assessment shall be of any force or effect unless the Commissioner, in the Commissioner’s discretion, accepts it and gives notice to the objector accordingly.

“12J. **Commissioner may amend assessment, or objection may be submitted to Taxation Review Authority**—(1) The Commissioner shall consider all objections under section 12I of this Act, and may alter the assessment to which an objection relates.

“(2) If an objection is not wholly allowed by the Commissioner, the objector may, within 2 months after the date on which notice of the disallowance is given to the objector by or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be heard and determined by a Taxation Review Authority, and in that event—

“(a) The objection shall be heard and determined by a Taxation Review Authority (except to the extent that it is referred directly to the High Court by way of case stated pursuant to the provisions referred to in paragraph (b) of this subsection), and the provisions of Part II of the Inland Revenue Department Act 1974 shall apply in respect of the institution, hearing, and determination of the proceedings on the objection; and

“(b) The provisions of sections 35 to 38 of the Goods and Services Tax Act 1985 shall, as far as they are applicable and with any necessary modifications, apply to the objection as if references in those sections to tax were references to gaming machine duty; and

“(c) The provisions of section 398 (1) and (4) of the Income Tax Act 1976 shall, as far as they are applicable and with any necessary modifications, apply to any amount of deferrable duty within the meaning of the provisions applying by virtue of paragraph (b) of this subsection as if—

“(i) Every reference in the said section 398 (1) and (4) to income tax were a reference to gaming machine duty; and

“(ii) Every reference in the said section 398 (1) and (4) to a taxpayer were a reference to a person.

“12k. **Recovery of duty**—(1) Any gaming machine duty payable by a gaming machine operator under this Part of this Act shall be recoverable as a debt due to the Crown.

“(2) If any gaming machine duty is not paid by any gaming machine operator within the time specified in section 12E of this Act, that duty (and any interest thereon) shall also constitute a debt due and payable to the Crown, jointly and severally,—

“(a) In the case of an incorporated gaming machine operator, by all persons who, at any time during the return period in respect of which the duty is payable, were

officers, trustees, or other persons acting in the management of the gaming machine operator, including the secretary and treasurer thereof:

“(b) In the case of an unincorporated gaming machine operator, by all persons who, at any time during the return period in respect of which the duty is payable, were members, officers, or trustees of the gaming machine operator.

“(3) Where a person has not paid all or any part of the amount of gaming machine duty payable by that person, the amount of the duty for the time being unpaid to the Commissioner shall, in the application of the assets of the person in the circumstances specified in paragraphs (a) to (c) of section 42 (2) of the Goods and Services Tax Act 1985, rank, without limitation of amount, immediately after the order of priority given by those paragraphs to goods and services tax, and this subsection shall apply notwithstanding anything in any other Act.

“(4) Sections 401 to 408 of the Income Tax Act 1976, as far as they are applicable and with any necessary modifications, shall apply for the purposes of this Part of this Act, as if—

“(a) Every reference in those provisions to tax were a reference to gaming machine duty; and

“(b) The reference to an assessment in the said section 405 were a reference to an assessment made under this Part of this Act; and

“(c) Every reference to ‘this Act’ in the said sections 407 and 408 were a reference to this Part of this Act.

“12L. Deduction of duty from payments due to defaulters—(1) Where a person (in this section referred to as the defaulter) has made default in payment of any gaming machine duty payable under this Part of this Act, the Commissioner may from time to time, by notice in writing, require any person to deduct from any amount payable or becoming payable by that person to the defaulter such sum as may be specified in the notice, and to pay every sum so deducted to the Commissioner to the credit of the defaulter within such time as may be specified in the notice.

“(2) A copy of every notice given under subsection (1) of this section shall be given to the defaulter by the Commissioner.

“(3) Whenever, pursuant to a notice under this section, any deduction is made from any amount payable to a defaulter, the defaulter is entitled to receive from the person making the

deduction a statement in writing of the fact of the deduction and the purpose for which it was made.

“(4) Where any notice under this section relates to any amount payable that consists of wages or salary, the sums required to be deducted therefrom shall be computed so as to not exceed the greater of—

“(a) An amount equal to the lesser of the following amounts:

“(i) An amount calculated at the rate of 10 percent per week of the gaming machine duty due and payable by the person at the date of the notice:

“(ii) An amount calculated at the rate of 20 percent of the wages or salary:

“(b) The amount of \$10 per week.

“(5) Any person making any deduction pursuant to a notice under this section shall be deemed to have been acting under the authority of the defaulter to whom the notice relates and of all other persons concerned, and is hereby indemnified in respect of such deduction.

“(6) The sum deducted from any amount pursuant to a notice under this section shall be deemed to be held in trust for the Crown, and, without prejudice to any other remedies against the person making the deduction or any other person, shall be recoverable in the same manner in all respects as if it were gaming machine duty payable by the person.

“(7) Any notice under this section may be at any time revoked by the Commissioner by a subsequent notice to the person to whom the original notice was given, and shall be so revoked where the Commissioner is satisfied that all unpaid gaming machine duty then due and payable by the defaulter has been paid.

“(8) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$500 who—

“(a) Fails to make any deduction required by a notice under this section to be made from any amount payable by that person to the defaulter; or

“(b) Fails after making any such deduction to pay the sum so deducted to the Commissioner within the time specified in that behalf in the notice.

“PART IIB

“CASINO DUTY

“12M. **Interpretation**—In this Part, unless the context otherwise requires,—

- “ ‘Authorised game’, in relation to a casino operator, has the same meaning as in section 2 of the Casino Control Act 1990:
- “ ‘Casino’ means a licensed casino within the meaning of the Casino Control Act 1990:
- “ ‘Casino losses’, in relation to a casino operator and to any return period, means the amount by which the casino win of the casino operator for that return period would, but for the exclusion from the definition of the term ‘casino win’ of amounts less than zero, be less than zero:
- “ ‘Casino operator’ means any person who operates a casino pursuant to a casino operator’s licence granted under Part II of the Casino Control Act 1990, and includes—
- “(a) Any holder of a temporary authority to carry on the operation of a casino granted under section 92 of the Casino Control Act 1990:
- “(b) In relation to any return period and to the obligations and liabilities under sections 12N to 12Q of any person who was at any time during that period a casino operator, that person, notwithstanding that the person may have ceased during or after that return period to operate a casino pursuant to a casino operator’s licence or a temporary authority:
- “ ‘Casino win’, in relation to a casino operator and to any return period, means an amount (not being less than zero) ascertained by—
- “(a) Deducting from the amount of the gaming income of the casino operator for the return period the aggregate of—
- “(i) The amount of gaming wins paid out by the casino operator in the return period; and
- “(ii) The amount of casino losses (if any) of the casino operator for the immediately preceding return period; and
- “(b) Thereafter adjusting that amount by—
- “(i) Where the value of unredeemed chips at the end of the return period is greater than the value of unredeemed chips at the beginning of the return period, adding the difference between those values:
- “(ii) Where the value of unredeemed chips at the end of the return period is less than the value of unredeemed chips at the

beginning of the return period, subtracting the difference between those values:

“ ‘Chips’ has the same meaning as in section 2 of the Casino Control Act 1990:

“ ‘Gaming income’, in relation to a casino operator and to any return period, means the aggregate of—

“(a) All amounts in money or money’s worth paid to the casino operator during the return period to purchase chips; and

“(b) All amounts in money, or in money’s worth other than chips, paid or payable to the casino operator during the return period to play, or so paid or payable in the course of playing, any authorised game conducted or played in the casino:

“ ‘Gaming wins’, in relation to a casino operator and to any return period, means the aggregate of—

“(a) All amounts paid by the casino operator in the return period to redeem chips; and

“(b) All amounts in money, or in money’s worth other than chips, paid or returned by the casino operator during the return period as winnings in respect of authorised games conducted or played in the casino:

“ ‘Play’, in relation to any authorised game, includes participate in or commence that game; and ‘played’ has a corresponding meaning:

“ ‘Return period’, in relation to any casino operator, means any period of one calendar month in respect of which a statement of casino win and casino duty payable is required to be delivered under section 120 (1) of this Act, and includes any period in respect of which a statement is required to be delivered under section 120 (2) of this Act.

“12N. **Casino duty**—There shall be paid to the Crown a duty (in this Act referred to as casino duty) at the rate of 4 percent of the casino win of any casino operator.

“12O. **Monthly returns to be furnished to Commissioner**—(1) Every casino operator shall, on or before the 20th day of each month in each year, deliver to the Commissioner a statement in the prescribed form of—

“(a) The casino win of the casino operator for the previous month; and

“(b) The casino duty payable by the casino operator in respect of that casino win for that previous month.

“(2) Where, in any month, the licence of a casino operator licensed under the Casino Control Act 1990 is surrendered, cancelled, or suspended, the casino operator shall deliver to the Commissioner, within 7 days after the date of the surrender, cancellation, or suspension, a statement in the prescribed form of—

“(a) The casino win of the casino operator for the period commencing on the first day of the month in which the surrender, cancellation, or suspension occurred and ending with the close of the day preceding that on which the surrender, cancellation, or suspension takes effect; and

“(b) The casino duty payable by the casino operator in respect of that casino win for that period.

“(3) A statement of casino win and casino duty payable in respect of any return period that purports to be made by or on behalf of any casino operator shall for all purposes be deemed to have been made by that casino operator, or by that casino operator’s authority, unless the contrary is proved.

“12P. **Payment of casino duty**—Every casino operator shall, not later than the last day allowed under section 12O of this Act for the delivery of the statement of casino win and casino duty payable in respect of any return period, pay to the Commissioner the casino duty payable in respect of that return period.

“12Q. **Interest on unpaid casino duty**—(1) Interest at the rate of 5 percent for every month or part of a month shall be payable on the amount of all casino duty unpaid (other than any amount of deferrable duty within the meaning of the provisions applying by virtue of sections 12R and 12J (2) of this Act) at the due date specified in section 12P of this Act, and shall be calculated from the expiration of that date.

“(2) For the purposes of recovery, all interest payable under this section shall be deemed to be casino duty.

“12R. **Assessments, objections, and recovery of duty**—Sections 12G to 12L of this Act (except section 12K (2)), as far as they are applicable and with any necessary modifications, shall apply for the purposes of this Part of this Act, as if—

“(a) Every reference in those provisions to gaming machine duty were a reference to casino duty; and

“(b) Every reference in those provisions to a gaming machine operator were a reference to a casino operator; and

“(c) Every reference in those provisions to section 12D were a reference to section 12O; and

“(d) Every reference in those provisions to section 12E were a reference to section 12P; and

“(e) Every reference in those provisions to section 12F were a reference to section 12Q.”

4. Disclosure of information—The principal Act is hereby amended by inserting, after section 14, the following section:

“14A. (1) No obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment or otherwise shall prevent either—

“(a) The Commissioner of Inland Revenue or any officer authorised in that behalf; or

“(b) The Secretary for Internal Affairs or any officer authorised in that behalf,—

from disclosing to each other information obtained for the purposes of the administration of the Gaming and Lotteries Act 1977 or the Casino Control Act 1990, or of Part IIA or Part IIB of this Act, and which is required to be disclosed by the persons authorised by this subsection for the purpose of giving effect to the provisions of Part IIA or, as the case may be, Part IIB of this Act.

“(2) Information obtained pursuant to subsection (1) of this section shall not be disclosed except—

“(a) To the persons authorised under that subsection; or

“(b) For the purposes of any proceedings connected with a matter in relation to which those persons so authorised perform their duties.”

5. Offences—Section 15 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) Any gaming machine operator who fails to comply with section 12D of this Act, and any casino operator who fails to comply with section 12O of this Act, commits an offence and is liable on summary conviction to a fine not exceeding \$200.”

This Act is administered in the Inland Revenue Department.
