

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

*House of Representatives, 5 August 1991.*

**[Clauses 80 to 83 of this Bill were formerly clauses 80 to 83 of the Finance Bill (No. 2): 83-1]**

*Hon. Maurice McTigue*

## GAMING DUTIES AMENDMENT

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### A BILL INTITLED

#### **An Act to amend the Gaming Duties Act 1971**

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

5 **1. Short Title and commencement**—(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).

10 (2) Subject to **subsection (3)** of this section, this Act shall come into force on the 1st day of October 1991, and shall apply to all dutiable games played on or after that day by means of a gaming machine.

(3) **Section 82** of this Act shall come into force on the day on which this Act receives the Royal assent.

No. 83—2D

**80. Interpretation**—Section 3 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

- “ ‘Dutiable game’ means any—
- “ (a) Game of chance; or 5
  - “ (b) Lottery; or
  - “ (c) Prize competition; or
  - “ (d) Instant game,—
- as those terms are defined in section 2 of the Gaming and Lotteries Act 1977: 10
- “ ‘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 15 played by means of a gaming machine; and
  - “ (b) Any person who conducts, otherwise than pursuant to a licence issued under that Act, any dutiable game played by means of a gaming 20 machine;—
- and, in relation to any return period and to the obligations and liabilities under **sections 12c to 12e** and **section 12j** of this Act of any person who was at any time during that period a gaming machine operator, 25 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:
- “ ‘Gross turnover’, in relation to any gaming machine 30 operator and any return period, means the total turnover in respect of all dutiable games that are—
- “ (a) Conducted by the gaming machine operator; and
  - “ (b) Played in that return period by means of a 35 gaming machine:
- “ ‘Play’, in relation to any dutiable game, includes participate in or commence that game; and ‘played’ has a corresponding meaning:
- “ ‘Return period’ means any period of one calendar 40 month in respect of which a statement of gross turnover and gaming duty payable is required to be delivered under **section 12c (1)** of this Act; and includes any period in respect of which a statement is required to be delivered under **section 12c (2)** of this Act: 45

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

5 “ ‘Turnover’, in relation to any dutiable game played by means of a gaming machine, means the 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 payable to play that dutiable game.”

10 **81. New Part inserted**—The principal Act is hereby amended by inserting, after Part II, the following Part:

“PART IIA

“GAMING MACHINE DUTY

15 “12B. **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 5.5 percent of the turnover in respect of any dutiable game played on or after the 1st day of October 1991 by means of a gaming machine.

20 “12C. **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 gross turnover of the gaming machine operator for the previous month; and

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

30 “(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—

35 “ (a) The gross turnover 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

40 “ (b) The gaming machine duty payable by the gaming machine operator in respect of that gross turnover for that period.

“(3) A statement of gross turnover 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.

“12D. **Payment of gaming machine duty**—Every gaming machine operator shall, not later than the last day allowed under **section 12c** of this Act for the delivery of the statement of gross turnover and duty payable in respect of any return period, pay to the Commissioner the gaming duty payable in respect of that return period. 5 10

“12E. **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 12i** (2) (b) of this Act) at the due date specified in **section 12b** of this Act, and shall be calculated from the expiration of that due date. 15

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

“12F. **Assessment of duty**—(1) Subject to **subsection (4)** of this section, where— 20

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

“(b) The Commissioner is not satisfied with any such statement delivered; or 25

“(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 12c** of this Act, is liable to pay gaming machine duty,— 30

the Commissioner may make an assessment of the amount of gross turnover 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 12E** of this Act. 35

“(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. 40

“<sup>5</sup>(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.

“<sup>10</sup>(4) Where a person has delivered a statement pursuant to **section 12c** 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—

“<sup>15</sup>(a) Where an assessment has not been made in respect of the return period, to make an assessment; or

“<sup>15</sup>(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.

“<sup>25</sup>**12G. Assessments deemed correct except in proceedings on objection**—(1) Except in proceedings on objection to an assessment under **section 12i** 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.

“<sup>35</sup>(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 12c** 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.

“12H. **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: 5

“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. 10

“(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. 15

“12I. **Commissioner may amend assessment, or objection may be submitted to Taxation Review Authority**—(1) The Commissioner shall consider all objections under section 12H of this Act, and may alter the assessment to which an objection relates. 20

“(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— 25 30

“(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 35

“(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 40

sections to tax were references to gaming machine duty; and

5 “(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 section as if—

10 “(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.

15 “12j. **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.

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

25 “(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:

30 “(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.

35 “(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.

40 “(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.

“12k. **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.

5 “(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.

10 “(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

15 “(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.”

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

20 “14A. (1) No obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment or otherwise shall prevent either—

25 “(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,—

30 from disclosing to each other information obtained for the purposes of the administration of the Gaming and Lotteries Act 1977 or of **Part II A** 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 II A** of this Act.

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

35 “(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.”

**83. 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 12c** of this Act is liable on summary conviction to a fine not exceeding \$200.”