

Response to section 3 of form BTC00.DOT from HMCTS

This appeal relates to claims for VAT the appellant considers overstated for the period from *insert date* to *insert date* on income generated from the gaming machine(s) it operated. The appellant followed HMRC instructions to treat such income as standard rated but following the decision in Oasis technologies (UK) Limited v Revenue & Customs (LON/2008/0544) considers that it is disadvantaged as it considers fiscal neutrality is not being observed by the differing treatments applied to gaming machines it operated and declared VAT on and the B3A gaming machines operated by a host of operators across the UK whose income was treated as being exempt from VAT.

When considering whether there is a similarity or not between the machines operated by the appellant and the comparator B3A machines there are a number of factors that must be considered. Currently stakes and prizes are similar – a maximum stake of £2 with a maximum prize of £400 for a category B4 machine and £500 for a category B3A machine. Category B3 machines operated in adult gaming centres also have a £2 stake and a maximum £500 prize. Over the past years maximum prizes have altered as the government altered legislation but there has always been a broad similarity in stakes and prizes that would not allow a player to distinguish between categories B3, B3A and B4 machines.

In terms of appearance all of category B3, B3A and B4 machines appear very similar, a money slot to introduce the stake, a button or similar mechanism to start the game and spinning reels or the visual representation of spinning reels to indicate when the game is in play and whether the game has been won or lost. The casing of all these machines, the noises they make the visual display provided to encourage the player to participate in the game are all similar if not identical (indeed there are examples of certain manufacturers/distributors providing the same game in both category B3A and B4 machines). When considering HMRCs approach to the taxation (or not) of the B3A machine in the Dransfield Novelty Company Ltd case (MAN/08/0811) prior to its hearing HMRC officers considered the differences and similarities between traditional gaming machines (i.e. category B3 and B4 machines) and category B3A machines and noted;

“the machines (B3A machines that is – *my inclusion*) have all the characteristics and appearance of a gaming machine”, and

“because of the general appearance of the machines and the experience presented to the player, the machines appear to compete with traditional gaming machines”

clearly indicating HMRCs acceptance of the similarity of machines operated by the Appellant with the category B3A machines accepted by HMRC as being exempt from VAT following the Oasis Technologies (UK) Limited decision.

It seems clear to us that HMRCs position is that the category B3 and B4 machines are sufficiently similar as for any difference to be unidentifiable and as such we conclude the differing tax treatment breaches the principle of fiscal neutrality.