TC01389

Appeal number: TC/2010/05384

Value Added Tax; Bingo; method of calculation of VAT liability; change in policy by HMRC; retrospective claim; basis of claim; change of consideration; effect of issue of internal credit note; Value Added Tax 1994 ss19, 24, &80; Value Added Tax Regulations 1995, Regulation 24 and 38 EU Sixth Directive Article 11A.1(a), 11C.1; Appeal allowed.

FIRST-TIER TRIBUNAL

TAX

CARLTON CLUBS PLC **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL JUDGE: **J. GORDON REID Q.C., F.C.I.Arb.**
Member: **PETER SHEPPARD F.C.I.S., F.C.I.B., ATII**

Sitting in public at George House, 126 George Street, Edinburgh on 7, 8, & 9 June 2011

Roderick Cordara Q.C. Essex Court Chambers, London, for the Appellant

Sean Smith, Advocate, Axiom Advocates, for the Respondents

DECISION

Introduction

1. **Bingo** is the subject of this appeal. The Appellant operates bingo clubs at which its customers compete *inter alia* for cash prizes. Throughout the eighties until 2007, and, in particular, between 5 December 1996 and 31 December 2003, the Appellant calculated its VAT liability on what is known as the *game by game* basis. Following the publication by HMRC of Business Brief 07/07 on 1 February 2007, the Appellant recalculated its liability on what is known as the *session* basis, and gave effect to this (for the period between 1996 and 2003) in its VAT return for the period ending December 2009. This entailed an adjustment of £718,732.32 to Box 1 of the return showing output tax due. The Respondents (HMRC) have reversed the adjustment. The Appellant sought reconsideration of that decision, which was upheld, and now appeal to this Tribunal.

2. A Hearing took place at Edinburgh on 7, 8, and 9 June 2011. The Appellant was represented by Roderick Cordara Q.C. (of the English Bar). Mr Cordara led the evidence of George Carter, C.A., the Appellant's financial controller. He also led the evidence of Jim Maclean an assurance officer with HMRC. HMRC were represented by Sean Smith, advocate. He led no evidence. Both parties produced Skeleton Arguments. A joint bundle of productions was also produced.

3. Finally, by way of introduction, we record that we refused, at the end of Mr Carter's evidence-in-chief on the morning of the first day, an application by Mr Smith to adjourn the Hearing on the ground that he had not been able to obtain instructions from HMRC on their policy in relation to the interpretation of certain HMRC notices and documents. While we had some sympathy for Mr Smith's position, we took the view that, balancing the interests of justice and fairness, progress could and should be made on other aspects of the appeal, and if necessary, Mr Carter could be recalled to give further evidence. In the event, that was not required, and Mr Smith was able to present and argue the case for HMRC without any apparent disadvantage. No further request for an adjournment was made and the hearing proceeded to a conclusion in the usual way.

Bingo and VAT-General Background

4. The Appellant operates a number of bingo clubs in Scotland and in the north of England. Cash prizes are paid to those who participate in games of bingo and win. A customer who wishes to participate, pays a fixed sum to participate in a session of bingo. This is known as the session fee. Payment entitles the customer to participate in a session which may last for about two hours and consists, usually, of fifteen games of Bingo. The customer, in exchange for the fixed sum, normally about £10 or £11, typically receives books of tickets or cards which contain lists of numbers for each game.

5. We were provided with a sample. This comprised (i) a book of ten tickets or cards of different colours-a different colour for each of the ten games, (ii) a book of two gold cards, one for each of two games, (i) one ticket or card described as the

national game, and (iii) a book of two tickets or cards described as *Carlton Connection.* This pack or cache of tickets or cards thus makes up a session comprising fifteen games of bingo. The *national game* is a single game in which clubs owned by various operators in England and Scotland link up to play a single simultaneous game; this provides a large prize culled from the stakes of all the players from the various clubs taking part. It is sometimes referred to as Linked Bingo. The *Carlton Connection* games are similar to the *national game* but restricted to a link-up of the Appellant's clubs.

6. Each ticket for each game is divided into six blocks. Each block contains fifteen different numbers randomly set out from 1 to 90.

7. Over and above the session fee, some of the Appellant's clubs charge an admission fee to gain entry to the club. This is entirely separate from the session fee. It is subject to VAT. There is no dispute about this. Accordingly, the admission fees do not feature at all in the issues we have to resolve, and need not be mentioned again.

8. Although the customer pays a single session fee to participate in a bingo session, the sum paid has two components. The first is what has been referred to as the *participation fee.* This is the consideration received by the Appellant for the supply to its customer of the right to play bingo for cash prizes. VAT is payable on this component. The second component is the *stake.* This is the contribution which each customer makes towards the cash prizes paid out to the winner of each game in the session. This component or element is outside the scope of the VAT regime.

9. While the session fee will, so far as the customer is concerned, generally be the same fixed sum, the split between the *participation fee* and the *stake* for each game will vary depending on the number of customers participating in a session and the amount of prize money to be paid out for each game. Thus, the fewer the number of customers for a session, the lower the amount of total stake available for the winner. In such circumstances the Appellant will top up the stake money to enable any advertised or guaranteed cash prize for a game to be paid out.

10. Thus, if there were 100 customers each paying £10 for a session of fifteen games and the first game has a guaranteed cash prize of £200, with an allocated ticket price of £2 for say the first game (i.e. £200 in total for 100 tickets), the participation fee might be £0.25 producing gross participation fees of £25 [100 x £0.25] (this sum is VAT inclusive); the stake per ticket would be £1.75 producing gross stakes of £175 [100 x £1.75]; additional prize money of £25 would be required to bring the prize money up to £200. On this game, a loss of £25 would be made or at least the gross participation fee would be reduced to nil. If the prize money were greater than £200 then top up prize money would have to be greater than £25 and thus greater than the allocated participation fees.

11. If, on the other hand, the cash prize for the second game is £100 and the allocated ticket price is £1.50 (i.e. £150 in total for 100 tickets), the participation fee might be £0.50 producing gross participation fees of £50 (this sum is VAT inclusive); the stake

per ticket would be £1 producing gross stakes of £100; no additional prize money would be required to be added to bring the prize money up to £100.

12. If these two games comprised the whole session, then the total VAT inclusive gross participation fees amount to £75 (£25 + £50) if one simply adds up the gross participation fee for each game. This is essentially the *game by game* basis of calculation.

13. If, on the other hand, the *session* basis is used, the gross participation fees are calculated by adding up the gross ticket sales (£200 + £150) i.e. £350, and deducting therefrom the total prize money (£200 + £100) i.e. £300; this produces total VAT inclusive gross participation fees of £50 (£350-£300) instead of £75. The different result arises because the additional prize money which had to be added in the first game is set off against the total participation fees to produce a net total VAT inclusive participation fee for the whole session. In other words, any negative balance on an individual game is carried forward to other games in the same session. However, there is no set off or consolidation *between* sessions only *within* a *session.*

14. From the foregoing, it can be seen that the session basis of calculation is more beneficial to the Appellant. Their case essentially is that for many years they accounted for VAT on turnover on the basis of a *game by game* calculation, as they thought that was what HMRC and their predecessors required. The position changed they say, after the publication of the 2007 Business Brief. That, they say, enabled them to adopt the *session* basis of calculation and make, in effect, a retrospective claim for overpaid VAT over many years. In essence, the Appellant's position, as expressed by Mr Carter in evidence, is that the inability to include the top-up or additional prize money in the VAT calculations came to an end and enabled a more favourable method of calculation to be made and applied retrospectively.

15. At a practical level, the bingo club manager has to decide immediately after the sale of tickets for a particular session closes and immediately before the bingo session begins, what the prize money for each game will be (except insofar as guaranteed by previous advertisement). Although the time for allocation between participation fee and stake is short, the manager's allocation generally proceeds along the lines of the split for the same session for the same time of day of the previous week. There is thus a broad template built up by experience of likely custom for particular sessions. For example a session on Tuesday morning may attract few customers compared with say a Wednesday afternoon. A guaranteed prize might be offered to attract customers into the club.

Further Details and History

16. Mr Carter joined the Appellant in 1982. One of his functions was to introduce computerisation at head office level. Computerised systems were introduced at club level in about 2000. These computerised systems duplicated the systems already in place. The pre-existing system calculated VAT liability on a *game by game* basis.

17. There was at least one *Control Visit* by HMRC or their predecessors. The nature, extent and scope of that visit is unclear, although it must have been obvious from any reasonable examination of the Appellant's records that the *game by game* method of calculation was being used. Whatever the extent or intensity of HMRC's examination of the Appellant's records, no criticism of the Appellant's use of the *game by game* basis was made.

18. Between the periods in issue, namely October 1996 and December 2003 (the "Accounting Periods in Issue"), and before then, the Appellant calculated the value of participation fees on a game by game basis as described above. Mr Carter was not familiar with the HMRC Notices and Business Briefs referred to below although he did recollect the Business Brief dated 1 February 2007.

19. Following the issue of Business Brief 07/07 on 1 February 2007, the Appellant submitted claims in respect of the overpayment of output tax in the accounting periods between April 1973 and September 1996 and from December 2003 to December 2006. These claims were paid by HMRC. They proceeded on the *session* basis of calculation.

20. It may seem odd that earlier and later claims have been resolved. However, in 1996 a three year time limit was placed on tax claims in relation to the refunding of understated or overpaid VAT. In 1997 this three year cap was extended to late input tax claims. The legislation contained no transitional period for input tax claims. In broad terms, the relevant legislation was held to be unlawful by the Court of Appeal and the House of Lords in *Fleming t/a Bodycraft*[1]. The absence of a transitional period to enable persons with accrued rights to make their claims, infringed Community law principles of effectiveness and legitimate expectation. The result was that a transitional period was created by s121 of the Finance Act 2008, which provided *inter alia* that output tax overpaid in accounting periods ending before 4 December 1996 could be made before 1 April 2009. That left the claim, to which this appeal relates, outstanding.

21. The Appellant sought advice from Ernst & Young. Thereafter, on 22 December 2009, the Appellant issued an internal accounting document which gave effect to the recalculation of their VAT liability for the Accounting Periods in Issue on the *session* basis. It would not have been practicable for the Appellant to issue individual credit notes to all of its customers, who would by that stage, have been largely unknown and/or untraceable.

22. The internal accounting document was on the Appellant's headed notepaper and was in the following terms:-

"22nd December 2009

INTERNAL CREDIT NOTE

[1]2008 1 WLR 195

To sales and VAT 5th Dec 1996-Q4 2003 subject to adjustment of VAT on "Added Prize Money" following sessional calculation per business brief 07/07

Net Sales	£4,159,802.97
VAT thereon	£ 727,965.52
Gross Sales	£4,887,768.49"

The document also contained what appeared to be Mr Carter's reference.

23. By letter to HMRC dated 24 December 2009, the Appellant intimated that it would be making an adjustment to its VAT return for accounting period 12/09 within the meaning of Regulation 38 of the VAT Regulations 1995. The letter notes that the Appellant has made the appropriate adjustments for periods from 1973 to 4 December 1996 and for periods from the first quarter of 2004 to 29 April 2009 when cash bingo became exempt from VAT. The letter records that these have already been settled with HMRC. The letter continues:-

> This letter is concerned with adjustments to be made by Carlton in accordance with the requirements of regulation 38 for sums received from 5 December 1996 to the end of Q4 FY 2003. In those periods, Carlton attributed the payments received from customers to its taxable participation fees on a game by game basis and accounted for VAT to HMRC accordingly.
>
> Following the issue of Business Brief 07/07, Carlton has now revisited these calculations. Applying the calculation on the proper basis has resulted in a reduction in the consideration charged to customers over the material periods (and a corresponding increase in the stake money provided by them). Over the whole of this period, the total reduction in consideration is £4,887,768.49 which includes VAT of £727,965.52.

24. This re-calculation was given effect to in the Appellant's return for the period to December 2009 submitted to HMRC towards the end of January 2010. The consideration for supplies was reduced by £727,965.52 and led to a net repayment of £530,487.18 being sought in that return.

25. On or about 15 February 2010, Mr Maclean and a colleague visited the Appellant's premises at Inverness. Mr. Maclean checked the Appellant's calculations which he accepted subject to the sum of £727,965.82 being reduced by £9,233.20 and the net sum repayable being reduced accordingly. The Appellant accepted the modification to their figures. They gave effect to it by producing a back-dated *Internal Debit Note* dated 22 December 2009 in the following terms

INTERNAL DEBIT NOTE

To Correct Financial Year 2003: Sales and VAT 5th December 1996-Q42003 subject to adjustment of VAT on "Added Prize Money" following sessional calculation per business brief 07/07

Net Sales	£52,761.16
VAT thereon	£9,233.20
Gross Sales	£61,994.36

26. The figures are now common ground. Mr Maclean examined what he described as the *non time barred* part of the claim. That claim was calculated on the same basis as the present claim relating to the Accounting Periods in Issue. Mr Maclean accepted this was so.

27. By letter to the Appellant dated 18 February 2010, HMRC (per Mr MacLean) intimated that they considered that Regulation 38 was not engaged; and that the underlying consideration had not changed. The letter notified a formal adjustment to the Appellant's return for the accounting period 12/09; this effectively rejected the Appellant's Regulation 38 adjustment so that payment of £188,245.14 was required instead of **re**payment. Mr MacLean made a further visit on 25 February 2010 and thereafter engaged in correspondence with the Appellant and Ernst & Young about the claim. By letter dated 18 March 2010, Ernst & Young sought a reconsideration of the HMRC decision contained in their letter dated 18 February 2010. By letter dated 25 May 2010 to the Appellant, HMRC affirmed its earlier decision. The basis of the affirmation was that there was no change in the underlying consideration.

Legislative Framework

28. Section 19 of VATA provides *inter alia* as follows:-

> (2) if the supply is for a consideration in money its value shall be taken to be such amount as, with the addition of VAT chargeable, is equal to the consideration.
>
> (4) Where a supply of any goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

29. The Value Added Tax Regulations 1995 provide *inter alia* as follows:-

> 24 "increase in consideration" means an increase in the consideration due on a supply made by a taxable person which is evidenced by a credit or debit note or any other document having the same effect and "decrease in consideration" is to be interpreted accordingly.
>
> 38 (1) This regulation applies where-
>
> (a) there is an increase in consideration for a supply, or
>
> (b) there is a decrease in consideration for a supply,
>
> Which includes an amount of VAT and the increase or decrease occurs after the end of the prescribed accounting period in which the original supply took place.
>
> …….
>
> (3)…….the maker of the supply shall
>
> (a) in the case of an increase in consideration, make a positive entry; or
>
> (b) in the case of a decrease in consideration, make a negative supply,
>
> for the relevant amount of VAT in the VAT payable portion of his VAT account
>
> ……..

(5) Every entry required by this regulation shall, except where paragraph (6) below applies, be made in that part of the VAT account which relates to the prescribed accounting period in which the increase or decrease is given effect in the business accounts of the relevant taxable person.

30. Article 11A.1(a) of the Sixth Directive provides *inter alia* as follows:-

1 The taxable amount shall be:

(a) In respect of supplies of goods and services…… everything which constitutes the consideration which has been or is to be obtained by the supplier from the purchaser, the customer or a third party for such supplies …….

31. Article 11C.1 of the Sixth Directive provides *inter alia* as follows:-

1 In the case of cancellation, refusal or total or partial non-payment, or where the price is reduced after the supply takes place, the taxable amount shall be reduced accordingly under conditions which shall be determined by Member States.

However, in the case of total or partial non-payment, Member States may derogate from this rule.

HMRC Public Notices

32. On 1 January 1984 HM Customs & Excise published VAT Leaflet No 701/27/84 entitled *Bingo.* This document was not in the documents produced for the Hearing but was referred to in a later publication. The Tribunal requested it and it was duly produced.

33. Paragraph 4 confirms that in relation to cash bingo the stake which goes back to the players as prizes is outside the scope of VAT. Paragraph 5 provides that the taxpayer must account for VAT on the gross session and participation charges even if the taxpayer finances some of the prizes from them. This instruction is consistent with the *game by game* method of calculation illustrated above. This instruction could not be complied with if VAT liability is calculated on a *session* basis as illustrated above. Paragraph 7 provides that all session and participation charges are taxable in full even if added prizes are funded from those charges.

34. On 1 March 1990 HM Customs & Excise published VAT Leaflet No 701/27/90 entitled *Bingo.* This Leaflet replaced the 1984 Leaflet. Paragraphs 7 and 8 relate to Cash Bingo. Paragraph 7 notes that session and participation charges at cash bingo promoted at clubs and other premises which are not licensed under the Betting Gaming &Lotteries Act 1968 are exempt from VAT, whereas if the premises are so licensed, the session and participation charges are standard-rated. We are concerned with licensed premises.

35. Paragraph 7 also confirms that the stake or card money which goes back to the players as prizes during the game for which it is paid is outside the scope of VAT, as nothing is supplied for the stake payment. It notes that any admission charge is standard-rated.

36. Curiously, the Leaflet only deals with the calculation of the value of exempt supplies in relation to cash bingo. However, it is interesting to note that at paragraph

8, the leaflet directs that in calculating the stake money, any participation charges which are used as additional prize money are to be excluded. This is consistent with what the Leaflet has to say about Prize Bingo (also exempt) at paragraph 6(b)(ii) where it provides that participation charges used as additional prize money are to be excluded from the calculation of the value of the exempt supply.

37. In June 1997, HM Customs & Excise published Notice 701/27/97 entitled *Bingo.* As with paragraph 8 of the 1990 Leaflet, paragraph 4.1 of the 1997 Notice describes the calculation where the session fees are exempt and contains the same instruction that any participation charges which are used as additional prize money are to be excluded.

38. In March 2002, HM Customs & Excise issued Notice 701/27. This cancelled and replaced the 1997 Notice. Paragraph 1.1 notes that the technical content of the 1997 Notice has not been changed. The method of calculation is the same (section 3.2) as earlier Notices. In calculating the value of stake money given back to the players as prizes, the notice provides (at section 3.2):-

> Step 1
>
> Add up the value of stake money given back to players as prizes. This is the value of stake money you received (do not include participation charges used as additional prize money)
>
> Step 2
>
> Add up the total value of charges you made for participation and session charges and stake (do not make any deduction for bingo duty payable)
>
> Step 3
>
> Deduct step 1 from step 2 to give the value of your participation and session charges

This section does not distinguish between taxable and exempt supplies.

39. On 1 February 2007, HMRC issued Business Brief 07/07 entitled *Cash Bingo: Accounting for VAT on Participation and Session Fees.*

40. This document begins with a statement that it clarifies HMRC policy on how to calculate participation and session fees paid by cash bingo players. It notes that HMRC have received enquiries from some bingo promoters performing VAT calculation on a *game by game* basis asking whether they are acting correctly. This is said to have prompted the issue of *this clarification.* The document further provides *inter alia* as follows:-

> CALCULATING THE VAT DUE
>
> When a player pays to participate in all or part of a bingo session, the supply made by the promoter is the right to participate in the number of games during that session for which they have received payment. As a player cannot participate in further sessions unless they make further payment, the supply to the player is completed when the session ends. In these circumstances the amount of VAT due on participation and session charges should properly be calculated on a session-by-session basis by deducting the stake money arising in each individual session from the total amount (less any admission fees) paid by players to participate in that same session. Where money from other sources is added to

the stake money received in the session in order to meet guaranteed prizes, that additional money cannot be used to reduce the value for VAT of the participation and session charges paid for taking part in the that session. [underlining added]

Where a player pays to take part in an additional game ("flyer") that does not form part of the session charge, this is a separate supply of the right to participate in that further game. The VAT due on fees charged for participating in additional games should be calculated on a game-by-game basis.

Where a promoter provides facilities for participating in linked games or a national game, in which players located at more than one venue all participate in the same game, charges received at all the promoter's participating venues should be aggregated in order to calculate the amount of VAT due on par fees relating to the linked or national game.

Promoters should not perform a single calculation for the whole of each VAT return period, aggregating stake money and receipts taken for all bingo played during that time.

Notice 701/27 Bingo will be updated.

Participation and session fees/Making claims or adjustments

MAKING CLAIMS OR ADJUSTMENTS

Bingo promoters that have calculated the VAT on participation and session charges on a game-by-game basis, and who now find that they have done so incorrectly, may make a claim to HMRC for a repayment of any resulting overdeclaration, subject to the conditions set out in Notice 700/45 *How to correct errors or make adjustments or claims*. In particular, businesses should note that :

- where the total of previous errors does not exceed £2000 net tax, an adjustment may be made to your current VAT return

- where the total of previous errors exceeds £2000 net tax a separate claim should be submitted to HMRC (in these cases the errors must not be corrected through your VAT returns)

HMRC may reject all or part of a claim if repayment would unjustly enrich the claimant. More information about unjust enrichment can be found at part 14 of Notice 700/45

41. It is difficult to understand what is meant by the underlined passage unless it is a reference to other sessions. It cannot be a reference to other games in the same session otherwise there would be no difference between the *game by game* basis of calculation and the *session* basis.

42. In September 2007 HMRC issued Notice 701/27 entitled *Bingo.* It cancelled and replaced the 2002 Notice. At section 1.3 it notes *inter alia* that it clarifies the procedure for accounting for VAT on participation and session charges on bingo. The Notice provides *inter alia* as follows:-

This notice cancels and replaces notice 701/27 Bingo (March 2002)

…….

3 ACCOUNTING for VAT

3.1 HOW DO I APPORTION COMPOSITE CHARGES

You may make one composite charge to each player for admission, participation and session charges, and stake money. To work out your VAT you will need to allocate the amount of your charge to each part.

You must first calculate and deduct any amount due for admission. The value of admission is standard-rated for VAT-see paragraph 2.2. You will then need to work out the value of your participation and session charges using the formulae in paragraphs 3.3 and 3.4. The liability of participation and session charges is explained at paragraph 2.1.

3.2 **SHOULD I CALCULATE THE VAT ON A GAME BY GAME BASIS OR ON A SESSION BASIS?**

When players pay to participate in all or part of a bingo session, the supply you make to them is the right to participate in the number of games during that session for which you have received payment. As the players cannot participate in further sessions unless they make further payment, the supply to the players is completed when the session ends. In these circumstances you should calculate the amount of VAT due on participation and session charges on a session-by- session basis.

When players pay to take part in an additional game ("flyer") that does not form part of the session charge, this is a separate supply of the right to participate in that further game. The VAT due on fees charged in additional games should be calculated on a game-by-game basis.

You should **not** perform a single calculation for the whole of each VAT return period, aggregating stake money and receipts taken for all bingo players during that time.

3.3 **WORKING OUT PARTICIPATION AND SESSION CHARGES FOR BINGO (CASH PRIZES)**

You must carry out the following calculation for each session:

Step	**Action**
1	Add up the value of stake money given back to players as prizes. This is the value of stake money you received (Do not include participation charges used as additional prize money.)[underlining added]
2	Add up the total value of charges you made for participation and session charges and stake (Do not make any deduction for bingo duty payable)
3	Deduct step 1 from step 2 to give the value of your participation and session charges

Finally, we have noted that since the conclusion of the Hearing, HMRC have published Notice 701/29 Betting, gaming and lotteries (13 July 2011). It states that it replaces *inter alia* Notice 701/27 Bingo (March 2002), referred to above, and discusses the VAT implications of a wide range of games of chance and games which combine skill and chance. It has no bearing on the issues we have to decide.

Submissions

Appellant

43. The Appellant's argument was, in essence, that (i) historically, participation fees were calculated on a *game by game* basis in accordance with HMRC policy and directions in published Notices; these notices are administrative statements giving rise to a legitimate expectation that the *game by game* method was acceptable and indeed required (ii) HMRC policy changed in February 2007 and that change, and not a mistake or error on the part of the Appellant, required the participation fees to be calculated on a *session basis*; HMRC changed the parameters and the Appellants

adjusted the apportionment between participation fees and stake money accordingly; neither method is wrong, they just produce different results; the prohibition in the September 2007 Notice in relation to additional prize money (underlined above) must apply across sessions and not *inter* session otherwise it would make no sense; the context of the 2007 Business Brief makes that clear; however no such reading down applies to the earlier notices because the context of the 2007 Business Brief is absent; (iii) HMRC invited retrospective claims, (iv) for the Accounting Periods in Issue, the Appellant gave effect to this by issuing an internal credit note which gave rise to the resulting figures in its December 2009 VAT return in accordance with regulation 38 of the 1995 Regulations as there was a change in the consideration for the right to participate in the bingo sessions. In any event, there was overpayment of VAT and this was properly corrected by the issue of the internal *credit note*.

44. What has occurred, the Appellants contend, is a statutory deeming process which has led to the consideration being reduced retrospectively. That cannot be characterised as a mistake as no error was made at the time of the original calculation of the tax. Reference was made to s19 VATA and to regulation 38 of the 1995 Regulations. S19(4) related to a single payment with multiple functions; deeming is part of the process.

45. By challenging the credit note, HMRC were attempting to cut off the Appellant's access to its EU rights. Where suppliers have a large number of essentially anonymous final consumers in low value, high volume transactions, the HMRC approach would make it impossible or excessively difficult for traders such as the Appellants to access their EU rights under the Directives (*Marks & Spencer plc v C&EC 2002 STC 103 at paragraph 34; Societe Generale des Grandes Sources d'Eaux Minerales Francaises v Bundesamp fur Finanzen 1998 STC 981*. The Appellant's internal document had all the material characteristics of a credit note (*General Motors Acceptance Corporation (UK) plc v C&EC 17990 paragraph 44; and on appeal at 2004 STC 577 paragraph 38.* Even if the credit note falls outwith the scope of regulation 38, it nevertheless has effect, as a common and accepted everyday means of giving effect to agreed changes in consideration and to correct errors. Reference was made to Notice 700/45/2009 section 4.10. A section 80 claim was unnecessary and regulation 38 was not exhaustive and did not prevent a credit note being issued in the present circumstances.

46. Reference was also made to *General Motors Acceptance Corp (UK) plc 2006 VAT Decisions 19989, HJ Glawe Spiel-und Unterhaltungsgerate Aufstellungsgesellschaft mbH & Co KG v Finanzamt Hamburg-Barmbek-Uhlenhorst (Case C-38/93 1994 STC 543 paras 14-26, C&EC v First National Bank of Chicago (Case C-172/96) 1998 STC 850; C&EC v Littlewoods 2001 STC 1568 at paragraphs 8-23; Lex Services plc v C&EC 2004 STC 73; Oxfam 2010 STC 686; CGI Group (Europe) Ltd 2010 UKFTT 224; CR Smith Glaziers (Dunfermline) Ltd v C&EC 2003 STC 419 at paragraphs 23 to 29; Muy's en De Winter's Bouw-en Aannemingsbedriff BV v Staatssecretaris van Financien (Case C-281/91) 1997 STC 665 paragraph 12 (AG); Ampafrance SA v Directuer des Services Fiscaux du Val-de-Marne (Joined Cases C-177/99 and C-181/99) 2000 ECR 1-7013 paragraph 60; Jorian (nee Jeunehomme) v Belgium (Joined Cases 123/87 and 330/87 1988 ECR 4517.*

47. The authorities did not identify one correct answer as to how to apportion VATable and out of scope elements. There were a number of possibilities. Attribution of input tax in partial exemption cases illustrates this point. Here, the Appellant does not suggest that the pre-2007 *game by game* method was wrong.

HMRC

48. Mr Smith submitted that there has been no change in policy regarding the manner in which the operator should properly apportion the session fee between stake money and participation fee. Even if there has that does not amount to a change in consideration. He referred to *Elida Gibbs Ltd (Case 317-94) 1996 STC 1387*. There was no decrease in the sum properly attributable to participation in the bingo session. If it was correct to calculate the VAT liability on a *session* basis it was always correct to do so notwithstanding any advice from HMRC. He accepted that the prohibition on including additional prize money in the 2007 Notice should be read down so as to apply *inter sessions* but submitted that this interpretation should apply to the earlier notices too. On a session basis one simply deducts the prize money from the total participation fees. You do not need any pre-conceived notion of the stake if the *session* basis is used. If the HMRC advice in the Notices was wrong it should have been challenged and if VAT was overpaid it should have been reclaimed under s80 of VATA.

49. Regulation 38 cannot be used to turn what was not VAT into VAT and vice versa (*C&EC v McMaster Stores (Sc) Ltd 1996 SLT 935; The Robinson Group of Cos Ltd v C&EC VAT Decision 16081 (Manchester)*). There was no event giving rise to a change in consideration. At most there were two separate *deemings* of equal status. There is no overpayment if the first deeming is correct.

50. With regard to the *credit note* the document does not record the acceptance by both parties that any event triggering a decrease in consideration has occurred (*General Motors 2004 STC 577 at paragraph 38*). Moreover, the advice given by HMRC in Notice 700/45/2009 section 4.10 is inapplicable as the return for the prescribed accounting period had already been rendered.

51. The Appellant was in error in accounting for more output tax than was due. S80 of VATA makes provision for reclaiming overdeclared or overpaid output tax. The statutory defences such as unjust enrichment and time bar should not be capable of being by-passed by the issue of an internal *credit note.*

Discussion

52. We found both Mr Carter and Mr Maclean to be generally credible and reliable. Mr Maclean's evidence was actually led by Mr Cordara, and was not the subject of cross-examination.

Notices

53. We are of the view that the proper interpretation of the notices and leaflets issued prior to the Business Brief 07/07 issued in February 2007 is that these notices required

VAT to be calculated on a *game by game* basis. We recognise that the language is a little vague and ambiguous in places. We are doubtful whether it is appropriate to subject these notices to the same analytical processes normally deployed to construe legislation or a commercial document.

54. There is, however, at least one important thread which runs through these pre 2007 notices. It is the requirement that participation fees are taxable in full even although additional prize money is funded from participation fees. This can be seen in paragraphs 5 and 7 of the 1984 Leaflet. The 1990 Leaflet makes the same point in relation to exempt supplies. The 1997 Notice (section 4.1) is to the same effect. This is made even clearer in section 3.2 of the 2002 Notice.

55. The Business Brief published in February 2007 states expressly for the first time that participation and session charges should properly be calculated on a session by session basis. This is confirmed by sections 3.2 and 3.3 of the September 2007 Notice.

56. The prohibition, on including in the calculation participation charges used as additional prize money, must relate to other sessions (we understood counsel to be agreed on this) otherwise it makes no sense and there would then be no difference between the *game by game* basis and the *session* basis. The whole point of the two methods of calculation is that the *game by game* basis does not allow any set off at all of additional prize money funded from participation charges. The *session* basis allows set off at session level i.e. from one game to the next within a single session. It does not permit set off across different sessions. The two methods of calculation are illustrated above and in the appendix to this Decision. It is on the *session* basis of calculation that the Appellant's claims for other periods have been settled.

The Nature of the Supply

57. The VAT regime focuses on supply and consideration for the supply. There can be a single supply and multiple considerations, multiple supplies and a single consideration. The consideration may have several components; some may fall within and some outwith the scope of the VAT regime. How a transaction is analysed will affect the nature and extent of the supply and the amount of the consideration.

58. The activity of playing bingo over say a two hour period can be analysed as a single supply for each game- i.e. fifteen supplies to each individual customer (or to the total number of customers participating as a group in one session) with one consideration paid at the outset of the session. Alternatively, the activity can be analysed as a single supply of a session of bingo for a single consideration.

59. Further, the analysis might break down the consideration for the supply of the overall session into components for each game within the session. In addition, the consideration has to be further analysed because a part of the sum paid by the customer or consumer is stake money which falls outwith the scope of the VAT regime.

60. Which analysis applies depends on where the line is drawn with reference to supply on the one hand and consideration on the other hand. Supplies may be *globalised* to a lesser or greater extent or not at all. The drawing of the line at any particular point is not always obviously correct or obviously wrong.

61. Our interpretation of the pre-2007 Notices and Leaflets issued by HMRC and their predecessors is that the line was drawn at game level rather than at session level. Even then, the analysis involves multiple supplies at game level. There is a single supply to each of the customers who participate in each game. The participation fees are added up to identify the gross participation fees for a game.

62. There is no dispute that the 2007 Business Brief and subsequent Notice required the VAT payable to be calculated on a *session basis.* On our interpretation of the earlier Notices, that is a **change** of policy rather than a **clarification** of existing policy.

63. We should mention the main authorities cited. *Glawe* concerned gaming or slot machines operated in bars and restaurants. The facts illustrate a physical manifestation of the division between participation fees and stake money. Each machine had two separate compartments, the *cash box* and the *reserve;* the cash box contained coins which the owner or operator of the machine was able to remove from the machines and retain for his own benefit. The *reserve* held the stock of coins from which winnings were paid out. The machines were set, in accordance with statutory requirements, so that they automatically paid out about 60% of the coins inserted after deduction of turnover tax. The issue before the Court was whether *Glawe* was assessable to VAT on all the coins inserted or only on those which entered the cash box. It was held that the winnings paid out from the *reserve* did not form part of the taxable amount. A similar analysis in relation to roulette is to be found in the opinion of Advocate General Jacobs in *Fischer v Finanzamt Donaueschingen (Case C-283/95 1998 STC 708 at 715 paragraph 47*).

64. *Glawe* reminds us that VAT is a tax on turnover. There, the operator's turnover was the amount he was able to remove from the machine, not the amounts inserted by the players. The principle of individual taxation (i.e. that each supply should give rise to a separate VAT charge which is proportional to the price paid) was met by regarding each payment as consisting of two components; one is the price paid for the services provided by the operator (including the VAT payable on that amount); the other component is regarded as an amount contributed to the common pool available to be paid out as winnings (see *paragraphs 18 and 28 of the Opinion of Advocate General Jacobs and paragraphs 10-12 of the Court's Decision*).

65. In *First National Bank of Chicago,* a case relating to a bank's foreign exchange transactions, the problem was to identify the consideration received by the bank as it charged no actual fee or commission for the large number of transactions carried out. The solution was to regard the taxable amount as the net result of its transactions over a given period of time (*paragraph 47 of the Court's Decision*).

66. *Glawe*, and *First National Bank of Chicago* demonstrate that the consideration for the supply of services may be regarded as consisting of the net result of transactions over a given period of time. Furthermore, it is not necessary for either party to know the exact amount of the consideration serving as the taxable amount in order for it to be possible to tax a particular type of transaction (see *First National Bank paragraphs 47 -49 of the Court's Decision*).

67. What that period of time should be will depend upon the circumstances of each case. We have not detected any principle or rule which provides a definitive answer for every situation. In *First National Bank,* emphasis was placed on a practical rather than a theoretical solution; and one should have regard to the net result of a trader's transactions (*paragraphs 31, 46 and 47 of the Court's Decision*).

68. Although these authorities were discussed at length at the Hearing, there is really no dispute here about the identification of the consideration and how it should now be calculated. It **was** calculated on a *game by game basis.* It has been re-calculated on a *session* basis. The figures are not in dispute.

Regulation 38

69. Drawing the line at session level means that there is or at least may be a change in the consideration for the right to participate in each game and each session and a consequent and equal change in the stake money. This arises, as we have explained, because set off applies within each session (*intra session*). It does not seem to us to matter how the change in consideration arises as long as it does arise. Regulation 38, which implements Article 11C.1, applies *inter alia* where there has been a decrease in consideration evidenced by a credit note. Any change in the consideration is bound to be retrospective in nature. The Appellant has, in accordance with the administrative directions of HMRC, changed the consideration for the supply of the right to participate in cash bingo sessions over the period between 1996 and 2003. On the face of it, such a change falls within the scope of regulation 38. It is not an error. The regulation does not restrict its application by reference to the means by which the consideration changes. Thus, a change might arise by operation of law, agreement of the parties to a transaction e.g. a subsequent reduction in the price due to customer dissatisfaction or coupon schemes under a sales promotion campaign (as in *Elida Gibbs*), or by reason of administrative direction by HMRC.

70. The first calculation of the consideration (on a *game by game* basis) was in accordance with the HMRC administrative directions and was therefore correct and valid. The sums properly attributable to the participation fees were correctly calculated. Calculation on a *session* basis would have infringed those administrative directions because of the prohibition on including participation fees or charges used as additional prize money.

71. The second calculation (on a *session* basis) was also in accordance with HMRC administrative directions and must also be correct and valid. The sums properly attributable to the participation fees were also correctly calculated. That basis of calculation has been accepted and settled in relation to different return periods. On

this basis, there must have been a decrease in the consideration properly attributable to the supply of the right to participate in a bingo session.

72. The fact that the amount paid by the customer has not changed is irrelevant because we are examining a payment consisting of two components; one component is the consideration for a supply which falls within the VAT regime; the other component is stake money which falls outwith the scope of the VAT regime. The amount of each component has changed. The stake money becomes greater and the consideration becomes less by equal amounts. This analysis and the application of regulation 38 to the circumstances of this appeal are consistent with the general principle that a trader should not pay VAT on a sum which is greater than the consideration ultimately received for the supply in question (*Elida Gibbs paragraphs 19-24 and 29-31*).

73. On one view, the circumstances could be said to be similar to those in *Elida Gibbs*. The Business Brief and Notice of 2007 are equivalent to the presentation to the manufacturing company of money off and cash back coupons which led to a reduction in the consideration received for the right to participate in the activity of bingo supplied by the Appellant. The sums received by Elida from the wholesalers to whom they supplied the goods did not change. Here, the sums received from the bingo customers did not change either but the consideration for the taxable supply was reduced and the out of scope element (the stake) increased by identical amounts. Although we are concerned with *deemed* considerations that does not affect the principles applied in *Elida Gibbs*. These principles are that (i)the taxable amount collectable by the tax authorities cannot exceed the consideration paid by the final consumer, and (ii) the principle of neutrality borne out by article 11C.(1) of the Sixth Directive which provides that where the price is reduced after the supply takes place, the taxable amount is to be reduced accordingly.

74. We therefore conclude that the implementation of the 2007 Business Brief and the later Notice have brought about a decrease in the consideration for the right to participate in bingo sessions and that therefore regulation 38 is applicable.

Credit Note

75. Regulation 24 of the 1995 Regulations requires an increase or decrease in consideration to be evidenced by a credit or debit note or any other document having the same effect.

76. *GMAC* (*2002 Chairman Stephen Oliver Q.C.*) concerned hire purchase transactions relating to motor cars. For VAT purposes such a transaction is equated to a sale and so the consideration for the supply is the total price due on the assumption that the customer elects to purchase (excluding finance charges). Where a customer elects not to buy but returns the car, GMAC was entitled, in principle, to a VAT adjustment on that part of the purchase price which ceased to be payable. One of the issues was whether GMAC satisfied the credit note requirements of regulation 38. The Tribunal observed, at paragraph 43, that the expression *credit note or other document having the same effect* had to be construed in a way that produced a result

which complied with Article 11C.(1). Otherwise, GMAC would be able to rely on their Community law rights. These rights could not be cut down by conditions imposed by Member States. The Tribunal in GMAC considered that a document had to come into being at the time or after the decrease in consideration; it was not essential that the document passed from issuer to the person receiving the credit; the VAT element need not be identified in the document evidencing the decrease in price (*paragraph 44*). The Tribunal concluded that the documents produced did evidence a decrease in consideration for the purposes of regulation 38 adjustments, having regard to the definition of that expression in regulation 24 (Paragraph 50).

77. The Tribunal's decision on that issue was upheld on appeal by Field J (*2004 STC 577*) who endorsed the reasoning summarised above (at page 593, paragraph 38) and observed that the purpose of regulation 24 is (i) to ensure that increases in the consideration are duly recorded by the taxable person, (ii) to guard against fictitious claims for adjustments and (iii) to enable the commissioners to verify adjustment entries in the taxable person's VAT account by inspecting that person's books and records.

78. We have described the internal credit note and the accompanying letter prepared by the Appellant in December 2009. These record and explain the adjustments. HMRC understood what the Appellant had done and were able to verify the adjustment entries by inspection of the Appellant's books and records. They were able to agree the figures as such (subject to minor modification). There is no suggestion that this is a fictitious claim.

79. In our view, the internal credit note, either on its own or read along with the letter dated 24 December 2009 referred to above, constitutes sufficient compliance with regulation 24 and 38 construed in the light of and having regard to the purpose of Article 11C.1 of the EC Sixth Directive.

80. Having regard to the facts as we have found them to be, it is difficult to envisage what more the Appellant could have done to comply with the requirement to produce evidence of the decrease in consideration in accordance with regulation 38 and 24. It was not possible to identify individual customers; it was therefore not possible to issue the credit note to any such customers. It seems to us to be somewhat unlikely that any of the customers would have been taxable persons, so regulation 38(5) [recipient of supply to make appropriate entry in his VAT account] cannot be relevant. If Field J's analysis is sound, then the purposes of the regulation 24 have been met. The change in consideration has been recorded. There is no suggestion of a fictitious claim being made. The entries have been verified by inspection by HMRC. There was no difficulty about that. An arithmetical correction was required and that was given effect to by the internal debit note referred to above.

81. To conclude that the requirements of regulation 24 have not been met would be to construe that regulation in an unduly technical manner. It would be impossible for traders dealing with essentially anonymous final consumers to comply with the regulation. Such a construction is not necessary to meet the purposes of the regulation, which in turn is to give effect to the general principle in Article 11C.(1) of

the Sixth Directive that where the price is reduced after the supply takes place, the taxable amount is to be reduced accordingly (see *Societe Generale at paragraph 30 of the Court's Decision; CR Smith Glaziers at paragraphs 27-28 and 51*).

82. HMRC referred to *McMaster*, but it seems to us to be dealing with a different point which does not directly or indirectly assist in the determination of the issues we have to resolve. In *McMaster*, one of the issues was whether an adjustment to a VAT return complied with the predecessor of regulation 38. The taxpayer had elected to waive exemption from VAT and charged VAT on rent payable by its tenants; and accounted therefor to HMRC. However, it failed to notify HMRC of the election, rendering the election invalid. The company's receiver, on discovering the true position, issued credit notes to the tenants, and intimated that the tenants would be treated as unsecured creditors for the amounts in the credit notes. The receiver sought to make appropriate adjustments in the company's VAT return. In the alternative, he claimed repayment under what is now s80 VATA. The Inner House held that the regulation was concerned only with the making of adjustments to the value added tax account to reflect an increase or decrease in consideration which *included* an amount of tax chargeable on the supply. As the supply was exempt, no VAT was due on the supply. Accordingly, the regulation had no application. The claim was treated as being based on error to which what is now s80 VATA applied. An argument based on unjust enrichment failed and the receiver's claim for repayment succeeded.

83. We conclude therefore that the evidential requirements of regulation 38 (read with regulation 24) have been met.

Alternative Credit Note Argument

84. As we have decided that there has been a change in consideration (and not an error on the part of the Appellant) and that regulation 38 has been complied with, the Appellant's fall-back argument on the credit note does not arise.

85. The fall-back argument for the Appellant proceeds on the basis that there has been an error and not a change in consideration. Accordingly, for the purposes of this argument regulation 38 is not relevant. The Appellant relied on paragraph 4.10 of HMRC Notice 700/45/2009 which relates to the correction of errors on a return already submitted. It is said that the issue of credit notes is commonplace and that the regular functioning of the VAT system depends on such a straightforward way for corrections to be made. S80 VATA makes provision for reclaiming overdeclared or overpaid output tax. It sets out time limits for making claims and provides statutory defences to such claims. A similar time limit applied, at one stage to regulation 38, but it was repealed.

86. This aspect of the appeal was not explored in detail by counsel for the parties. We are reluctant to give a concluded view on an issue which may have wide reaching ramifications which have not been fully discussed. While it strikes us as odd that s80 could be elided by the issue of an internal credit note, as we do not need to decide the point, we decline to do so.

Juridical Nature of sums returned by HMRC

87. We asked counsel to address us on this topic. Neither counsel put forward a positive submission with any degree of confidence. We were informed that the moneys returned under settled claims have been treated as income for corporation tax purposes. Although unnecessary for our decision, our tentative view, for what it may be worth, is that any overpaid VAT returned to the Appellant would fall to be added to turnover for VAT purposes. Such sums would be an addition to the participation fees and would be VAT inclusive. Accordingly, a portion (presumably one sixth [applying the standard VAT rate of 20%] would have to be accounted for in the return for the period in which the overpaid VAT was repaid to the Appellant. The money returned cannot be regarded as stake money. It could never be distributed to winning customers. More importantly, winning customers have already received all that was due to them. Where the stake money for any particular game fell short of the prize money paid out, the shortfall, as we have seen, was topped-up from participation fees.

Additional Matters

88. We have discussed only those cases on which we were addressed at the Hearing. The other cases mentioned above were referred to in written submissions but were not referred to in any detail at the Hearing.

89. At the conclusion of the Hearing, the Tribunal drew parties' attention to *Wadlewski v CC&E 1995 No 13340,* an appeal concerning retrospective change of VAT liability under retail schemes. We invited parties to submit short written submissions on the possible relevance of the case to the issues we had to resolve. We received written submissions from HMRC and a copy of *Lesley & Jayne Lewis 1996 No 14085* which discusses *Wadlewski.* The Appellant also produced short written submissions and referred to *James Roy Buckley (MAN/91/793 Case No 7644,* noted in *Wadlewski*

90. Subject to certain restrictions, a retailer may choose which scheme to adopt or may agree a bespoke scheme with HMRC. The general purpose of the schemes is to enable the retailer properly to account for tax due on supplies without having to calculate the tax separately for each individual supply or to issue a VAT invoice to each customer. The Commissioners interpreted the relevant regulations as giving them a discretion to allow a retrospective change of scheme. Their policy on this aspect was set out in an administrative Notice. Such a discretionary decision could be the subject of appeal. The Tribunal, on appeal, exercised a supervisory rather than a full appellate jurisdiction. These appeals arose because the retailer, with hindsight, considered that he should have adopted a different retail scheme which would have led to a reduced tax liability. The question at issue for the tribunal was the reasonableness of the exercise of the Commissioners' discretion.

91. Having considered the additional submissions and these three decisions, we are of the view that this line of authority has, after all, no direct relevance to the present appeal. HMRC have suggested that *Wadlewski* illustrates a flaw in the Appellant's arguments, namely that as no one scheme provided the correct amount for which the

taxpayer was liable, a change to another scheme did not mean that the taxpayer had overpaid VAT; thus the change from the *game by game* basis to *session* basis, although advantageous to the Appellant, did not constitute a change in consideration.

92. We are unable to accept this argument. We have already concluded that the pre-2007 Notices directed, in effect, that the *game by game* basis of calculation be adopted, otherwise, if the *session* basis had been deployed, the prohibition on setting off additional prize money would have been infringed. The 2007 Business Brief and the subsequent Notice directed that a *session* basis of calculation be adopted and invited retrospective claims. That basis of calculation resulted in a change (namely a decrease) in the consideration attributable to the right to participate in a bingo session.

93. These cases do, however, provide some indirect support for the decision we have reached because, as the Appellant has pointed out, it is difficult to see how the exercise of discretion to allow a retrospective change of a retail scheme could have resulted in repayment on the basis of error under s80 VATA. None of the cases indicate that would have been the basis on which repayment would have been made. In similar vein, there is no need to classify the claim in the present appeal as arising through error.

Summary and disposal

94. **The proper interpretation of the notices and leaflets issued prior to the Business Brief 07/07 issued in February 2007 is that these notices required VAT to be calculated on a *game by game* basis.**

95. **There is no dispute that the 2007 Business Brief and subsequent Notice required VAT payable to be calculated on a *session basis.* On our interpretation of the earlier Notices, that is a change of policy rather than a clarification of existing policy.**

96. **Drawing the line at session level means that there is or at least may be a change in the consideration for the right to participate in each game and each session and a consequent and equal change in the stake money. The Appellant has, in accordance with the administrative directions of HMRC, changed the consideration for the supply of the right to participate in cash bingo sessions over the period between 1996 and 2003. Such a change falls within the scope of regulation 38 and is not an error. This is consistent with the general principle that a trader should not pay VAT on a sum which is greater than the consideration ultimately received for the supply in question.**

97. **The internal credit note either on its own or read along with the letter dated 24 December 2009 referred to above, constitutes sufficient compliance with regulation 24 and 38 construed in the light of and having regard to the purpose of Article 11C.1 of the EC Sixth Directive.**

98. **The appeal is therefore allowed.**

99. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

J GORDON REID, QC, F.C.I.Arb.,
TRIBUNAL JUDGE

RELEASE DATE: 9 AUGUST 2011

APPENDIX

Mainstage Cash Bingo - VAT Accounting

Example of a session

Based on 100 admissions paying £10 for a combined book of tickets

Game	Ticket (£)	Gross ticket sales (£)	Stake (£) per ticket	Par Fee (£) per ticket	Gross stakes (£)	APM (£)	Total Prizes (£)	Gross Par Fee (£)
1	2.00	200.00	1.75	0.25	175.00	25.00	200.00	25.00
2	1.50	150.00	1.00	0.50	100.00	-	100.00	50.00
3	1.50	150.00	1.00	0.50	100.00	-	100.00	50.00
4	2.00	200.00	1.75	0.25	175.00	25.00	200.00	25.00
5	1.00	100.00	0.75	0.25	75.00	25.00	100.00	25.00
6	2.00	200.00	1.75	0.25	175.00	25.00	200.00	25.00
	10.00	1,000.00			800.00	100.00	900.00	200.00

VAT calculation on a game by game basis

VAT would have been calculated on the gross par fee generated by each game. APM would not have been deducted prior to the issue of Business Brief 07/2007

The Gross Par Fee is taken to be VAT inclusive, and we have taken VAT to be 17.5%, the standard rate in force during the period in question

£200 x 7/47 = £29.79

VAT calculation on a sessional basis

VAT would have been calculated on a "cash in - cash out" basis.

Par Fee is calculated by deducting Gross ticket sales per session less Total Prizes for the session

£1,000 - £900 = £100

£100 x 7/47 = £14.89