

## Online gambling and taxation issues

*EPMA represents the leading pari mutuel/tote operators from 10 European countries<sup>1</sup>. The association aims to protect and promote the business model of its members which relies on the pari mutuel system, offers a vital support to the equine sector in Europe and contributes to the integrity of betting on horse racing.*

### OBJECTIVE

EPMA Paper aims at providing input to the European Commission Expert Group<sup>2</sup> on Taxation of the Digital Economy.

EPMA members hope to establish a relevant level-playing field for all gambling operators in the European Union through the setting up of smart and efficient “Point Of Consumption Taxation” (POCT) models<sup>3</sup> in the EU’s Member States.

### CONTEXT

- **Subsidiarity**

- Although it is a cross-border activity by nature, online gambling is regulated at national level.
- Online gambling is part of the digital economy; however, it is not an ordinary economic activity (as stated in several CJEU rulings), notably owing to associated potential risks (gambling addiction, money laundering, etc.).
- As a consequence of the above, Member States have the right to organise and regulate the provision of services in accordance with the principle of subsidiarity.

- **Fragmentation**

- There is enormous discrepancy in taxation models pertaining to online gambling from one EU Member State to another;
- Many online gambling operators, whether they are located inside or outside the EU, take advantage of the disparity in taxation models in order to pay as low level of tax as possible.

- **Illegal gambling**

- Many gambling services providers are easily able to operate illegally (i.e. operating without licenses in countries where it is required to have one), and thus escape any tax obligations.
- Indeed, the cross-border nature of online gambling makes it extremely difficult to monitor the sector and to enforce the laws that are in place in EU Member States.

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<sup>1</sup> Austria, Belgium, Finland, France, Germany, Ireland, Norway, Sweden, Switzerland and United Kingdom

<sup>2</sup> Commission Decision C(2013)7082, 22.10.2013

<sup>3</sup> Under a place-of-consumption basis for taxation, online gambling operators pay tax on gambling profits generated from customers in the Member State, no matter where in the world the operator itself is located.

## CONSEQUENCES OF DISPARITY ON THE EU MARKET

- **Unfair competition conditions**

→ Depending on where they are located, lawful operators can benefit from much less advantageous fiscal conditions: as more constraints and taxes are imposed on them, the less the proceeds to be redistributed to punters are, the more they lose customers and market share.

Of course, legal operators are not competing fairly with illegal ones, who avoid paying taxes.

- **Funding sources for causes of general interest are jeopardised**

→ Not only do the proceeds of lawful gambling operators feed into national budgets via taxation, but in many Member States of EU, they are also used to finance research on problem gambling, the surveillance of sport integrity, as well as good causes (grassroots sport, horse sector at large, culture, social issues).

- **Sustainable funding of sports at risk**

→ Discrepancies in taxation models are used by some online gambling operators as means to pressure governments to change the organisational model of their market so that the financial and commercial interests of operators are favoured.

→ This might result in the putting at risk of some existing models, which have yet proved efficient and beneficial to the sectors (sports competitions and the sports sector in general) on which gambling services are based.

→ A case in point is the pari mutuel/tote model: while, after taxation, most of the proceeds from bets on horse racing is transferred to owners of winning horses on the one hand, and to successful punters on the other, the remainder is channeled to the horse sector at large (breeding, equestrian centres, stables, equestrian tourism, horse-related professionals such as vets, farriers, saddlers, etc.) on which many jobs depend, especially in rural areas.

- **Innovative investments are overlooked**

→ Taxation discrepancies are often the main leverage used by gambling operators in order to increase their competitiveness (by raising payback ratios for their customers), whereas increased competitiveness should rather be sought by making innovative investments with a view to enhancing the quality and the security of gambling products and services.

- **Gambling-related EU initiatives might prove inefficient**

→ The EU Recommendations that the European Commission is currently drawing up on responsible gaming, responsible marketing and match-fixing (announced in the EU Action Plan on online gambling in 2012<sup>4</sup>) might prove inefficient if taxation models keep pushing (or favouring) operators that are based outside the EU.

### **The differences in taxation between Member States has showed its limit**

Taxation on gambling like the principle to be applied to VAT for electronically supplied services, from 1 January 2015, could be taxed at the place where the private customer is established, has his permanent address or usually resides. With such principle, betting companies in Malta or Gibraltar

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<sup>4</sup> COM/2012/0596 final

would no longer be able to offer their bets at very low price conditions (meaning high level of pay-out) to punters located in other European countries.

Gambling companies from outside of Sweden offer betting services on Swedish races to Swedish players without a license. This means that gambling volume intended for ATG's betting pools ends up with other operators instead. The Swedish trotting and thoroughbred racing sports get their financing from ATG's revenues while no money is directed back to the horseracing sport from companies operating outside of Sweden. For every bet placed on a foreign game, the Swedish trotting and thoroughbred racing sports lose 13% of the bet's value. This results in free riding by operators offering services from outside of Sweden on something that is financed by ATG and the Swedish trotting and thoroughbred racing sports.

#### Case Study in UK:

The recently adopted Gambling (Licensing and Advertising) Bill<sup>5</sup> is implementing the Taxation on point of consumption principle and is reversing the existing situation: today, only approximately 10% of remote gambling carried out by customers in the UK is subject to UK gambling duties.

Under a place of consumption basis of taxation, an operator will pay tax on gross gambling profits generated from customers in the UK, no matter where in the world the operator itself is located.

A place of consumption basis of taxation for remote gambling will level the playing field, providing a fairer basis for competition between remote gambling supplied from the UK and overseas. As profits from non-UK customers will be excluded from the scope of tax, the reform will also enhance the competitiveness of the UK tax system, removing a disincentive for remote gambling businesses to locate in the UK and helping retain existing operators. It could drain a **£300 million from the industry.**

The main British bookmakers moved their online platform to Gibraltar in 2009/2010/2011

Even Betfair, which denied such a move for many years, did so in March 2011:

- The move allowed Betfair to avoid UK's 15% tax on betting profits
- Savings of around £18.5m a year expected
- Said it will continue paying Racing Levy but the participation is already low

Such a move places a major part of the betting business beyond the reach of both UK taxes and anti-corruption laws. More than half the UK gambling market is beyond the reach of British legislation. The most worrying implication for sports is that the bookmakers no longer have to comply with rules requiring them to share information in cases of suspected corruption.

#### **In this context :**

- **the relevance and benefits of a POCT model to be established at EU level should be assessed;**
- **sharing experiences with Member States where such a model is already implemented (France, Italy or Belgium) should be encouraged;**
- **Thought should be given to the establishment of a minimum and maximum level of taxation within the EU.**
- **This taxation rate spread might serve as a basis for regulatory bodies in Member States to calculate the financial penalties that should be applied to illegal operators.**

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<sup>5</sup> <http://services.parliament.uk/bills/2013-14/gamblinglicensingandadvertising/documents.html>