



## William Hill's response to the Horserace Betting Levy Board's Consultation Paper on Betting Exchanges

### Executive Summary

- William Hill agrees with the argument that those who trade by way of businesses on betting exchanges should be subject to levy.
- William Hill believes that the failure to collect levy from business users of betting exchanges has led to a shortfall in funding for horseracing (estimated loss at least £30 million per annum).
- We believe that had Government (i) realised the implications for tax and levy yield when legitimising betting exchanges and (ii) anticipated the volume of betting transactions that are now flowing through exchanges, it would not have been so keen to either allow market entry without addressing the tax issues. Nor would it have made the decision to leave business users of exchanges outside the scope of tax and levy and/or not pursued proactive enforcement policies.
- While the current tax legislation recognises that the making or acceptance of bets on a commercial basis is leviable, it is unlikely that individuals will volunteer either their status or pay taxes without suitable enforcement mechanisms being put in place. Such mechanisms will require co-operation and transparency from betting exchanges whose own systems could be readily used to identify the relevant persons and facilitate the collection of tax and levy.
- There is a distinction between business users of betting exchanges and so-called professional gamblers because business users of exchanges have the capacity to use the facility to both back and lay on events to lock in a profit. Whilst the majority of recreational users will be making losses, most if not all business users with access to sufficient liquidity will be making profits.
- Given the well-developed accounting and risk systems employed by exchanges and the classification of different types of user by the exchanges themselves, definitional issues relating to business users on exchanges should not prove to be an insurmountable challenge for the authorities. Such definitions are likely to revolve around transactional volumes and data requests because high levels of use will identify business users; particularly if using automated software.
- Were only 10% of exchange users business users, we believe that the overall tax and levy loss (figures extrapolated from exchange commission revenues) might be as much as £75 million (levy £30 million). However we are of the opinion that a relatively small percentage of exchange users (most of them business users) receive the majority of profits made on betting exchanges, so the tax and levy loss may significantly exceed our estimates.

- Whilst other factors have impacted on levy and tax yield (such as the current economic climate and offshore migration), the most important factor causing tax and levy leakage is the failure to collect tax and levy due from business users of exchanges.
- William Hill is therefore advocating that levy (based on gross profits) be paid by all business users on betting exchanges.
- Because exchange activity comes within the definition of “bookmakers” under s55 of the 1963 Act, the exchange is also liable to pay Levy on its commission
- William Hill believes that HMRC should be seeking in addition to tax those business users who are liable to levy on their gross profits.
- It would be possible for levy and tax to be secured by means of a deduction of tax payable; administered by the betting exchange itself.
- In addition, exchanges, which provide a service to buyers and sellers and derive profit from commission, should be taxed as service providers (perhaps by the application of VAT to the commission revenue as a service provider and not a VAT exempt bookmaker).
- William Hill appreciates the limitations placed on this consultation by the HBLB’s own statutory objectives, but whilst it may be possible to consider this issue purely in terms of extant legislation, there is undoubtedly the need for a wider review and possible legislative change which eliminates ambiguity and brings business users of exchanges within the scope of tax, levy and regulation. There is as the HBLB have pointed out, a lack of correlation between tax, levy and regulatory statutes. A coordinated gambling policy requires this correlation.
- William Hill is therefore calling for a full review of the betting exchange model by the authorities which should include independent scrutiny of the type of customer using the exchanges and independent assessment of whether or not particularly heavy users of exchanges, judged by the nature of the activity (laying), frequency of data or transaction requests, volumes and other financial parameters, are trading by way of business and should be taxed and regulated as well as required to pay levy.
- This wider review should not hold up early action by the HBLB, which working within existing levy legislation could move to identify and levy business users of exchanges. There are without doubt betting exchange business users who are actively engaged in levy avoidance and the HBLB has a statutory duty to close this loophole and pursue the sums owed by these individuals within the assessable period.
- This should pave the way for a more fundamental reform. The levy, an anachronistic subsidy introduced in the 1960s to compensate racecourses for loss of attendance at courses expected with the legalisation of off course betting, should be replaced by a commercial relationship between racing and the betting industry by 2013.



- At the centre of this commercial arrangement should be the increasing income received by racing from traditional bookmakers for the value of picture rights.
- In a three year transitional period (2010-2013), steps should be taken (if necessary by amending existing legislation, but certainly by encouraging enforcement of existing legislation) to ensure that business users of exchanges are levied at the appropriate rate.
- We endorse the submission made by the Association of British bookmakers

## 1. Introduction

1.1 William Hill is the largest betting shop operator with some 2300 betting shops in the UK and therefore the largest payer of levy. William Hill still earns 80% of its revenues from its UK business.

1.2 William Hill has been a long standing proponent of the view that those who have decided to operate their betting business via betting exchanges are not appropriately taxed or levied.

1.3 William Hill supports a competitive free market, but when that market and the prices within it are distorted by a substantial proportion of betting activity not being taxed in the same way as the businesses of traditional bookmakers, then that creates an unfair competitive advantage in favour of business users of exchanges and exchanges themselves.

1.4 In addition to paying corporation tax, William Hill's UK operations, like other bookmakers, is subject to a gross profits tax and a further levy also based on gross profits which is administered by the HBLB and used to continue to subsidise Racing despite their growing commercial income stream from providing televised racing in betting shops. Racecourse income from attendances and corporate hospitality has also shown signs of modest growth.

1.5 A traditional bookmaker's business model, because of the additional obligation to pay gross profits and levy, is very cost sensitive. Therefore when a new entrant or entrants to that market are allowed to compete in the market on favourable cost terms the result is to skew the market in favour of those new entrants. Tax and levy should be the same for all market participants and not avoidable simply on the basis of which channel through which it is operated.

1.6 We firmly believe that had (i) Government had realised the implications for tax yield in legitimising betting exchanges and (ii) anticipated the volume of betting transactions that are now flowing through exchanges, then it would not have been so keen to either allow market entry. Nor would it have made the decision not to tax exchange customers and to treat exchange commission as a form of betting gross profit. In terms of levy, this may simply be a failure to enforce the existing legislation properly.

1.7 Extrapolating from the sum paid by exchanges in horseracing levy (£6 million), which suggests commission revenues of around £60 million, William Hill believes that the estimated loss of gross profit tax and levy yield from business users could be as much as £75 million per annum; were such volume to be taxed in the same way as applied to traditional bookmakers. This calculation is based on the assumption of a 2% commission rate producing gross win for business users of around £300



million. This figure may be a significant underestimate if the majority (in percentage terms) of exchange profits are made by business users rather than recreational punters.

1.8 We understand, although it is for the exchanges to confirm, that the majority of profits are made by a minority percentage of users; this suggests strongly that there are significant business users operating on the exchanges.

1.9 Our stance has been misrepresented as a call for exchanges to be taxed on their total turnover. What William Hill is advocating is a tax to be levied which is the equivalent of the gross profits derived by business users from their exchange use/trading. This may have to be collected by exchanges as a deduction at source. In addition exchanges, which provide a service to buyers and sellers and derive profit from commission, should be taxed as a service provider (perhaps by the application of VAT to the commission revenue as a service provider and not a VAT exempt bookmaker). Exchanges also offer fixed odds SP and multiple betting and this of course would mean that they are a bookmaker for this element of its business.

1.10 While we welcome the opportunity to participate in this consultation, trying to shoehorn betting exchanges into existing statutory provisions is not, we believe, the only way to approach this issue. Whilst it may be possible to consider this issue purely in terms of extant legislation and bring business users within the scope of the levy, there is undoubtedly the need for a wider review and possible legislative change which eliminates ambiguity and brings business users of exchanges within the full scope of tax, levy and regulation.

1.11 William Hill's experience is that the Gambling Commission, DCMS, the Treasury and HMRC have all been happy to pass this issue around as if it were a hot potato; the result being that as exchange revenues have multiplied five fold in the last few years, tax and levy yield has fallen.

1.12 It is also notable that the majority of horseracing integrity issues have arisen as a result of betting exchange use while betting exchanges (through the levy) meet proportionately less of the integrity costs of racing than do traditional bookmakers like William Hill. To put this into perspective, William Hill pays levy at three times the level of Betfair's contribution whilst Betfair may account for up to 20% of UK betting market volumes.

1.13 This has all been against a background of a well orchestrated public and government relations programme operated by the principal betting exchange, Betfair, which has sought to oversimplify, to its advantage, the complexities of how betting exchanges operate within the wider UK and global betting market. Clever positioning and advertising has sold Betfair to politicians, officials and customers alike as a technology success story facilitating betting between ordinary punters ("peer to peer"); when in fact a proper examination of the facts would show that the small recreational punters, who generally lose overall, provide profits for a concentrated group of untaxed and unlevied business users. Whilst exchanges may be a technology success story, that has certainly been at the expense of racing who no longer receive levy from a significant proportion of the commercial betting market as required by the current levy legislation.



## **2. Betting exchanges and the UK betting market**

2.1 A betting exchange is effectively a technology platform which matches buyers and sellers. In this case the seller is an individual who wants to lay a price, for example on a horse to lose a race and the buyer is the person who wants to back that same horse at the price offered. William Hill's view is that the layer, when acting by way of business, is acting as a bookmaker.

2.2 Betting exchanges and particularly the dominant betting exchange, Betfair- with over 90% of the betting exchange market, now pervades the wider UK betting market.

2.3 We understand that separate representations will be made by the on course industry, but off course prices are also driven by the starting price mechanism (derived from a sample of on course bookmakers). The emergence of betting exchanges means that the market is adversely affected by unfair competition.

2.4 As time has gone on, particularly in the last five years, more and more business users are attracted to exchanges which, because of the way they operate and are taxed, offer tax and levy free profits.

2.5 We have no issue with the existence/legitimacy of betting exchanges; however the current approach (both in terms of tax and levy) does not uphold the principle of tax neutrality (similar activities taxed in the same way). Bookmakers, like William Hill, are forced to compete (in the case of business users of exchanges) against an untaxed and unlevied black market and what results is falling tax yield and a decline hole in racing's funding. Traditional bookmakers should not be required to fund a shortfall created by business use on exchanges.

2.6 The emergence of betting exchanges has brought about fundamental changes to the UK betting market. Betting exchange trading rooms have appeared on the high street which rent high specification computers, specialist software ("Bots") and access to fast transmission pictures to individuals who work seven days a week from these trading rooms, backing and laying and locking in a profit on each race or event even as it is in running.

2.7 This practice has also spread to racecourses and there is very rarely a race meeting where a group of exchange traders have not rented a corporate hospitality box equipped with the same technology found in exchange trading rooms. The same individuals have also been known to rent hotel rooms overlooking the racecourse to provide advantage in the practice of betting in running. The fast feed or real time viewing of the event can provide a few vital seconds for those traders over ordinary punters viewing from home. Such incidents are well documented.

2.8 The true picture is one of a number of businesses, assisted by automated trading strategies making a significant profit mainly from recreational punters who have no idea that the counterparty to the transaction is not a recreational punter like them. Deliberately or otherwise there is currently a lack of understanding and transparency surrounding exchanges.

2.9 Betting exchanges impose a premium transaction or data charge on those customers who make numerous data requests as they trade in and out of positions, but then seek to argue that that is not



indicative of business use. However, it is difficult to believe that by its ordinary meaning this is not an indicator of business use worthy of further investigation. Indeed the rapid growth of automated betting and the use of “bots” has very much moved the betting exchange model away from “peer to peer” betting to one where untaxed and unlevied businesses and other trading organisations are generally on the other end of a transaction entered into by a recreational punter.

2.10 William Hill believes that betting exchanges facilitate business users who provide significant liquidity to the exchange, but there is little or no transparency around the business model or the accounts with only headline figures appearing in the published financial reviews. What is needed is an independent review of the business model by the relevant authorities; rather than placing reliance on un-evidenced statements or rhetoric. If betting exchanges have nothing to hide then we would expect them to welcome this approach.

### **3. Conclusions**

3.1 The emergence and growth of betting exchanges has resulted in a significant proportion of non private betting being outside the scope of gross profits tax and horserace levy. Taking this to its logical conclusion, Government should either abolish a gross profits tax and horserace levy (a hypothecated tax) ,leaving corporation or income tax to be levied on businesses where appropriate, or ensure that the entire UK betting market is taxed appropriately. In the current economic climate it is difficult to comprehend that the Government would continue with a policy that that allows at least part of the betting market to escape the tax net.

3.2 This is particularly important because traditional bookmakers currently suffer a punitive tax regime which means that they pay more in tax than they make in profit. If this situation remains uncorrected, more and more currently regulated independent bookmakers will look at their cost base and feel that they could run a viable business laying prices on the exchanges rather than betting premises. It is our understanding that a significant number of individuals have already undergone this migration.

3.3 We understand the Treasury has concerns about bringing individuals who trade on exchanges within the scope of tax because those individuals will be able to offset losses against other forms of income. However as discussed above, business users of exchanges (who can use automated trading strategies to lock in profit) will by their nature make profits overall not losses; so this reservation is unfounded.

3.4 Although to some extent betting exchange customers are protected from fraud because layers have to deposit with the exchange a sum to cover their potential liabilities, we also believe that the question of whether or not business users of betting exchanges should be licensed by the Gambling Commission should be reviewed.

3.5 This is because one of the key objectives of the Gambling Act is to prevent criminals operating gambling businesses. Allowing unlicensed and untaxed individuals to trade by way of business on exchanges, means that those individuals can provide liquidity onto the exchange, without being subjected to a suitability test as set out under the Gambling Act 2005.



3.6 The HBLB has been the first public authority to take the initiative and explore the issue of betting exchanges and we applaud this stance. However what is required is a much wider review which encompasses tax, levy and regulation.

3.7 We believe that betting exchanges should also welcome such a review, thereby bringing certainty regarding the ever present tax and regulatory risks associated with operating the exchange model.

3.8 However, this wider review should not hold up early action by the HBLB who working within existing levy legislation can move to identify and levy business users of exchanges. There are without doubt betting exchange business users who are actively engaged in levy avoidance and the HBLB has a statutory duty to close this loophole and pursue the sums owed by these individuals within the assessable period.

3.9 Were the HBLB to move quickly on this issue, then this would alleviate any shortfall in levy funding currently being experienced by racing in what we hope is a three year transitional period prior to the ending of the levy and a move to the commercial relationship that is required.