50TH HORSERACE BETTING LEVY SCHEME
TURNOVER BASED LEVY

This is a summary note in response to a specific request from HBLB for Racing to submit headline points on reverting to a turnover-based system for either whole or part of the 50th Scheme for assessment and collection of Levy, as opposed to a system based on gross win.

Legal

- We are advised that there is no impediment in law to reverting to a turnover system. We are advised that there are no provisions in any applicable Act on this matter, which means it is entirely in the discretion of the Bookmakers' Committee and Levy Board, or the Secretary of State, to make the decision as to the basis on which Levy should be assessed.

- We are advised therefore that it is open to the Bookmakers' Committee to make such a recommendation in relation to any category of bookmaker and for the Levy Board to agree the same.

- Racing has previously stated the view that there is no merit in any threats of judicial review which may be mounted against a decision of the Secretary of State as to return to a turnover-based system for any Scheme on the basis that such system is discriminatory, or otherwise.

- There is considerable precedent for a turnover-based Levy system. For example, such a system was the basis of Schemes 28 to 40 inclusive.

- There is no obligation in law for a Levy Scheme system to apply on the same basis as operators are taxed, in particular in respect of betting duty.

Planning, Certainty and Predictability

- Certainty, predictability of outcome and enabling planning on the best possible information is consistent with best practice and is an important objective in creating any system, including a Levy Scheme. As is apparent from the last twelve months, the Levy Board and Racing have been subjected to having to budget, forecast and plan against a Levy yield of great unpredictability and uncertainty. A turnover-based system is subject to much less volatility than a gross win system.

- It is consistent with best practice that once a target yield range is identified, it is the objective to create a Scheme that has the best possible chance of achieving a yield within that range (both in terms of the total yield to the Levy Board, and the contributions to that total from each of the different and diverse parts of Betting, from small ‘traditional’ bookmakers, to the large operators, to exchanges etc). Given the unpredictability of sporting outcomes and the setting of odds by bookmakers, and thus their gross win, a Levy based on turnover has a greater chance of achieving a yield within a target range than one based on gross win.

- Under a turnover-based Levy system, the Levy Board’s cashflow forecasting would improve considerably as payments on account could be forecast with greater accuracy, or, further, agreements could be made for monthly payments to be made based on actual results. Under either scenario, the current situation whereby the Levy Board often has to make substantial repayments to bookmakers following the end of a Levy year would be eliminated. It would also remove the significant issues created for the Levy Board and Racing in relation to distributions within a year, as has been the case for instance during 2009 and 2010.

Creation of Partnership approach

- Racing creates a product that punters choose to gamble on through betting operators – turnover is something Racing can influence in terms of driving consumer interests in betting on racing specifically and betting and gaming generally, but betting operators' gross win is dependent on their strategy for managing their business and the outcome of the punter's bet. Racing can find itself receiving no return (or worse, negative impact on annual Levy, as reported by William Hill in respect of Royal Ascot 2010) in the event that betting operators attract more betting on winning favourites.

- Turnover is a true measure of the popularity of Racing, and betting on Racing.

- Gross win as applied to bets on horseracing creates an incentive for betting operators to migrate punters to other products. It dis-incentivises an open and collaborative approach. The current gross win system creates an adversarial approach as between the two sectors, particularly in the absence of for instance any guaranteed returns to racing prior to a profit share mechanic. Racing would wish to adopt a system which created a shared interest in driving racing business, in the mutual interest, but the current system works against this.

Gross win system places all the risk on Racing and is unfair

- Racing takes the risk of putting on races but is fully dependent on a system managed by the counterparty for its return. In a long-standing commercial agreement for a mature product (which, in terms of a betting product, Racing is) this would not happen without for example Racing receiving a minimum guarantee. Under a Levy scenario, such a guarantee could be achieved using a turnover basis of assessment.

- In other circumstances, the amount of licence fee paid (for example by a radio station to play a piece of music) would not depend on the profit of the operator.

- Under current arrangements, a bookmaker could offer particularly beneficial and unprofitable odds for punters in respect of British racing with the aim for example of attracting them to bet on other sports or gaming products. In such a circumstance, Racing may obtain little or no Levy (because the gross win is low or zero) whilst the bookmaker profits from increased business in other sports. This is plainly unfair and unsustainable.

- For these reasons, Levy assessed on turnover is fairer and more proportionate to what the betting operator obtains from Racing than a Levy assessed on gross win.

Avoids public perception concerns

- The use of gross win to generate Levy means that Racing benefits the more its betting customers' lose money. This risks the betting public having the damaging perception that the Racing authorities have an incentive to act against them, and means that racing benefits from the defeat of its star horses. Both are unhelpful to the image and hence long term future of the sport.

- Further, a gross win system incentivises Racing to set a programme of fixtures and races to achieve maximisation of gross win, rather than an alternative system which would incentivise attractive betting product as well as producing a balanced programme to best meet the needs of all its various consumers.

- In France for instance, those responsible for establishing the new system for the French Government rejected a gross win basis on the grounds that it was unacceptable for there to be a perception of the sport being financially motivated/rewarded by betting operators through the favourite not winning, against the interests of the bettor.

Disruption by growth of exchanges and offshore betting means a gross win system provides a lower Levy

- The gross win introduced for the 41st Scheme assumed a certain relationship between reduced margins being offset by higher turnover, but did not forecast the growth of the very low margin betting exchanges. The impact of exchanges and the depression of margin (not turnover) as a result has been very significant. Offshore moves by betting operators have added to the creation of lower margin, which then has a knock-on through to Levy yield.

- We recognise that low margins are seen as good for the punter, but our point is simply that the planning that supported the change to a gross win system did not envisage such low margin betting to be available. This also has consequential effect on betting operators and the various products they offer to punters in, for instance, shops, which can add as a compounding negative against returns through the current Levy system. Racing is impacted by sports book specific issues which were never envisaged at the time of gross win.

- A gross win Levy system was not intended to last long, as planning for the replacement of the Levy with a commercial mechanism was already well progressed at the time of the introduction of the gross win Levy system under the 41st Scheme.

- Although the original commercial contracts as implemented included a fee structure based on a similar gross win system to the 41st Scheme, those contracts were to expire in 2007 and Racing would have been at will to negotiate revised terms with Betting. (Ultimately, those commercial contracts, based upon the licensing of then relatively new Database Rights, failed due to the judgment from the European Court of Justice, which defeated the intended introduction of a suitable legislative Levy replacement under which an operator anywhere in Europe wishing to offer a bet on British Racing and therefore using pre-race data would have had to have purchased the right to do so).

Response to counter argument that gross win is a better reflection of capacity to pay

- The target yield should be the same whatever the basis of assessment and collection.

- Turnover is also a measure of Capacity to Pay and, in itself, Capacity to Pay is only one factor to take into account.

- The argument relates back to the sharing of risk – betting operators have no right to full protection from either their own poor performance or ‘results’, both of which are given to them under the gross win system, at Racing’s expense.

Different Systems can apply to Different Categories

- If considered appropriate to achieve the desired outcome, a Levy Scheme is capable of using a different system of assessment in differentiating between categories of “bookmaker”.

- Systems are applied at present to differentiate between land-based operators (regarding thresholds), between online and land-based (regarding the application of thresholds or not), and spread betting (different rates).

- The Republic of Ireland betting market has shown that a turnover system (in their case, for the assessment of betting duty), does not automatically lead to a charge directly on punters. All Irish betting shops absorb the 1% charge as a cost of the business without charging this on directly to customers, and have previously absorbed as much as a 3% turnover charge again without passing costs directly to the punter.

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