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Your Ref
Our Ref

25 August 2009

Dear Nic

BETTING EXCHANGES

As you know, we have been examining the concerns raised both by Racing and the Levy Board that there may be individuals, effectively acting as bookmakers on betting exchanges, who are not properly licensed or contributing Levy and tax as appropriate and asked the Government to consider taking action. I wanted to update you on the work we have undertaken and our current thinking about what needs to be done next.

In our discussions, you have suggested that the work could be progressed by HMRC identifying those who were 'acting in the course of business' so the Levy Board could pursue them for Levy. We have been exploring this issue since the Levy Board's letter of 2 October 2008. DCMS officials held a meeting with officials from the Levy Board, Gambling Commission and HMRC on 3 December last year which usefully clarified the roles, relationships and attitudes of the different authorities in respect of this issue. All three are committed to ensuring that the statutory requirements of the Levy, regulatory and tax regimes are adhered to, and would be concerned if evidence showed that there are individuals not meeting their statutory responsibilities. However, each made it clear that they are required to act in a proportionate way to the apparent risks. HMRC in particular indicated that they take a risk based approach to enforcement and will only consider action on the basis of clear evidence of an identified risk to the revenue.

It was generally felt that the most appropriate next step would be to meet with representatives of betting exchanges to raise these concerns and establish what action might be possible. On 20 February 2009, Paul Bolt, replied to the Levy Board's letter of 2 October confirming that initial discussions had been held involving others in Government and the Gambling Commission, and that we would be meeting Betfair to explore this further. DCMS officials met representatives of Betfair, as well as the Gambling Commission, on 30 March 2009. This was an open and frank meeting but Betfair did not accept that the concerns raised were justified.



Betfair acknowledged that where there are licensed bookmakers using betting exchanges to hedge, these operators currently contribute Levy in relation to such transactions. However, Betfair do not consider that it is practical to conduct a bookmaking business purely as a user of a betting exchange. Betfair accepted that there are some betting exchange customers who make more consistent profit than others. However, they felt that these could be categorised as 'professional punters', in the same way that those betting through traditional bookmakers have not been traditionally considered as 'acting in the course of business'.

We concluded that it would be appropriate for DCMS to meet again with HMRC, Gambling Commission and the Levy Board to consider the position.

DCMS officials therefore discussed the issue further with the Gambling Commission and Treasury officials, and in particular, considered the review undertaken in 2004/2005 with HMRC about the tax treatment of betting exchanges and their customers. This review looked at whether there was a group of users on betting exchanges who were acting by way of business and not being taxed. As you know it concluded that while some users do bet in high volumes, there was insufficient evidence at that time to characterise these users as running a business, as opposed to being high-volume gamblers, who have traditionally been outside the tax net.

A second meeting with the Levy Board, Gambling Commission and HMRC was subsequently held on 29 June 2009. This allowed us to consider the progress of the issue since the December meeting and the current positions of each authority. Whilst the concerns about the potential for illegal bookmakers to use betting exchanges were understood, that meeting reached a similar conclusion to that of the earlier Treasury review, i.e. that there remains insufficient evidence at this time of a significant risk to the revenue for HMRC to justify the consideration of enforcement activity or a further investigation in this area. HMRC's belief is that these actions would inevitably be costly and difficult exercises which would be disproportionate to any little yield that might be achieved, if at all.

In relation to the 2004/2005 Treasury review, HMRC felt that although technology may have moved on since then, and the overall numbers of betting exchange customers will have undoubtedly increased, an improved case has not yet been put to them which would advance the arguments made previously.

In addition, it would be inappropriate for HMRC to conduct a fishing exercise for information that might be useful for enforcement purposes on the basis of anecdotal allegations and without realistic justification. It would therefore be a disproportionate response to take such action on the basis of limited information and speculation, as appears to them to be the case currently.

I understand that the outcome of our discussions will be a disappointment to you. It remains the Government's position that if there is sufficient evidence of the avoidance of any relevant Levy, licensing or taxation requirements action will be taken.

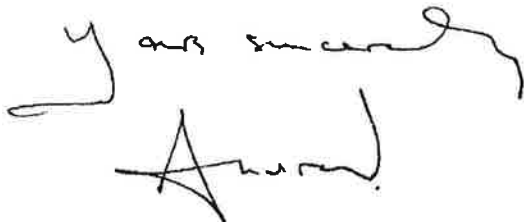
We consider that we have taken this work as far as we can for the present time. If your own research in this area produces new and substantive evidence, we would of course be willing to revisit the issue. Any new evidence would need to demonstrate how the

situation has changed since the time of the previous review of the tax treatment of betting exchanges and their users in 2004/2005. It would also need to more clearly identify and quantify the specific harms that there might be caused by illegal bookmakers using betting exchanges, for instance in terms of Levy yield and tax revenue lost, and of regulatory risks under the relevant regimes, including under the Gambling Act 2005. Should you be planning further research, you might find it helpful to speak directly to HMRC officials in order to find out exactly what they would need and in what format it should be presented.

The lead official at HMRC with responsibility for this matter is Brian O'Kane and he has indicated he would be happy to discuss this with you. Brian can be contacted by email (brian.okane@hmrc.gsi.gov.uk) or by phone (0161-827-0325). Alternatively, his address is:

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Finally, as you will also be aware, the Department recently consulted on proposals for Gambling Commission fees from 1 August 2009. This consultation, which closed on 23 June 2009, included the possibility of introducing a new fee category for those using betting exchanges "in the course of business". In the light of the consultation responses received, we intend to give further consideration to this issue in relation to the Gambling Commission fees and discuss with stakeholders before reaching a final view.

A handwritten signature in black ink, appearing to read 'Andrew Cunningham', with a large, stylized initial 'A'.

Andrew Cunningham
Head of Leisure

cc: Douglas Erskine-Crum, Chief Executive, Horserace Betting Levy Board
Matthew Hill, Director of Strategy, Research & Analysis, Gambling Commission
Brian O'Kane, Excise, Stamps & Money Businesses - Gambling Team, HM Revenue and Customs
