

Point of consumption tax

Consultation Paper



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The Consultation Process

The purpose of this paper is to seek stakeholder views on the design characteristics of a point of consumption (POC) wagering tax as well as answers to specific questions summarised at the end of the paper.

Key stakeholders are invited to comment or provide feedback on the issues outlined in this paper by submitting a written response in a word or PDF format via email to Trung.Dang@dtf.vic.gov.au by no later than COB 25 August 2017.

Introduction

1. Wagering in Victoria is currently taxed on a place of supply basis. Wagering tax is only applied to Tabcorp Wagering (VIC) Pty Ltd (Tabcorp), the Victorian wagering and betting licensee. Whether the customer wagering with Tabcorp is located in Victoria or another state or territory is of no relevance to the way wagering taxation is imposed under Victoria's current taxation framework.
2. All other bookmakers, including corporate bookmakers that are licensed in other states and Territories, do not pay Victorian wagering tax derived from bets placed by Victorians.
3. On 24 March 2017, the Council on Federal Financial Relations (CFFR) announced that:

“The Treasurers agreed to consider a common national approach on examining a point of consumption tax for online gambling having regard to South Australia’s approach. Treasurers will consider a model that provides for Commonwealth oversight of consistency. The common approach will include a National Consumer Protection Framework on online gambling. Each state and territory will need to individually consider the impacts on sports organisations within their own jurisdictions and the Commonwealth will report on efforts to crack down on illegal offshore gambling.

Treasurers have asked Heads of Treasuries to report back to the next Council meeting on such a potential model, including an assessment of the transitional impacts on existing state and territory arrangements.”
4. As part of the *Victorian Budget 2017-18*, the Victorian Government indicated that:

“As agreed at the CFFR meeting on 24 March 2017, the states and Commonwealth will consider a common national approach on examining a point of consumption tax for online gambling. At the next Council, Treasurers will consider a potential model that includes a National Consumer Protection Framework and provides for Commonwealth oversight. As part of this work Victoria is developing a point of consumption tax. This initiative will better align Victoria’s wagering tax system with the increasingly digital betting environment.”
5. Under a POC wagering tax, operators pay tax on customers wagering in Victoria, no matter where the operator is located. This approach is currently being considered by the CFFR.
6. The key driver for wagering tax reform is the considerable growth in online wagering, much of which is outside Victoria's wagering tax and regulatory structures. One of the benefits of a POC wagering tax is that it links the location of the consumer with the location of harms that wagering can cause, and secures a revenue source to help address these harms.
7. Other jurisdictions have responded to the changing landscape of the wagering industry. In December 2014, the United Kingdom (UK) introduced a POC wagering tax called the Remote Gaming Duty to ensure more betting operators, many of which have established operations in low-tax territories, contribute to a fairer share of UK taxes.
8. South Australia (SA) became the first Australian jurisdiction to introduce a POC wagering tax, which commenced on 1 July 2017. In its 2017-18 Budget, the NSW government announced that it will consider a POC wagering taxation option.

Nature and extent of issue

Victorian wagering and betting licence

9. Tabcorp currently holds the sole 12-year wagering and betting licence in Victoria, valid from 16 August 2012 to 15 August 2024.
10. The licence largely provides for the exclusive right to have a retail presence, offer pari-mutuel and fixed odds wagering in Victoria and other simulated racing services in off-course retail venues. Under the current licence Tabcorp also has the right to operate a betting exchange.
11. The licensee may offer wagering services through various platforms including online, telephone and in-person, on both racing and sports. The licence also allows Tabcorp to operate on-course and off-course wagering on all racing and approved sporting events, including the simulated racing game Trackside.
12. The licensee pays a premium payment to the state on award of the licence and is liable for state wagering taxes.
13. Although there is only one wagering and betting licence in Victoria, under Part 4 of the *Gambling Regulation Act 2003* (GRA), corporate bookmakers can seek to be registered in Victoria.
14. Victorian licensed bookmakers, whether they are small on-course operators or a corporate bookmaker, are not liable to pay wagering taxes. They can offer wagering services to customers on racing and approved sporting events, but only on fixed odds wagers.
15. In accordance with sections 4.6.3 and 4.6.6 of the (GRA), the wagering and betting licensee is liable to pay the following wagering tax at rates:

Bet offering	Tax rate (%)	Legislation – GRA 2003
Pari-mutuel	7.6	s4.6.3(1A)
Fixed odds	4.38	s4.6.6(2A)
Simulated Racing	10.91	s4.6.6A(1)
Betting exchange	10.0	s4.6.6B(1)

Victorian Racing Industry

16. The Victorian Racing Industry (VRI) is a major part of Victoria's sporting landscape and cultural tradition. It employs almost 20,000 full time equivalent jobs throughout the state.
17. The GRA requires the wagering and betting licensee to enter into arrangements with the VRI to provide funding for the industry. The current funding arrangement has been formalised as a Joint Venture (JV) agreement, the first one being established in 1994.

18. In 2012, Tabcorp was successful in securing a new wagering and betting licence, and subsequently established a new JV with the VRI. Some of the key changes to the JV include:
- an increase in VRI's share of JV wagering profits;
 - a number of fee changes to reflect the growth in fixed-odds betting and option to operate a betting exchange;
 - accompanying reductions to wagering tax, as legislated through the GRA, on pari-mutuel and fixed-odds betting, from 19.11 per cent to 7.6 per cent and from 10.91 per cent to 4.38 per cent, respectively; and
 - the full amount arising from the tax cuts passed on to the VRI as a separate payment from the JV, referred to as the Victorian Racing Industry Benefit (VIRB).

Policy rationale

19. Australia's online wagering market, worth approximately \$1.4 billion in net wagering revenue in 2014, has been growing considerably in recent years. Between 2004 and 2014, on an annual basis, online wagering grew at around 15 per cent compared with just 3 per cent growth in the general gambling market.
20. The shift towards online wagering is expected to continue in the foreseeable future due to increased accessibility and convenience, as well as increased competition and breadth of offerings available to consumers.
21. Much of this growth is occurring outside Victoria's wagering tax and regulatory structures. This means that although online wagering continues to grow, wagering tax revenue is decreasing. This trend towards online and mobile forms of wagering continues to place the burden on state Governments to address the harms from wagering, without the additional resources to do so.
22. Applying taxation under a POC wagering tax model would recognise the significant shift in the wagering industry, and better align Victoria's wagering tax system with the increasingly digital wagering environment.
23. A POC wagering tax would help mitigate the societal impacts from wagering by linking the location where wagering activity occurs with the harms it causes in that community. It is important to note that in Victoria, approximately 80 per cent of total gambling tax revenue is transferred to the Hospitals and Charities Fund, the Mental Health Fund and the Community Support Fund, including funding for the Victorian Responsible Gambling Foundation.
24. In March 2017, the CFFR agreed to consider a common national approach on examining a point of consumption wagering taxation, having regard to the South Australian model. It is within this context that the Victorian Government is seeking views on design characteristics of the POC wagering tax.

Question

1. What are stakeholders' views on a POC wagering tax including potential impacts on industry, government, consumers and the community more broadly?

The South Australian model

24. On the 1 July 2017, South Australia became the first jurisdiction in Australia to implement a POC wagering tax. The tax is levied at 15 per cent on a betting operator's annual net state wagering revenue. Wagering operators with a net wagering revenue less than \$150,000 in a financial year are exempt from the POC wagering tax.
25. Wagering operators are expected to self-assess their own tax liability and lodge their returns to the SA revenue office on a monthly basis. Oncourse bookmakers are required to lodge returns and make relevant payments on an annual basis.
26. Net wagering revenue is defined as the sum of all bets, fees or commissions less winnings paid out to all customers who were located in SA at the time of making the bets. This covers all wagering types and bets placed on betting exchanges.
27. The SA model allows for betting operators, if they are unable to accurately determine a person's location at the time of making placing a bet or using a service, to estimate location based on a person's registered residential address. The operator is required to have sufficient safeguards in place to ensure that registered residential address information is accurate.
28. To ensure compliance, the SA revenue office will conduct various audit and investigation programs and have the power to request records and documents from operators to do so.

Question

2. What are stakeholders' views on the South Australian POC wagering tax model, including its potential application to Victoria?

Policy design considerations

Scope of a POC wagering tax

29. Currently, Victorian wagering tax applies to services offered by the wagering and betting licensee, including fixed odds, pari-mutuel wagering and the simulated racing game, Trackside. Wagering tax is calculated as a percentage of the operator's net wagering revenue (player loss).
30. Victorian wagering taxes apply to bets placed through different platforms, including online, mobile, telephone and in-person. Only the wagering and betting licensee is subject to the Victorian wagering tax.
31. A POC wagering tax could adopt the approach where the tax is calculated as a percentage of the operator's net wagering revenue. It could focus on the fixed odds bets only or apply to all types of wagering.

Questions

3. Should a POC wagering tax be calculated as a percentage of the operator's net wagering revenue (player loss) or should it be based on a different calculation?
4. What forms of wagers should be captured by a POC wagering tax and what forms of wagers ought to be outside of the scope of a POC wagering tax?

Tax rates and tax-free threshold

32. Currently in Victoria fixed odds wagering is taxed at 4.38 per cent of net wagering revenue, pari-mutuel wagering in Victoria is taxed at 7.6 per cent of net wagering revenue, and simulated racing (Trackside) is taxed at 10.92 per cent of net wagering revenue.
33. One option under a POC wagering tax model is to continue with different tax rates for each wagering type, but to calculate the tax on a place of consumption (where the bets are placed) rather than a place of supply basis (where the wagering service providers are licensed). Another option is for the three different wagering tax rates to be replaced with one single POC wagering tax rate.
34. The SA model is based on a single tax rate for all wagering types at 15 per cent of net wagering revenue. The SA model also includes a tax-free threshold to protect small scale on-course bookmakers.
35. On-course bookmakers are predominantly limited to accepting bets on racing events and are usually family-run businesses which have a limited or no online presence. On-course bookmaking has been practiced for over a century, and the ability to compare and place bets in-person with a bookmaker at the racecourse is often cited as a major component of the race-day experience.
36. Over the past decade the number of on-course bookmakers has declined. This has likely been driven by decreasing attendance at the racecourse, increased competition from online corporate bookmakers and a shift in consumer preferences towards wagering on sports rather than racing events.

Questions

5. Should one POC wagering tax apply to all wagering types, or should there be different tax rates for different wagering types?
6. What would be an optimal POC wagering tax rate/s for Victoria? On what basis?
7. Should a Victorian POC wagering tax have a tax-free threshold, and if so, at what level?

Defining customer's location

37. To establish the amount of wagering revenue generated by customers in Victoria, operators will have to determine the location in which a customer places a wager or uses facilities for wagering.
38. In light of the experience in other jurisdictions, it is apparent that some operators may encounter difficulties in determining the exact location of a customer in some cases.
39. A number of operators in the UK consultations indicated that it would be difficult to identify a customer's location at the time a bet is placed, and indicated a preference to define a customer's location based on their usual place of residence.
40. The SA POC wagering tax model allows for betting operators, if they are unable to accurately determine a person's location at the time of making placing a bet or using a service, to estimate location based on a person's registered residential address.
41. The type of indicator that an operator could use to determine whether a customer is in Victoria may include:
 - a. instant tracking technologies such as geo-location or IP address tracking;
 - b. using a customer's residential address registered to their betting account;
 - c. self-verification; or
 - d. a combination of any of the above methods.

Questions

8. Should the customer's location be defined through instant tracking using geo-location? What issues are associated with this approach?
9. Should the customer's location be defined through their residential address? What issues are associated with this approach?
10. Should the definition of a point of consumption encompass both elements, geo location and customer's residential address, similar to the SA model?
11. Are there any other options to define customer location, not canvassed in this paper, that ought to be considered?

National consistency

42. Each state and territory across Australia has different industry considerations, legal and regulatory frameworks, taxation structured, wagering markets and licensing arrangements.
43. Therefore, in considering a POC wagering tax as part of the inter-jurisdictional process agreed by the CFFR, questions arise regarding tax design elements that can be nationally harmonised and those that ought to remain subject to state autonomy.

44. There are a number of potential harmonisation options. One option involves all elements of the tax design left for each jurisdiction to determine, with no concerted national harmonisation. This would mean that each jurisdiction could have different tax design elements such as tax rates and tax structures, a different approach to identifying location of the customer and different tax administration arrangements.
45. Another option involves a fully harmonised POC wagering tax introduced across all jurisdictions, including a harmonised administrative process and a consistent tax design across all jurisdictions.
46. A hybrid option could also be considered, where some tax design elements are harmonised (for example, the wagering types subject to the POC wagering tax) and others are not (for example, tax rates and/or the tax-free threshold).

Question

12. What tax design elements are best suited to full harmonisation across all jurisdictions, and which tax design elements ought to be subject to the state's autonomy?

Potential industry and customer impacts

Wagering and betting licensee

47. The current wagering and betting licence, held by Tabcorp, is valid until August 2024. Tabcorp is liable to pay Victorian wagering tax on each wagering type offered, with specific tax rates applying to each type (fixed odds, pari-mutuel and simulated racing).
48. One option is for a POC wagering tax structure to replace the wagering tax arrangements applying to the licensee and instead apply a POC wagering tax to any wagering operator providing services to customers in Victoria.
49. Implementing a POC wagering tax would require changes to the GRA as well as the wagering and betting licence agreement. All future licences would need to be structured to reflect the application of a POC wagering tax on Victorian wagers.

Question

13. How would a change from the current wagering tax structures to a POC wagering tax impact on the Victorian wagering and betting licence?

Victorian Racing Industry funding

50. As a condition of the wagering and betting licence, the licensee is required to enter into an arrangement with the VRI to provide funding for the racing industry. These are commercial agreements between the licensee and the VRI, and the state is not a party to these agreements.

51. Tabcorp and the VRI have entered into a joint venture agreement for the term of the current licence. At the expiry of the license, the VRI would enter into new arrangements with the wagering and betting licensee covering the term of the next wagering and betting license.
52. The joint venture between the licensee and the VRI comprises several agreements which relate to the various terms of the joint venture. Introducing a POC wagering tax may inadvertently impact on the operation of the joint venture agreement.

Question

14. How would a POC wagering tax affect racing industry's current funding arrangements?

Product Fees

53. The VRI and relevant sports controlling bodies charge product fees on wagering operators that offer wagering markets on any event controlled by that racing or sporting entity. These fees are payments resulting from a commercial agreement between the wagering operator and the controlling body for the right to offer wagering on the relevant event.
54. The right for a wagering operator to use race field or sports event information may be revoked by a controlling body if an operator does not comply with product fee payment terms.
55. The ability to collect product fees is particularly valuable to the VRI as it represents a considerable funding source for the industry.

Question

15. What impact, if any, would the introduction of a POC wagering tax have on product fees?

Offshore wagering operators

56. Australian consumers are not prohibited from wagering with offshore operators. However, they may not enjoy the same consumer protections when they bet with off-shore operators compared to when they wager with operators licenced in Australia. It is difficult to ascertain with any level of accuracy the number of Australians or Victorians that conduct their wagering activity with offshore operators, however, it is likely that a considerable number of Victorian consumers wager with offshore wagering operators.
57. Offshore operators offer online services outside of the Australian or Victorian regulatory and taxation framework, and without making product fee payments to the racing and sports industries. By avoiding wagering taxes, company taxes and industry contributions, off-shore operators are able to offer more competitive odds than operators licensed in Australia.
58. The Interactive Gambling Amendment Bill 2016 is currently being considered by the Australian Parliament. Among other measures, the Bill prohibits the provision of interactive gambling services to Australians unless the person holds a licence under the law of an Australian state or territory to provide the relevant service. This will effectively prohibit the provision of offshore gambling services to Australians by offshore bookmakers. Additionally

the Bill will create a civil penalty regime to be enforced by the Australian Communications and Media Authority (ACMA). This regime will allow ACMA to issue formal warnings and infringement notices and to seek civil penalties and injunctions. These provisions will also apply to offshore gambling services and are intended to increase the capacity of the Australian Government to enforce the prohibitions in the *Interactive Gambling Act 2001*.

59. The *Review of Illegal Offshore Wagering 2015* (O'Farrell Review) recommended that the Australian Government explore options to disrupt illegal offshore wagering providers offering services to Australia by identifying potential payment blocking strategies, implementing "safe harbour" provisions to support payment blocking by banks and credit card providers, and entering into voluntary agreements with internet service providers to block websites identified as fostering illegal wagering activity in Australia. The Australian Government has agreed, or agreed in-principle, to these recommendations and it is understood the Australian Government is continuing to explore the adoption of these measures.
60. Additionally, Australian, state and territory Gaming Ministers are working on the development of a National Consumer Protection Framework for online gambling. On 27 April 2017, Ministers agreed in-principle to the key elements of the National Framework, subject to further development of detail by senior officials and consultation with stakeholders. Development of the detail and implementation design of the National Framework is ongoing.

Question

16. What is the likely impact of a POC wagering tax on offshore wagering activity by Victorians?

Corporate bookmakers

61. Whilst on-course bookmakers have experienced downturns in revenue, on-line corporate bookmakers have seen an expansion in revenue over the past decade.
62. Corporate bookmakers operate remotely, mostly online and over the phone and offer services to many consumers at one point in time on a range of markets.
63. Corporate bookmakers have benefited most from the shift in consumer preferences towards sports wagering markets and have also benefited from a shift away from pari-mutuel wagering towards fixed odds betting on racing events.
64. A POC wagering tax is likely to impose a new costs for corporate bookmakers offering wagering services to Victorian customers and may impact on the operator's profitability.

Question

17. What are the expected impacts on bookmaker viability as a result of a POC wagering tax?

Summary of consultation questions

Nature and extent of issue

1. What are stakeholders' views on a POC wagering tax including potential impacts on industry, government, consumers and the community more broadly?
2. What are stakeholders' views on the South Australian POC wagering tax model, including its potential application to Victoria?

Policy design considerations

3. Should a POC wagering tax be calculated as a percentage of the operator's net wagering revenue (player loss) or should it be based on a different calculation?
4. What forms of wagers should be captured by a POC wagering tax and what forms of wagers ought to be outside of the scope of a POC wagering tax?
5. Should one POC wagering tax apply to all wagering types, or should there be different tax rates for different wagering types?
6. What would be an optimal POC wagering tax rate/s for Victoria? On what basis?
7. Should a Victorian POC wagering tax have a tax-free threshold, and if so, at what level?
8. Should the customer's location be defined through instant tracking using geo-location? What issues are associated with this approach?
9. Should the customer's location be defined through their residential address? What issues are associated with this approach?
10. Should the definition of a point of consumption encompass both elements, geo location and customer's residential address, similar to the SA model?
11. Are there any other options to define customer location, not canvassed in this paper, that ought to be considered?
12. What tax design elements are best suited to full harmonisation across all jurisdictions, and which tax design elements ought to be subject to the state's autonomy?

Potential industry and customer impacts

13. How would a change from the current wagering tax structures to a POC wagering tax impact on the Victorian wagering and betting licence?
14. How would a POC wagering tax affect racing industry's funding arrangements?
15. What impact, if any, would the introduction of a POC wagering tax have on product fees?
16. What is the likely impact of a POC wagering tax on offshore wagering activity by Victorians?
17. What are the expected impacts on bookmaker viability as a result of a POC wagering tax?

