Wagering on Horse Racing: A Proposal for Rationalization of GST

A White Paper

Turf Authorities of India

April 2019

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1 Horse Racing in India: An Introduction

The Indian Horse-racing industry has a rich history, with the first race course being set up in Madras in 1776. From its humble beginnings over two centuries ago, the industry has grown by bounds and leaps to where it stands in the present day. The following sections provide an overview into the organization of the Industry in India.

1.1 Race Clubs of India

Six state governments in India allow licensed horse racing in India. There are nine race courses in various cities across the country, operated by seven race clubs, details of which are given in the figure below.

Royal Calcutta Turf Club	• Race Course in Kolkata, West Bengal
Royal Western India Turf Club Ltd.	• Race Courses in Mumbai and Pune in Maharashtra
Madras Race Club	• Race Courses in Chennai and Ootacamund in Tamil Nadu
Bangalore Turf Club Ltd.	• Race Course in Bangalore, Karnataka
Hyderabad Race Club	• Race Course in Hyderabad, Telangana
Mysore Turf Club Ltd.	• Race Course in Mysore, Karnataka
Delhi Race Club Ltd.	• Race Course in New Delhi

Each of these clubs are distinct legal entities which operate independently, and each club is duly registered under the law either as societies, trusts or companies. The clubs operate as not-for-profit entities and are not set up with the intent of profiteering, but any profits in the form of positive surplus is utilized once again for the promotion of the sport or for charitable causes. These clubs also perform several functions, some of which are listed below:

- Providing, managing and maintaining the required infrastructure for conducting horse racing and ancillary activities such as accommodation and training
- Management of racing and allied events
- Licensing of horse trainers, jockeys and horse owners
- Payment of prize money to owners
- Management of betting and wagering activity through totalizator system within regulatory framework

This is only an indicative list of functions. The clubs often carry out several other functions such as leasing out their premises to other public events, promoting activities for the public good, etc.

1.2 The Turf Authorities of India

The Turf Authorities of India (TAI) is an organized association with six of the afore-mentioned race clubs of India as members, except for the Delhi Race Club Ltd. The TAI is headed by a chairman who is appointed on a rotational basis every year from one of the six race clubs. The TAI acts as an anchor between the clubs and meets once in three months to evolve regulations on the sport of horse racing and assist or coordinate between each of the members. The TAI also makes joint representations to the Government on behalf of its members, with an aim to promote the development of the horse racing sport in the country.

2. Positive Impacts of Horse Racing in India

As mentioned above, horse racing has a long history in India. As an industry, it has several positive impacts on society, such as those detailed below:

Revenue Generation	It is a significant contributor to the economy with wagering alone amounting to over ₹3,000 Crores annually, and it contributes a substantial amount to tax revenues as well.
Employment Generation	The industry provides employment to over 60,000 people, directly or indirectly, through race clubs, stud farms and other ancillary industries.
Impetus to Ancillary Industries	Horse racing has led to the development of a sustainable breeding industry in the country. It also supports the agri-veterinary industry by providing fodder of about ₹100 Crore annually.
Heritage & Culture	Horse racing has been a part of Indian heritage since the time of British rule, and most of the properties where the clubs are located are also known heritage sites or popular landmarks which form a part of the urban character and cityscape.
Environment	The racecourses are typically large green estates located within densely developed urban cityscapes. They provide much needed green cover and act as a lung space for the pollution choked cities.
Entertainment	On any given race day (usually about 2-4 hours of races), horse racing provides entertainment to over 50,000 patrons from a mixed economic background, with over 75% of patrons being from low & middle income groups.
Public Welfare & Development	Being Not-for-Profit entities, race clubs often utilize sizeable portions of their cash surplus for promoting public welfare and charitable causes. They are also significant contributors to Corporate Social Responsibility Activities.
Leisure & Public Space	During non-racing hours, race courses are often used to hold several public events by and for the general citizen.
Tourism Potential	Horse racing is a popular sport with patrons from across the globe. With the right management, it can be used to drive tourism for various events.

1.3 Horse Racing and Wagering

Betting and Wagering are generally prohibited in most cases, with each state evolving their own gaming/gambling. The prevalent legal position of permitting wagering on horse racing has been questioned in courts of law. The question comes down to the distinction between a 'game of skill' wherein "success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player" as compared to a 'game of chance' wherein results are "wholly uncertain and doubtful." Gaming or gambling predominantly involves betting on a 'game of chance'.

The matter was conclusively put to rest by the Supreme Court through its judgement in "Dr. K.R. Lakshmanan V. State of Tamil Nadu and Anr." (AIR 1996 1153; 1996 SCC (2) 226). In the subject case, the Hon'ble Court decided that the definitions of gaming or gambling could not be construed to include betting on horseracing as it was predominantly a game of skill, involving the talents of the jockey and stamina of the horse, among other factors. Therefore, wagering on horse racing is viewed as a legal activity provided that it is conducted under the framework established by the law.

In the six states named above, several exemptions have been made in their respective gaming laws to permit wagering or betting activity on horse racing, provided that strict regulatory and licensing stipulations are complied with. Betting and wagering is permitted through licensed bookmakers or through the totalizator system. In addition to stringent government regulation, some of the race clubs too have developed further requirements of the wagering system, in order to ensure transparency and deter illicit betting activity.

1.4 Taxation on Race Wagers

Before July 2017, wagering on horse races fell under Entry 62 of List-II of the Seventh Schedule of the Constitution of India. Thus, it was subject to levy of state taxes by the various State Governments, which ranged between 4-21% in different states. Across the country, the average tax rate was 7.6%.

In 2017, the Government of India (GOI) introduced the unified Goods and Services Tax (GST) regime. TAI welcomes the GST regime as it brings with it immense tax reforms by reducing cascading effect of taxes, promoting digitization and expediting the unification of the country into one singular economic market. However, wagering on horse races is now subject to a Central Goods and Services Tax (CGST) as well as a State Goods and Services Tax (SGST) at 14% each, across all states. This cumulative tax rate of 28% is nearly four times higher than the prevailing all India tax rates and will lead to increases in illegal betting channels. Moreover, the GST Council in a circular dated 27.01.2018 (attached as Annexure-I), also clarified that the tax shall be levied on the "on the transaction value of betting, i.e. the total bet value". This is problematic as the total bet value is not the consideration for the service provided by race clubs, as they charge and retain only a small commission or service fee for the service provided. This leads to several deleterious impacts which are discussed in subsequent chapters of this paper.

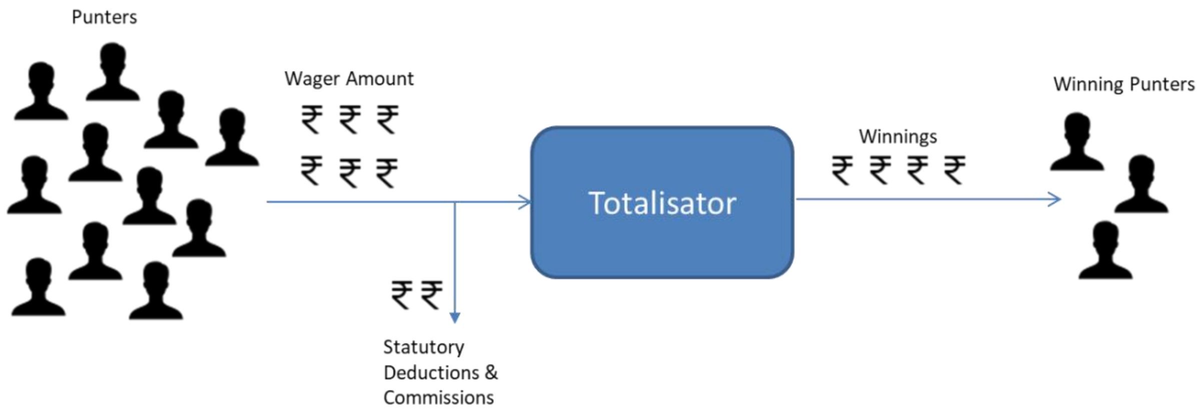
Therefore, in this paper, the authors propose a rationalization of the GST levy applicable on horse racing wagers in the interest of the industry, economy as well as public good.

2 Wagering: The Business Model

All the race clubs in India follow a similar model for wagering activities. This chapter delves into the nature of operation of the wagering transactions and activity at race clubs.

2.1 Totalisator Betting System

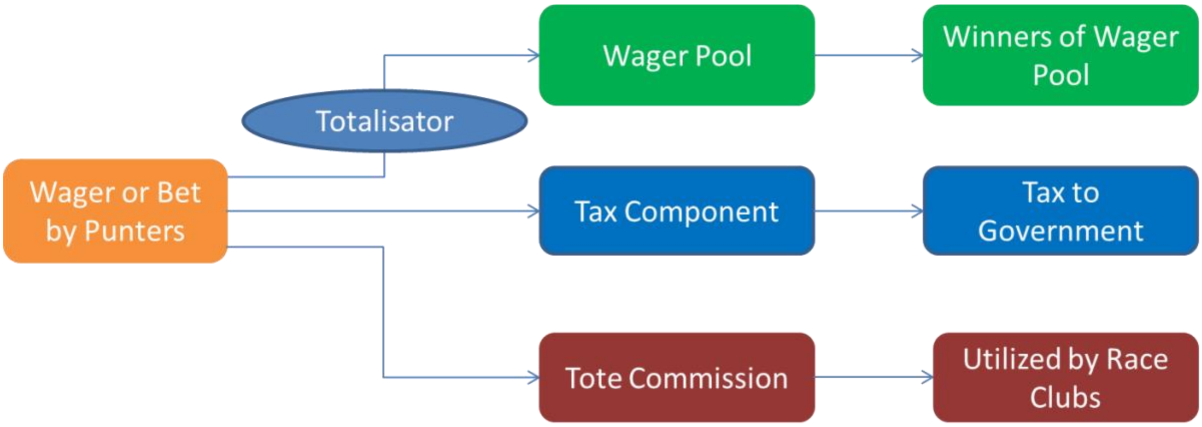
A racing patron who places a 'wager' or a bet on a race is commonly known as a **punter** (consumer). Race clubs act as the service provider for the wagering transaction as they create the marketplace and facilitate the transaction, in all aspects including technically, financially and administratively. The wagers are placed through a **totalisator**, which is essentially a computerized device that pools the wagers (after deduction of charges and statutory taxes) of various punters together, and also divides the total wager amount to be distributed to the winning punters. The amount so divided and distributed to every winning punter is called the **dividend**. A very simple representation of the totalisator's operation is presented in the figure below.



Thus, the totalisator pools together and consolidates the wagers of various after making certain deductions as required. Thereafter, upon the completion of a race and the announcement of results, the totalisator divides the pooled amounts and pays a dividend to each winning punter. In reality, the totalisator usually is programmed with several different pools within which punters can place bets.

2.2 Elements of a Wager

The total bet value thus consists of several different elements. In order to provide the service of facilitating wagering transactions, the race clubs charge a **tote commission or commission**, which is deducted and retained by the club from the total bet value. The statutory tax that is to be levied is also deducted from the total bet value at this stage, and then remitted to the appropriate government by the race club. The amount that remains after the deduction of statutory taxes and the commission, is the amount that is finally fed into the totalisator and becomes a part of the wager pool for division and distribution as dividends. The figure below segregates the various components of the wager.



Therefore, the income of the race club from wagering activity on horse racing, is in reality only the commission amount that is charged in lieu of a consideration for service provision by the race club, and not the entire wager amount or bet value. This is used by race clubs for distribution as prize money to horse-owners and jockeys, maintenance of the premises and other activities. The larger portion of the bet value is not retained by the race club which actually consists of amounts remitted as tax to the government and amounts redistributed as dividends.

3 GST and Wagering

The Goods and Services Tax (GST) was introduced in India on the 1st of July 2017 and for the most part it has subsumed several previous taxes such as Value Added Tax (VAT), Central Sales Tax (CST), Service Tax, OCTROI and others. One of the biggest tax reforms since independence and effected through the amendment of the constitution, the GST is an indirect consumption based tax imposed on the supply of goods and services. It is effectively imposed on the value added at every stage of the production or delivery process and is finally borne by the end consumer by being passed on at every stage. The introduction of the GST has been a much needed step in reforming the tax system in the country, in bringing in more producers and suppliers into the tax net and increasing market competitiveness by reducing the cascading effects of tax. Moreover, GST brought with it a strong IT platform in the form of the Goods and Services Tax Network (GSTN) which digitizes return filing, thereby reducing visits to offices, compliance efforts and increasing transparency and accountability.

Race clubs across the country have also been brought under the GST regime. Section 2 (17) of The Central Goods and Services Tax Act of 2017 defines business, and sub-section (h) reads that business includes "services provided by a race club by way of totalisator or a licence to book maker in such club". Heading 9996 of the GST Council's Notification No. 11/2017-Central Tax (Rate)-28 June 2017 set the Central GST rate for such services at 14%, thereby subjecting it to an equivalent SGST, cumulatively resulting in a 28% tax rate.

3.1 Value of Supply

The value of supply is an important concept under GST, as it is a supply based tax. The value of supply effectively defines the taxable value of the transaction, whether in the case of supply of goods or services.

Definition of Value of Supply under GST Law

Chapter IV of the Central Goods and Services Tax Act deals with 'Time and Value of Supply' under GST. Section 15 (1) of the Act defines it as follows,

"The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply."

Thus, in most cases, the value of the supply is essentially the money value (consideration) charged by the service provider (supplier) to the consumers (recipient of the supply) for the supply of goods or services or both.

3.2 Value of Supply in Horse Racing Wagers

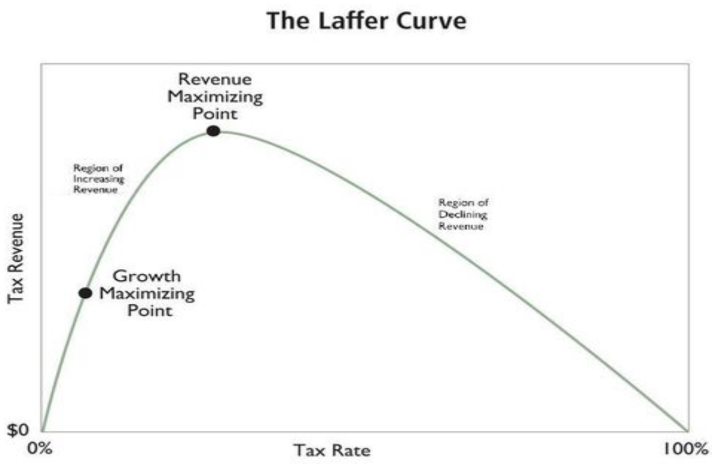
As detailed in the previous sections, the race clubs charge a commission on the bet value, which is their service fee for the provision of the service. Therefore, only a small percentage of the total bet value is retained by the race clubs as commission, while the remainder is either remitted as taxes to the government, or pooled through the totalisator and distributed as dividends to the winning punters (consumers).

The commission is the consideration for the service provided and this is the only amount that the club retains and expects punters to pay. The total bet value is not stipulated by the race clubs and is entirely voluntary, i.e. the punters decide this amount. Moreover it is not entirely retained by the clubs. Ideally, therefore, the taxable value or the value of supply of services by the race clubs should be the consideration charged for the services, which would be the commission charged and retained by the race clubs. Prior to the implementation of the GST regime as well, most race clubs were only paying state service or entertainment or betting taxes only on the amount retained on consideration.

Anomalously however, the GST Council's clarification dated 27.01.2018 (referred to earlier and attached as Annexure-I), stated that the tax shall be levied "on the transaction value of betting, i.e. the total bet value." This clarification means that the race clubs must collect and remit taxes on the total bet value paid by the punter, and not just the commission retained by the club. This principle seems to be in dissonance with the understanding of the value of supply and creates several complications in the operation of the industry.

3.3 Tax Impact on Industry

Being an indirect tax, the tax burden in GST is passed down the supply chain and is finally borne by the consumer. Therefore, the additional tax burden, both in light of the higher 28% tax rate as well as the levy on the entire bet value, is borne by the punters (consumers). Contrary to popular perception, the large majority of the consumers for horse racing are from the Low and Middle Income Groups who feel this impact the most.



The Laffer Curve (pictured alongside), surmised that higher tax rates only increase tax revenues to a certain level. After a certain point, these revenues dipped with further increasing tax rates. This could occur as after a certain point, people would lose the initiative to work as the chunk of their earnings would go to the government.

This has been seen in effect in the past in the horse racing industry itself. During the pre-GST era, increases in tax rates were often accompanied by dwindling revenues for the race clubs, as more patrons resorted to informal or illegal avenues to place their bets. For eg. Mumbai's RWITC saw a nearly 50% dip in official betting volumes a few years following an increase in tax rate from 10% to 20%. Generally too, despite similar economic status, the Bangalore Turf Club saw a tote turnover of ₹1900 crores, while the RWITC in Mumbai only saw a tote turnover of ₹80 Crores. It is pertinent to note that during this period (pre GST era), the betting tax rate at Bangalore was 8% while it was 20% in Mumbai. Given that the rate of commission charged by the clubs has remained the same, this indicates that punter (consumer) behaviour is highly sensitive to tax rates, and increases often spur punters to resort to illegal channels.

In this case, the amount of tax paid by the punter is heightened by two factors:

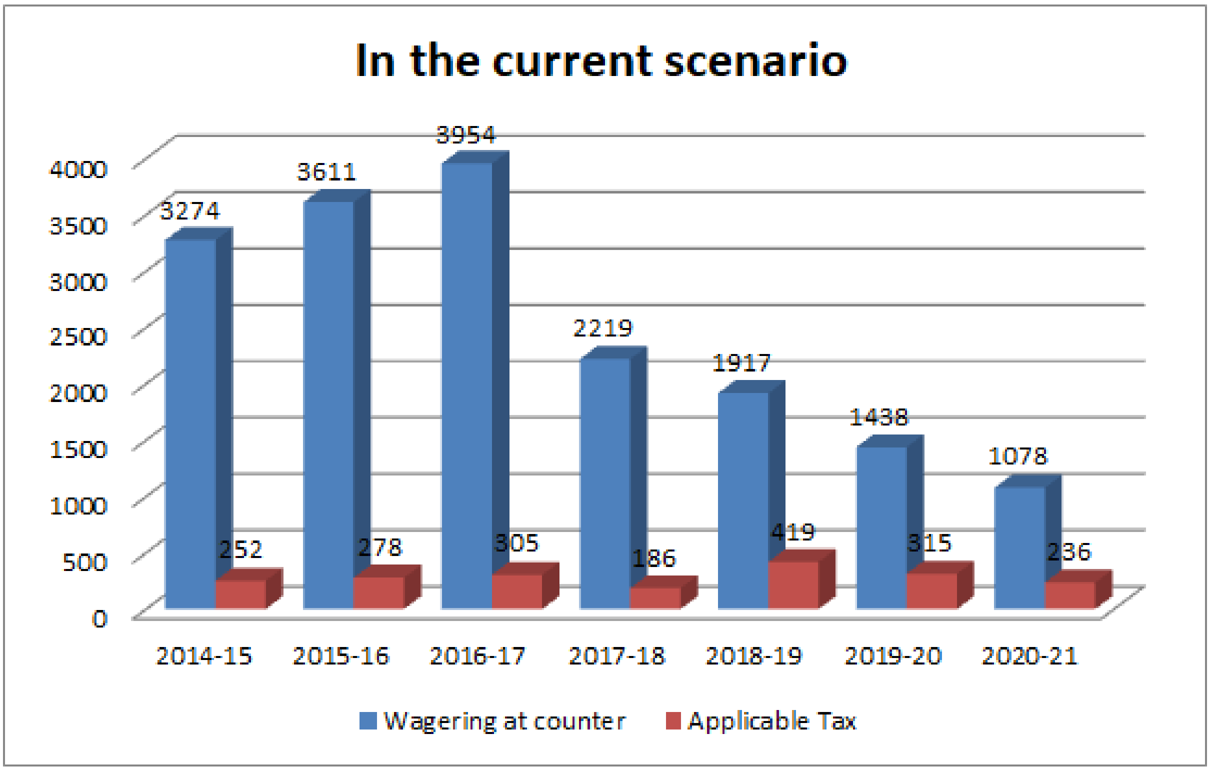
1. The increased rate of taxation at 28%; and
2. Calculation of tax on entire bet value (larger sum), rather than the commission element.

These factors have the effect of greatly reducing the value of the bet that is pooled into the totalisator and finally distributed. The table below illustrates this:

	Pre GST (₹)	Post GST (₹)
Total Bet Value (A)	1000	1000
Commission (B)	100	100
Tax (C)	80	280
Wager amount (D = A-B-C)	820	620
Winning amount (E = 25% of D)	205	155
Final Return (F = D+E)	1025	775
Net Winning for punter (F-A)	25	-225
Assumptions Commission: 10% of total bet value GST Rate: 28% of total bet value Pre GST Era Tax Rate: 8% of total bet value Assumption that winning punter earns 25% in addition to wagered value		

The effect is simply as follows: The higher the amount of the wager that is taxed (either by higher tax rate or by higher taxable value), lower the returns through wager. In the absence of adequate returns, the punter (consumer) will be dissuaded from betting through the formal channel and may resort to illegal channels. Not only could this spell doom for the industry, but it also results in higher tax evaded, and subsequently reduction in overall tax revenue for the government as the industry declines. This effect can be seen from the projections below:

Year	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Wagering at counter	3274	3611	3954	2219	1917	1438	1078
Applicable Tax	252	278	305	186	419	315	236



The graph above, illustrates that while tax initially collected by the government may increase, the declining volumes of formal betting at race clubs will spur a drop in the tax revenues accruing to the government. This prompts an unwanted situation for the race clubs, the government as well as the economy as a whole.

3.4 Negative Externalities

In addition to reduced tax collection, the high taxation will result in decline and eventual death of the horse racing industry in itself in India. This could have several spill-over effects on various other aspects of society and economy, some of which are detailed below:

- **Increase in illegal betting activity:** Due to the reduced earning through winnings, punters (consumers) will look for other routes and mechanisms to place their wagers. One potential risk is an increase in the use of illegal means. This would not just mean that the race clubs are losing revenue and the government is losing out on tax, it would also lead to an increase in the untracked or black economy.
- **Loss of employment:** A drop in revenue will lead to a situation where the clubs need to downsize their operations and staff. Aside from the direct employment in race clubs, the industry provides employment either directly or indirectly to over 60000 people, who could suffer job losses should the industry go into decline.
- **Loss of Green Cover:** The race courses also provide a green cover in ever increasing concrete environments of cities, thereby acting as lungs and heat sinks for the city. A decline in the industry will force these green spaces to be engulfed by built up environment to promote more profit making activities.
- **Loss of Heritage:** Horse racing is a heritage sport, and many of the race courses are also prominent cultural heritage landmarks of the city. A decline in the industry will see a loss of these remnants of cultural heritage.
- **Loss of support to ancillary industries:** Several industries such as the horse breeding industry or the agro-veterinary industry are supported by the activity in the horse racing industry. These ancillary industries too would take a hit, should the horse racing industry suffer. The Breeding Industry for example currently covers nearly 6000 acres of land in nine states of India and has existed since 1938. This industry provides employment amounting to 3.3 million man days and contributes to Indian exports. This animal husbandry industry and others will falter and wither along with the horse racing industry.
- **Loss to Society:** Aside from providing leisure and entertainment to patrons, race clubs are not for profit entities and contribute towards several social and charitable causes. They also lease out their properties for public events. With increasing losses, race clubs will no longer be able to perform these functions which would be a loss to the public and society at large.

4 Rationalization of GST on Horse Racing Wagers

The previous chapter established that higher taxation amounts will result in lower winnings per punter (consumer) and consequently a decline in the horse racing industry itself. This high taxation is a result of two factors:

1. The increased rate of taxation at 28%; and
2. Calculation of tax on entire bet value (larger sum), rather than the commission element.

The taxation of wagering on horse racing activity in the highest bracket of 28% is significantly larger than the previous tax rates. However, the potent issue is the levy of tax on the entire bet value, rather than the commission or consideration charged by the club. This chapter explores the manner in which GST or service tax is levied on horse racing wagers in several countries across the globe, and finally makes a proposal to rationalize the levy of GST on horse racing wagers in India, keeping in mind the interests of the industry, economy and nation.

4.1 International Practices

The case of the United Kingdom is pertinent to examine, as it is lucid in explaining the incidence of tax on betting, gaming and lotteries. This is laid out in the Her Majesty's Revenue and Customs (HMRC) Department's VAT Notice 701/29. Section 3.2 of the Notice defines stake money as follows, "money paid by each player or players which is risked in the game and is returned as winnings to the winning player or players." It further goes on to say that as it is not the "consideration for any supply", it is outside the scope of levy of Value Added Tax (VAT). Thus, only the portion retained by the service provider, or the consideration/commission itself is taxable. This is different from the Indian scenario where GST is levied on the entire bet value, which includes 'stake money' as defined in this notice as well as commission or consideration. The following table presents some more examples of prevailing law with respect to tax on wagering activity in various countries.

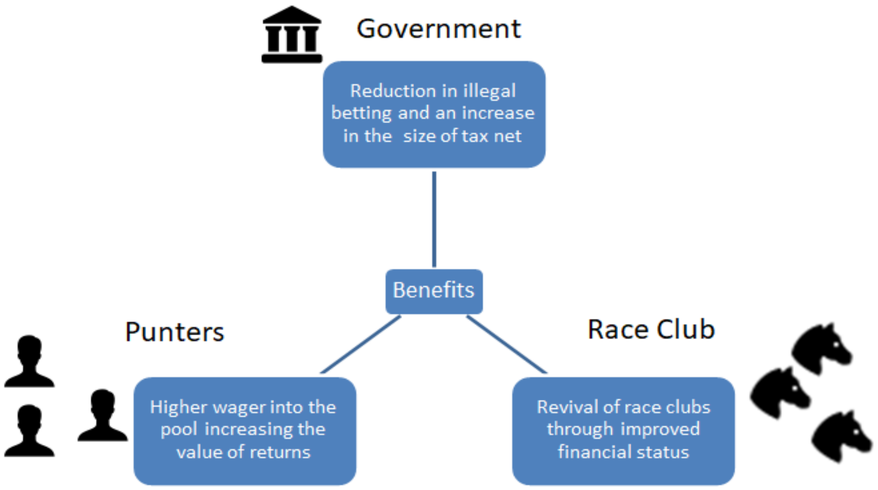
Parameter	Singapore	Australia	Malaysia
Taxable value on which tax is levied	Amount of bets received (less) winnings paid out	Total wager received (less) prizes paid to winners	The total amount received by the gambling operator for the taxable service (less) the total amount of money, if any, payable to any person participating successfully in the betting.
Tax Rate	GST at a rate of 7% on an inclusive basis (7/107) on the value determined above	GST at a rate of 1/11 on the value determined above	Service tax at 6% (on an inclusive method, as 6/106) on the value calculated above

In each of the above examples, the service tax is lower than the rate applicable in India, but more importantly, in all the cases the service tax is charged only on the money retained by the club and not the entire bet value.

4.2 The Proposal

The table in the previous section illustrated that in many countries, the tax on wagering activity is levied on the commission charged, rather than the total bet value. The TAI proposes a similar system in India where the 28% GST rate is levied on the commission charged by the race clubs for providing services, rather than the total bet value.

This proposal can be effected through a circular issued by the GST Council having the effect of clarifying that henceforth, **"GST shall be payable on betting/ gambling services being provided by race clubs at 28% on the total commission or consideration or service fee charged and retained by them, by whatever name called."** This would have the effect of modifying the previous circular dated 27.01.2018.



4.3 Impact of Proposal on Stakeholders

These would be the benefits of such an amendment for each of the major stakeholders:

For the Punter (Consumer)

Taxation on commission would mean that the taxable value, and hence total tax paid by the punter is lower. This would enable a larger percentage of the bet value to flow into the totalisator and consequently increase the pool for winnings per punter. Thus, the consumer benefits from greater returns. Moreover, the tax burden of the race club is only passed on to the consumer. So, if the race club is forced to collect and remit taxes on the entire amount, then it is finally the consumer who bears the additional tax burden. This hefty amount is illustrated as follows - if a punter places four equal bets in a day (usually about 2-4 hours of races), they will end up paying 112% (28%*4) of one of the bets in just taxes. Even after paying these taxes, there is no provision for adjustment of tax on losing bets as Input Taxes or Credits which can be offset against winnings, and those amounts therefore become dead amounts for the punter, creating further disincentives. Also, if the tax amount is reduced, the punter has more cash in hand to invest into more bets, which can derive revenue for both the club as well as the government.

The table below illustrates the financial impact of the proposed tax model on the punter's wager.

	Pre GST (₹)	Post GST (₹)	Proposed Tax Model (₹)
Total Bet Value	1000	1000	1000
Commission	100	100	100
Tax	80	280	28
Wager amount	820	620	872
Winning amount	205	155	218
Final Return	1025	775	1090
Net Winning for punter	25	-225	90
Assumptions Commission: 10% of total bet value GST Rate: 28% of total bet value Pre GST Era Tax Rate: 8% of total bet value Assumption that winning punter earns 25% in addition to wagered value			

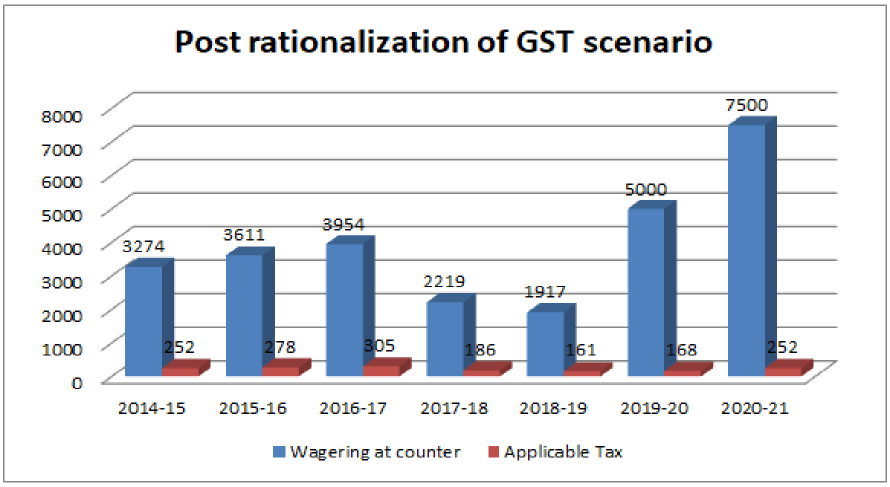
For the Race Club (Service Provider)

The definition of value of supply under GST Law reads, 'the transaction value, which is the price actually paid or payable for the said supply of goods or services or both'. As earlier ascertained, the transaction value or consideration or price by any name called, which is charged by the race club for the provision of service is only the commission element, while the remainder is either tax or returned to the winning punters. This distinction is clearly brought out in the earlier referenced UK HMRC's VAT Notice 701/29, which calls the returned element of the bet value as stake money and exempts it from tax. Similarly, charging GST on the commission charged and retained by the clubs will bring the taxable value of wagers in line with the definition of value of supply under GST. This will provide the impetus required for a turnaround in the economic performance and revival of race clubs and the ailing horse racing industry in the country.

For the Government

Should the status quo prevail, there will be more number of punters resorting to illegal channels, hence increasing the amount of money escaping the tax net. Moreover, the collected tax revenues would also fall due to the dwindling revenues of the race clubs themselves. While the proposed tax model does entail lower revenue collections in the short term, it would check this outflow and over time, as the formal betting activity with turf clubs increases due to conducive tax structures, tax revenues would grow to normalized levels once again. The graph below illustrates this through projections:

Year	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Wagering at counter	3274	3611	3954	2219	1917	5000	7500
Applicable Tax	252	278	305	186	161	168	252



4.4 Benefits of Proposed Tax Model

This would have the following effects:

1. Bring GST levy in India in line with international practices;
2. Bring the taxable value of horse racing wagers in line with the definition of value of supply as envisioned under the GST Law, viz. the transaction value, which is the price actually paid or payable for the said supply of goods or services or both
3. Illegal betting can be brought under control if a larger number of people find it more beneficial to place their wagers through the totalisator mechanism
4. A reduction in illegal betting will lead to a reduction in black money which is one of the stated objectives of the government
5. With more people placing their wagers through the totalisator system, the number of people falling under the tax net would increase.
6. An increase in bets would improve the financial situation of the race clubs and ensure a sustainable future for horse racing and its ancillary industries
7. A larger number of wagers through the formal channels would enable a faster transit onto the path of a digital economy.

5 Conclusion

In light of the concerns highlighted in this paper, the TAI has made multiple requests and appeals to the concerned ministries in Government of India as well as to the GST Council. However, these have not been met favourably yet. With each day that passes, pressure on the race clubs and the entire industry continues to increase. In order to avoid a situation where the industry is crippled beyond repair and collapses, there was a need to come out with a paper highlighting our case.

The TAI makes an earnest appeal to the GST Council and Government and hopes that this humble request is viewed favourably and expeditious action is taken to make necessary amends to the GST regulations. Given that GST is a tax that is charged on the value of service offered, the tax must only be charged on the commission collected by the turf clubs. By charging the tax on the entire wager amount, the government is violating this principle. The is making the legal means of placing wagers on horse racing is beginning to be seen as an unviable avenue leading to a potential rise in illegal wagers, drop in revenue for race clubs and eventual reduction in tax collected. The TAI therefore suggests that, in order to overcome these issues, the following amendment be made to the GST Rules:

“GST shall be payable on betting/ gambling services being provided by race clubs at 28% on the total commission or consideration or service fee charged and retained by them, by whatever name called.” This would have the effect of modifying the previous circular dated 27.01.2018.

The TAI submits that such a modification will increase formal betting activity on horse racing. This will have the impact of reducing extra-legal channels and increasing the tax net, both of which are stated objectives of the government. The TAI sincerely hopes that the government considers this appeal in the right spirit and takes step to protect one of the heritage industries of the country.

Jai Hind!

Annexure – I: GST Council Circular (27.01.18)

Circular No. 27/01/2018-GST

F. No. 354/107/2017-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax research Unit
****

North Block, New Delhi
04th January 2018

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, homestays, printing, legal services etc. – Reg.

Representations were received from trade and industry for clarification on certain issues regarding levy of GST on supply of services.

2. In this context, it is stated that the following clarifications, *inter-alia*, were published as FAQ at http://www.cbec.gov.in/resources//htdocs-cbec/gst/om-clarification.pdf.

S.No.	Questions/ Clarifications sought	Clarifications
1	1. Will GST be charged on actual tariff or declared tariff for accommodation services? 2. What will be GST rate if cost goes up (more than declared tariff) owing to additional bed. 3. Where will the declared tariff be published? 4. Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then? 5. If tariff changes between booking and actual usage, which rate will be used? 6. GST at what rate would be levied if	1. Declared or published tariff is relevant only for determination of the tax rate slab. GST will be payable on the actual amount charged (transaction value). 2. GST rate would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged from the customer. For example, if the declared tariff is Rs. 7000 per unit per day but the amount charged from the customer on account of extra bed is Rs. 8000, GST shall be charged at 18% on Rs. 8000. 3. Tariff declared anywhere, say on the websites through which business is being procured or printed on tariff card

Circular No. 27/01/2018-GST

	an upgrade is provided to the customer at a lower rate?	or displayed at the reception will be the declared tariff. In case different tariff is declared at different places, highest of such declared tariffs shall be the declared tariff for the purpose of levy of GST. 4. In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply. 5. Declared tariff at the time of supply would apply. 6. If declared tariff of the accommodation provided by way of upgrade is Rs 10000, but amount charged is Rs 7000, then GST would be levied @ 28% on Rs 7000/-.
2	Vide notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 entry 34, GST on the service of admission into casino under Heading 9996 (Recreational, cultural and sporting services) has been levied @ 28%. Since the Value of supply rule has not specified the method of determining taxable amount in casino, Casino Operators have been informed to collect 28% GST on gross amount collected as admission charge or entry fee. The method of levy adopted needs to be clarified.	Relevant part of entry 34 of the said CGST notification reads as under: *"Heading 9996 (Recreational, cultural and sporting services) - …* *(iii) Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting,* ***casinos****, race-course, ballet, any sporting event such as Indian Premier League and the like. - 14%* *(iv)…* *(v) Gambling. - 14 %"* As is evident from the notification, "entry to casinos" and "gambling" are two different services, and GST is leviable at 28% on both these services (14% CGST and 14% SGST) on the value determined as per section 15 of the CGST Act. Thus, GST @ 28% would apply on entry to casinos as well as on betting/ gambling services being provided by casinos on the transaction value of betting, i.e. the total bet value, in addition to GST levy on any other services being

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		provided by the casinos (such as services by way of supply of food/ drinks etc. at the casinos). Betting, in pre-GST regime, was subjected to betting tax on full bet value.
3	The provision in rate schedule notification No. 11/2017-Central Tax (Rate) dated the 28th June 2017 does not clearly state the tax base to levy GST on horse racing. This may be clarified.	GST would be leviable on the entire bet value i.e. total of face value of any or all bets paid into the totalisator or placed with licensed book makers, as the case may be. Illustration: If entire bet value is Rs. 100, GST leviable will be Rs. 28/-.
4	1. Whether for the purpose of entries at Sl. Nos. 34(ii) [admission to cinema] and 7(ii)(vi)(viii) [Accommodation in hotels, inns, etc.], of notification 11/2017-CT (Rate) dated 28th June 2017, price/ declared tariff includes the tax component or not? 2. Whether rent on rooms provided to in-patients is exempted? If liable to tax, please mention the entry of CGST Notification 11/2017-CT(Rate) 3. What will be the rate of tax for bakery items supplied where eating place is attached - manufacturer for the purpose of composition levy?	1. Price/ declared tariff does not include taxes. 2. Room rent in hospitals is exempt. 3. Any service by way of serving of food or drinks including by a bakery qualifies under section 10 (1) (b) of CGST Act and hence GST rate of composition levy for the same would be 5%.
5	Whether homestays providing accommodation through an Electronic Commerce Operator, below threshold limit are exempt from taking registration?	Notification No. 17/2017-Central Tax (Rate), has been issued making ECOs liable for payment of GST in case of accommodation services provided in hotels, inns guest houses or other commercial places meant for residential or lodging purposes provided by a person having turnover below Rs. 20 lakhs (Rs. 10 lakhs in special category states) per annum and thus not required to take registration under section 22(1) of CGST Act. Such persons, even though they provide services through ECO, are not required to take registration in view of section 24(ix) of CGST Act, 2017.
6	To clarify whether supply in the situations listed below shall be treated as a supply of goods or supply of service: -	The supply of books shall be treated as supply of goods as long as the supplier owns the books and has the legal rights to

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	1. The books are printed/ published/ sold on procuring copyright from the author or his legal heir. [e.g. White Tiger Procures copyright from Ruskin Bond] 2. The books are printed/ published/ sold against a specific brand name. [e.g. Manorama Year Book] 3. The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian edition (same language) of foreign books. [e.g. Penguin (India) Ltd. pays fees to Routledge (London)] The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian language edition (translated). [e.g. Ananda Publishers Ltd. pays fees to Penguin (NY)]	sell those books on his own account.
7	Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?	Yes. In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e. the business entity.

3. The above clarifications are reiterated for the purpose of levy of GST on supply of services.

4. Difficulty if any, in the implementation ofthe circular should be brought to the notice of the Board. Hindi version would follow.

Yours Faithfully,

Rachna

Technical Officer (TRU)