

Passed by both Houses



New South Wales

Betting Tax Amendment (Point of Consumption) Bill 2018

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Betting Tax Act 2001 No 43	3

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2018



New South Wales

Betting Tax Amendment (Point of Consumption) Bill 2018

Act No , 2018

An Act to amend the *Betting Tax Act 2001* to provide for the imposition of a point of consumption betting tax; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Betting Tax Amendment (Point of Consumption) Act 2018*.

2 Commencement

This Act commences on 1 January 2019.

Schedule 1 Amendment of Betting Tax Act 2001 No 43

[1] Sections 5A and 5B

Insert after section 5:

5A Extraterritorial operation of Act

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:
 - (a) things situated in or outside the territorial limits of the State,
 - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
 - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.
- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

5B Notes

Notes included in this Act do not form part of this Act.

[2] Part 3, heading

Omit “**Rebates**”. Insert instead “**Offsets and rebates**”.

[3] Section 11

Omit the section. Insert instead:

11 Offset of betting tax paid by totalizator licensee

- (1) A totalizator licensee is entitled to an offset against the betting tax payable by the licensee under section 10 of an amount equal to 0.91% of the amount obtained by subtracting from the total amount of bets placed with the totalizator licensee in respect of an approved betting activity conducted by the licensee on a day the total amount payable as dividends or other returns to investors in respect of those bets.
- (2) A totalizator licensee is entitled to an offset against the betting tax payable by the licensee under sections 8 and 10 of an amount equal to the sum of:
 - (a) 19.11% of the excluded commission for the day concerned, and
 - (b) 10% of the excluded net earnings for the day concerned.
- (3) If, in respect of any financial year, a totalizator licensee’s excluded commissions for the financial year exceed the sum of the amounts of excluded commission for each day of the financial year, the Chief Commissioner is to pay to the totalizator licensee an amount equal to 19.11% of the difference.

Note. Section 111 of the *Taxation Administration Act 1996* provides that if the Chief Commissioner is authorised or required to pay an amount under any taxation law, the amount is to be paid from the Consolidated Fund which is appropriated to the necessary extent.

- (4) If, in respect of any financial year, a totalizator licensee's excluded net earnings for the financial year exceed the sum of the amounts of excluded net earnings for each day of the financial year, the Chief Commissioner is to pay to the totalizator licensee an amount equal to 10% of the difference.

Note. Section 111 of the *Taxation Administration Act 1996* provides that if the Chief Commissioner is authorised or required to pay an amount under any taxation law, the amount is to be paid from the Consolidated Fund which is appropriated to the necessary extent.

- (5) Nothing in this section requires a totalizator licensee to pay betting tax for any period before the offset under this section is applied to that liability.

Note. Division 2 of Part 6 of the *Taxation Administration Act 1996* enables the Chief Commissioner to approve special arrangements for the lodging of returns and payment of tax under taxation laws.

- (6) For the avoidance of doubt, the reference in section 70 (2) (a) of the *Totalizator Act 1997* to a total amount of betting tax payable by TAB Limited under sections 8–10 of this Act in respect of a quarter does not include any offset under this section.

- (7) In this section:

approved betting activity has the same meaning as in section 10.

excluded commission, for a period, means the lesser of the following:

- (a) the total amount of commission deducted (under section 69 of the *Totalizator Act 1997*) from the amounts invested with the licensee in totalizators during the period concerned by investors who were not, at the time of the investment, located in NSW,
- (b) 5.5% of the total commission deducted (under section 69 of the *Totalizator Act 1997*) from the total amount invested with the licensee in totalizators during the period concerned by all investors.

excluded net earnings, for a period, means the lesser of the following:

- (a) the total amount of net earnings from bets placed with the totalizator licensee by persons who were not, at the time the bet was placed, located in NSW in respect of approved betting activities conducted by the licensee during the period concerned,
- (b) 4% of the total amount of net earnings from all bets placed with the totalizator licensee in respect of approved betting activities conducted by the licensee during the period concerned.

[4] Part 4

Insert after Part 3:

Part 4 Point of consumption tax

Division 1 Preliminary

13 Definitions

In this Part:

approved form means a form approved by the Chief Commissioner.

bet includes the following:

- (a) any bet or wager on any event or contingency, including but not limited to events and contingencies relating to the outcomes of racing, sports, elections, current affairs and entertainment,
- (b) a free bet,
- (c) a lay-off bet,
- (d) any other similar agreement or arrangement prescribed by the regulations,

but does not include any activity permitted under section 7 of the *Unlawful Gambling Act 1998* or under a corresponding provision of a law of another State or a Territory or the Commonwealth.

betting exchange and **bookmaker** have the same meanings as those terms have in the *Betting and Racing Act 1998*.

betting operator means a licensed betting service provider within the meaning of the *Betting and Racing Act 1998*.

Note. The *Betting and Racing Act 1998* defines a **licensed betting service provider** to be a betting service provider (being a bookmaker, a person who operates a totalizator or a person who operates a betting exchange) that holds a licence or authority (however described) under the legislation of this or any other State or Territory to carry out its betting services (whether in that State or Territory, or elsewhere).

free bet means a bet made wholly or partly without the person making the bet paying any monetary amount for the bet or part of the bet.

Note. Examples of a free bet (also known as a bonus bet) include a bet made using the following:

- (a) a free component provided for making a bet,
- (b) an amount representing a bonus on a previous winning bet,
- (c) an amount representing a refund of all or part of the staked amount for a previous non-winning bet.

lay-off bet means a bet made by a betting operator (the **first betting operator**) with another betting operator to reduce, wholly or partly, the liability of the first betting operator in relation to 1 or more bets made with the first betting operator.

net NSW wagering revenue—see section 13A.

point of consumption tax—see section 13C.

totalizator derived odds means any odds derived from or contingent on totalizator odds but does not include totalizator odds.

totalizator odds means any odds that are dependent on the result of the working of a totalizator on an event or contingency.

13A Meaning of “net NSW wagering revenue”

- (1) The **net NSW wagering revenue** of a betting operator, for a period, is the sum of the following:
 - (a) for NSW bets made with the betting operator using a totalizator—the total of all NSW revenue from totalizator pools paid to the betting operator during the period,
 - (b) for NSW bets made using a betting exchange operated by the betting operator—the total amount of all fees or commissions paid to the betting operator in relation to NSW betting exchange bets made with the betting operator during the period,

- (c) for NSW bets made with the betting operator (other than NSW bets made using a betting exchange or a totalizator)—the sum of the following during the period:
- (i) the total amount of all NSW bets (including, but not limited to, bets placed at fixed odds and at totalizator derived odds) made with the betting operator (including the face value of any free bets),
 - (ii) the total of any fees or commission associated with making the bets,
- less the sum of the following:
- (iii) the total amount of winnings paid or payable in relation to those bets (including winnings paid in relation to free bets, but not including winnings paid in the form of a credit or entitlement that cannot be converted to money),
 - (iv) the total amount of refund paid or payable in relation to those bets (other than amounts paid or payable in the form of a credit or entitlement that cannot be converted to money),
- (d) any amounts the betting operator became entitled to retain during the period on account of unclaimed winnings in relation to NSW bets,
- (e) any other amounts the betting operator became entitled to be paid during the period as consideration for, or in relation to, NSW bets made with the betting operator.

Note. In calculating the net NSW wagering revenue of a betting operator:

- (a) lay-off bets accepted by the betting operator placed by a person (or another betting operator) located in NSW are included, and
 - (b) lay-off bets that the betting operator places with a person (or another betting operator) are not included.
- (2) For the avoidance of doubt, for the purposes of this section, the same betting operator can operate a totalizator, operate a betting exchange and be a bookmaker.
- (3) In the section:
- NSW revenue*, from a totalizator pool, for a betting operator during a period, means the amount calculated using the formula:

$$\text{NSW revenue} = \left(1 - \frac{\text{Dividends}_{\text{total}}}{\text{Bets}_{\text{total}}}\right) \times \text{Bets}_{\text{NSW}}$$

where:

Dividends_{total} means the total amount of dividends paid or payable out of the totalizator pool to investors.

Bets_{total} means the total amount of bets placed in the totalizator pool.

Bets_{NSW} means the total amount of NSW bets placed with the betting operator in the totalizator pool.

totalizator pool means a pool of totalizator bets made on the outcome of an event or contingency.

13B Meaning of “NSW bet”

- (1) A reference in this Part to a *NSW bet*, or a NSW bet of a particular type, is a reference to a bet, or a bet of that type, made by a person who is located in NSW when the bet is made.

- (2) For the avoidance of doubt, a lay-off bet made by a betting operator who is located in NSW when it is made is a NSW bet, whether or not the liability the betting operator seeks to reduce by making the lay-off bet relates to NSW bets made with the betting operator.

Division 2 Imposition of point of consumption tax

13C Liability to pay point of consumption tax

- (1) A betting operator is liable to pay tax on the operator's net NSW wagering revenue for a financial year (*point of consumption tax*).
- (2) Point of consumption tax is payable in respect of a financial year as follows:
 - (a) if the net NSW wagering revenue for the financial year is \$1,000,000 or less—no tax is payable,
 - (b) if the net NSW wagering revenue for the financial year is more than \$1,000,000—tax is payable at the rate of 10% of the amount by which the net NSW wagering revenue exceeds \$1,000,000.

13D Tax to be paid monthly

- (1) A betting operator is liable to pay point of consumption tax for each month of the amount specified in this section.
- (2) For any month of a financial year before the qualifying month, if any, the amount is nil.
- (3) For the qualifying month of a financial year, the amount is 10% of the difference between:
 - (a) the net NSW wagering revenue of the betting operator for the period starting on 1 July in the financial year and ending on the last day of the qualifying month, and
 - (b) \$1,000,000.
- (4) For any month of a financial year after the qualifying month, the amount is:
 - (a) if the net NSW wagering revenue of the betting operator for the month is nil or a negative amount—nil, or
 - (b) in any other case—10% of the net NSW wagering revenue of the betting operator for the month.
- (5) If point of consumption tax is payable in relation to a month, the tax is to be paid within 21 days after the end of that month.
- (6) In this section, *qualifying month*, in relation to a financial year, for a betting operator, means the first month of the financial year in which the net NSW wagering revenue of the betting operator for the period starting on 1 July in the financial year and ending on the last day of the month is more than \$1,000,000.

13E Annual reconciliation

A betting operator's point of consumption tax liability is to be recalculated after the end of the relevant financial year.

Note. Section 18 of the *Taxation Administration Act 1996* provides that if a taxpayer has paid a greater amount of tax in relation to a tax liability than the amount assessed for that liability, the Chief Commissioner must refund the difference to the taxpayer.

Division 3 Registration

13F Requirement to apply for registration

- (1) This section applies to a betting operator if:
 - (a) the betting operator is not already registered under this Division as a betting operator, and
 - (b) for any month of a financial year, the net NSW wagering revenue of the betting operator for the period starting on 1 July in the financial year and ending on the last day of the month is equal to or more than \$1,000,000.
- (2) The betting operator must, within 7 days after the end of the month, give the Chief Commissioner an application, in an approved form, for registration under this Division as a betting operator.
Maximum penalty: 100 penalty units.

13G Registration of betting operator

- (1) If a betting operator applies under this Division for registration as a betting operator, the Chief Commissioner must register the betting operator.
- (2) If a betting operator who is required to apply for registration under this Division does not apply for that registration, the Chief Commissioner may register the betting operator.

13H Notice of registration

- (1) The Chief Commissioner must, as soon as practicable after registering a betting operator under this Part, give the betting operator a notice stating:
 - (a) that the betting operator has been registered as a betting operator under this Division, and
 - (b) the day the betting operator was registered.
- (2) The notice may also state any other matters that are reasonably incidental to the performance of the betting operator's obligations under this Act or the *Taxation Administration Act 1996*.
Note. Examples of other matters include:
 - (a) the betting operator's client number, and
 - (b) records required to be kept under the *Taxation Administration Act 1996* relating to the betting operator's liability under this Act.

13I Cancellation of registration

- (1) The Chief Commissioner must cancel the registration of a person as a betting operator under this Part if the person has:
 - (a) ceased to be a betting operator, and
 - (b) lodged all returns the person is required to lodge under this Part, and
 - (c) paid the person's liability in relation to those returns.
- (2) As soon as practicable after cancelling a person's registration under subsection (1), the Chief Commissioner must give the person a notice:
 - (a) stating that the person's registration has been cancelled, and
 - (b) specifying the day the registration was cancelled.

Division 4 Returns

13J Application of Division

This Division applies to a betting operator who, for all or part of a financial year, is a betting operator who:

- (a) is registered under Division 3, or
- (b) is required to apply for registration under section 13F.

13K Requirement to lodge monthly returns

- (1) The betting operator must, not later than 21 days after the last day of the month, lodge a return (a *monthly return*) in relation to the net NSW wagering revenue of the betting operator for the month.

Maximum penalty: 100 penalty units.

Note. Part 6 of the *Taxation Administration Act 1996* contains other provisions concerning returns (including provisions relating to the form of return, extensions of time for lodging returns and special tax return arrangements).

- (2) A monthly return is to be in an approved form.
- (3) Subsection (1) applies even if the betting operator's monthly liability for the month is nil.

Division 5 Betting operators to identify person's location

13L Obligation of betting operator to identify person's location

- (1) A betting operator must, when receiving a bet, take reasonable steps to identify the location of the person making the bet.
Maximum penalty: 100 penalty units.
- (2) For the purposes of subsection (1), a betting operator may rely on the following as being the location of a person making a bet with the betting operator:
 - (a) for an individual—an address given to the betting operator by the individual as the individual's residential address,
 - (b) for a corporation—an address given to the betting operator by or for the corporation as the corporation's principal place of business.
- (3) However, subsection (2) does not apply if the betting operator knows, or has reasonable grounds to suspect, that an address specified in subsection (2) (a) or (b) is not the location of the person when the bet is made.

Division 6 Hypothecation of tax revenue

13M Appropriation and payment of revenue to industry

- (1) The Treasurer is, in respect of a financial year in which point of consumption tax was collected, to pay an amount equal to 2% of taxable net NSW wagering revenue generated during that financial year to the following bodies:
 - (a) Racing New South Wales,
 - (b) Harness Racing New South Wales,
 - (c) Greyhound Racing New South Wales.
- (2) The amount determined under subsection (1) is to be paid in quarterly instalments in the following proportions:

- (a) to Racing New South Wales—72%,
- (b) to Harness Racing New South Wales—15%,
- (c) to Greyhound Racing New South Wales—13%.

Note. The proportions specified in this subsection are the same as the proportions for the distribution of amounts under the *Racing Inter-Code Deed* dated 27 February 1998 between NSW Racing Pty Limited, the NSW Thoroughbred Racing Board, Harness Racing New South Wales and the Greyhound Racing Authority (NSW) as in force on the commencement of this section.

- (3) If the Treasurer determines that a body was overpaid or underpaid in respect of any financial year, the Treasurer may deduct an amount from, or pay an extra amount with, a subsequent payment under this section to that body, as the case requires.
- (4) Amounts required to be paid under this section are to be paid from the Consolidated Fund, which is appropriated accordingly.
- (5) In this section:

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

taxable net NSW wagering revenue, in any financial year, means the sum of the amounts of net NSW wagering revenue of each betting operator that exceed \$1,000,000 for each operator (if any).

13N Appropriation and payment of revenue to Responsible Gambling Fund

- (1) The Treasurer is, for the period from 1 January 2019 to 30 June 2019, to pay \$2,500,000 to the Responsible Gambling Fund established under section 115 of the *Casino Control Act 1992*.
- (2) That amount is to be paid from the Consolidated Fund, which is appropriated accordingly.
- (3) The Treasurer may, for subsequent financial years, pay to the Responsible Gambling Fund from the Consolidated Fund other amounts appropriated by Parliament.
- (4) Any amount paid under this section is to be the subject of the creation and operation of a trust deed appointing trustees and containing provisions approved by the Minister administering the *Casino Control Act 1992* (the **Minister**) relating to the expenditure of that money for purposes relating to responsible gambling.
- (5) The trustees may make recommendations to the Minister as to the application of money (appropriate to the trust deed) for purposes relating to responsible gambling and the Minister may pay money out of the Responsible Gambling Fund in accordance with any such recommendations.
- (6) The trustees, when making recommendations for payment of money out of the Responsible Gambling Fund, are required to take into account any policy guidelines issued to the trustees by the Minister for the purpose of giving effect to the provisions of the trust deed relating to expenditure for purposes relating to responsible gambling.
- (7) The Minister may also pay money out of the Responsible Gambling Fund for any purpose that is consistent with the provisions of the trust deed but only after consulting with the trustees on the proposed expenditure.

130 Special appropriation to Greyhound Welfare and Integrity Commission

- (1) The Treasurer is, for the period from 1 January 2019 to 30 June 2019, to pay \$2,000,000 to the Greyhound Welfare and Integrity Commission.
- (2) That amount is to be paid from the Consolidated Fund, which is appropriated accordingly.
- (3) This section does not prevent any other appropriation or payment to the Greyhound Welfare and Integrity Commission.

Division 7 Offset against point of consumption tax

13P Offset of tax to totalizator licensee

- (1) A totalizator licensee is entitled, for a financial year, to an offset against the point of consumption tax payable by the licensee in an amount equal to the sum of the following:
 - (a) the amount of betting tax under Part 2 paid by the licensee for that financial year less any offset for the financial year under section 11,
 - (b) the tax reduction amount for that financial year paid by the licensee under section 70 of the *Totalizator Act 1997*.
- (2) For the avoidance of doubt, if in relation to a financial year the amount of a totalizator licensee's offset under this section is greater than the amount of the totalizator licensee's point of consumption tax liability under this Part, the totalizator licensee is not entitled to a refund of that excess amount.
- (3) Nothing in this Part requires a totalizator licensee to pay point of consumption tax for any period before the offset under this section for that period is applied to that liability.

Note. Division 2 of Part 6 of the *Taxation Administration Act 1996* enables the Chief Commissioner to approve special arrangements for the lodging of returns and payment of tax under taxation laws.

Division 8 Multi-jurisdictional agreements

13Q Treasurer may enter into agreements

- (1) The Treasurer may enter into an agreement (a *multi-jurisdictional agreement*) with 1 or more other Australian jurisdictions to establish and implement processes for achieving improvements in the assessment and collection of taxes, interest and penalties imposed by the participating jurisdictions on betting operations that are carried on in multiple jurisdictions.
- (2) A multi-jurisdictional agreement may:
 - (a) provide for the collection of taxes, interest and penalties by a participating jurisdiction on behalf of other participating jurisdictions and for the distribution of amounts so collected, and
 - (b) provide for each participating jurisdiction to collect, on behalf of all participating jurisdictions, taxes, interest and penalties payable to those jurisdictions by betting operators whose businesses are based in the collecting jurisdiction, and
 - (c) provide for participating jurisdictions to undertake audits or investigations in respect of taxes, interest and penalties payable by a betting operator under the law of another participating jurisdiction, and
 - (d) authorise the performance of functions under this Act or the *Taxation Administration Act 1996* by a specified authority of a participating

- jurisdiction, subject to subsection (4) and any other limitations specified in the agreement, and
- (e) authorise the performance of functions under a specified law of another participating jurisdiction by the Chief Commissioner, subject to any law of that jurisdiction and any other limitations specified in the agreement, and
 - (f) provide for participating jurisdictions to assist each other in making timely and accurate determinations of taxes, interest and penalties payable by sharing information available to them, including the results of audits and investigations and any other information of a kind specified in the agreement, and
 - (g) provide for any other measures or matters that the participating jurisdictions consider necessary or expedient for achieving improvements in the assessment or collection of taxes, interest and penalties or for implementing processes established by the agreement for that purpose.
- (3) A multi-jurisdictional agreement operates for the period, and may be varied or terminated in such a manner, as the participating jurisdictions agree.
 - (4) A multi-jurisdictional agreement:
 - (a) must be consistent with the provisions of this Act and the *Taxation Administration Act 1996*, and
 - (b) cannot authorise a participating jurisdiction:
 - (i) to make a binding determination of the amount of tax, interest or penalties payable by a betting operator under the laws of another participating jurisdiction, or
 - (ii) to take enforcement action in respect of tax, interest or penalties payable by a betting operator under the laws of another participating jurisdiction.
 - (5) The Chief Commissioner is to take such action as is necessary or expedient to giving effect to a multi-jurisdictional agreement.
 - (6) In this section, *participating jurisdiction* means New South Wales and another State or a Territory that enters into a multi-jurisdictional agreement.

Division 9 Miscellaneous

13R Regulations

Regulations may be made for or with respect to the following:

- (a) methods for determining the location of persons making bets with, or through a service provided by, a betting operator,
- (b) providing specified amounts associated with the making of bets that are to be included, or not included, in net NSW wagering revenue,
- (c) matters necessary or expedient to give effect to a multi-jurisdictional agreement under section 13Q,
- (d) providing that specified persons or classes of persons are, or are not, betting operators,
- (e) exceptions to and exemptions from liability to pay point of consumption tax.

13S Avoidance of point of consumption tax

- (1) If a person enters into an agreement, transaction or arrangement, whether in writing or otherwise, that has the effect of reducing, postponing or avoiding the liability of any person to the assessment, imposition or payment of point of consumption tax, the Chief Commissioner may:
 - (a) disregard the agreement, transaction or arrangement for 1 or more periods, and
 - (b) determine 1 or more of the matters mentioned in subsection (2).
- (2) The matters are the following:
 - (a) that the net NSW wagering revenue of a betting operator for a particular period is to be taken to include an additional amount,
 - (b) that a bet made with a betting operator:
 - (i) is to be taken to have been made by a person other than the person who purportedly made the bet or at a place other than the place where the bet was purportedly made, and
 - (ii) if applicable, is a NSW bet within the meaning of this Part for calculating the net NSW wagering revenue of the betting operator for a particular period,
 - (c) that:
 - (i) a party to the agreement, transaction or arrangement is to be taken to be a betting operator, and
 - (ii) a payment made in respect of the agreement, transaction or arrangement is to be taken to be part of the net NSW wagering revenue of the party for a particular period.
- (3) If the Chief Commissioner makes a determination under subsection (1) (b) about a betting operator or another party to the agreement, transaction or arrangement, the Chief Commissioner must give the betting operator or party a notice that states the decision and the reasons for the decision.
- (4) A person who, by any act or omission, avoids or attempts to avoid point of consumption tax imposed is guilty of an offence.
Maximum penalty: 100 penalty units and triple the amount of point of consumption tax avoided or attempted to be avoided.

[5] Section 18 Proportion of tax paid in respect of totalizator on non-racing events to be paid into Sport and Recreation Fund

Omit the section.

[6] Schedule 4 Savings and transitional provisions

Insert at the end of clause 1 (1):

any Act that amends this Act

[7] Schedule 4, clause 1 (4)

Insert at the end of clause 1:

- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.

[8] Schedule 4

Insert at the end of the Schedule:

**Part 5 Provisions consequent on enactment of Betting Tax
Amendment (Point of Consumption) Act 2018**

9 Point of consumption tax January–June 2019

For the purposes of the application of Part 4 of this Act during the period from 1 January 2019 to 30 June 2019, a reference in that Part in relation to that period to:

- (a) a financial year—is taken to be a reference to that 6-month period, and
- (b) a period starting on 1 July—is taken to be a reference to a period starting on 1 January, and
- (c) an amount of \$1,000,000—is taken to be a reference to \$500,000.