



Dottorato di ricerca in
Diritto tributario delle società
XXV Ciclo

Coordinatore: Chiar.ma Prof.ssa Livia Salvini

The taxation of gaming and betting

Synthesis
(English version)

Tutor:

Chiar.mo Prof. Fabio Marchetti

Candidato:

Stefano Riccardi

Anno Accademico 2012/2013

The thesis, moving in a complex legal framework that characterizes the phenomenon of play, focuses on identifying the imposition templates present in the gaming industry, analyzing the particular characteristics of each model and highlighting the attributable features. During the discussion as needed, starting from the model based on revenue-producing monopoly, which has long characterized the field of taxation, the legislature has modeled the various forms of tribute by introducing an ill-concealed desire to "participate" in profits achieved within the public gaming.

In order to locate the heart of the tax system, the method used was to start with an analysis of the civil law and to see if the concepts developed within the field of law can also be used for tax on games. Here it is anticipated that the methodology adopted has paid off, allowing us to explain to some extent the tax on games and allowing different key readings of the mechanism of taxation.

In Chapter I we have tried to frame the phenomenon of play as a whole, examining the regulation prepared by the different branches of law. At this stage, it was realized that the phenomenon reflected the entire legal system and how to play the ball has always been traversed by contradictory and often adverse feelings. It is the story of the game itself, with the strict moral condemnation and the applicants criminal repression, which testifies to this difficulty. The same legal science has been influenced as too often by aspects of meta-juridical.

First, we tried to identify the legally relevant facts. There is no rule that completely defines the game and betting or would outline the basic features. After enunciating the notion, the result of doctrinal elaborations, we passed to analyzing the civil law of the matter. This allowed us to grasp a fundamental and essential aspect of the phenomenon, which is useful in the solution of the most important problems of a tax. The key element of playful phenomenon has been identified in the distinction of gaming and betting into two broad categories:

- the first will cover those games and those bets that from the moment of conclusion of the contract you know exactly what the premium will be due to the player if they win whether the same is made by a specific amount (as in lotteries), or calculated as a multiple of the game (in the case of fixed odds sports betting or batch). In this case, the eventual winner knows that if the event occurs as planned, he will collect an amount predetermined or predictable regardless of the number of participants and the number of winners. This is due to the presence of an organizer or manager who bears the risk of the operation, in effect enters into a contract to play and bet. So, you are in the presence of a bundle of bilateral contracts signed by the manager and each player;
- in the second should be placed all those games and those bets where the premium is not predetermined nor predictable but depends both on the number of participants and the winners (in the case of football pools). In this case, the operator or manager does not take part in the

game simply to provide players with the organization to ensure the performance of the game. In this case, the contract is concluded between all the players, who are committed to each other to pay the game that will feed into a common fund which will then be distributed among the winners at the net cost of the game (fiscal and trade). Here the operator does not assume the risk of the operation. The contract will be entered into a multilateral agreement between all the players and a contract between them and the manager for the organization of the game.

In addition, the civil law has got to deal with the administrative aspect of the matter which showed the existence of complex and detailed rules governing the phenomenon of play from both the organizational and authorization. This has broad implications in the field of taxation and especially with regard to implementation, involving the enforcement mechanisms of the tax on the games. In fact, the provision of stringent regulatory requirements has serious effects on the phase where disruptive effects are expected if you violate rules imposed under the legislation administrative.

After trying to outline a concept of play and wager relevant to the tax law a brief overview of taxation mechanisms developed by the legislature was held.

In the second part of the thesis I examined special taxes on games.

We started by examining the tax system of the most important tax on betting and gambling (or single tax on betting pools and betting), analyzing both the dynamic and static phase of the tax rule. First, it identified the ratio of the tax focus on economic justification. So, we tried to limit the ability to pay affected by the tax. This made it possible to discover how the double soul of the tax on the one hand affects the enrichment of the winners and the other the economic potential of the operator of the game. This has been possible thanks to the fundamental distinction of the games in these two categories: Games bilateral and plurilateral games.

In fact, if the objective side was encountered with an unclear and incomplete legislation, subjectively showed a particular type of entity created by the legislature (at least for games plurilateral): the manager. The configuration of the operator of the game as the taxpayer leads to a simplification of relations with the mass of taxpayers as well as a strengthening of property collateral to secure the interest of the treasury and tax collection. In this context it was interesting to see how the legislature, in order to address the problem of illegal foreign bookmakers operating in Italy through a network of data centers (so-called CTD) has unlawfully attempted to erect the latter to taxable persons of 'tax.

So we moved to the implementation phase from which emerges legislation extremely difficult for the offender. In particular, an examination of the rules on the assessment revealed some controversial points that represent a violation of the principle of ability to pay and especially in

terms of effectiveness. In practice, the legislature illogically ordered the extension of the findings made in the context of tax on games even income tax, IRAP and VAT.

In the next chapter you are dealt a particular form of public tax levy: the PREU.

Here, too, we analyzed the static and dynamic aspects of the tax rule. The same difficulties emerge and problems encountered at the time of the single tax. From this chapter emerges a constant that will accompany us throughout the discussion: the imposition of the phenomenon of play is a logic arrangement only if you always keep in mind the distinction between the gaming and betting in the above-mentioned two broad categories. The key to a systematic composition of taxation on the games can not ignore the distinction between multilateral and bilateral games.

Among the peculiarities encountered in the discussion of the taxation of gaming machines emerges the particular discipline of the bonds of solidarity. We have seen how in order to safeguard the prompt and certain collection of taxes the legislature has in fact transcended the normal range of operation of the institution, the financial liability extending beyond the limits set by the constitutional principles in art. 3 and 53 Constitution, counting unlawfully solidarity between debtors all those who in any way come in contact with the gaming equipment.

Finally, there has been a way of protesting the implementing rules established for that specific type of unit (AWP), does not lend itself to being applied to the new forms of gambling such as new video lottery terminals (VLT).

Chapter IV has seen us address a particular form of taxation that involves the game of Bingo. Here, too, the usual difficulties in detecting the constituent elements of the tax case apply. However, even in this area it captures the theme of the imposition on the games especially with regard to ability to pay, which expresses the phenomenon of gaming and betting. The most controversial aspect is found in the instrument used in the establishment and discipline of the institute legal: a provision of a regulation.

Chapter V begins with the recognition doctrinaire fiscal monopoly and ends with a certainty: there is no consensus in the literature on the concept of monopoly. However, the conclusions have been achieved, thanks also to the case-law of legitimacy, allowed to develop in subsequent sections of this chapter a particular thesis reconstructive, which assumes that the private nature of gaming operations, says on the one hand the applicability of 'tax on gaming and betting to lottery and, secondly, identifies the levy on pari-mutuel numbers games and lotteries (multilateral) with the single tax.

Chapter VI relates to the samples placed at the edge of the game world.

Finally, Part III of the thesis examines the impacts of gaming and betting on the aspect of direct and indirect. The first part examines the legal framework applicable to direct taxes on the winnings. At this stage, the emergence the tax reform of the '70s has, in principle, excluded the income tax for assets produced in-chief to the winner, as it is included in the sampling work on the same games.

The discussion continued on the role of the manager in the game, on the organization of the game on tax of added value. In this emerged an indisputable fact: the operations of gambling do not lend themselves to be burdened from value added tax. However, not stopping at first, has deepened the investigation going beyond the conclusions reached by the case law. In this case I have tried to give a solution to the problem of the application of VAT to the phenomenon of play, stating the reasons on the basis of structural differences between the games multilateral and bilateral games.

The chapter ends with a brief survey of tax on entertainment applicable to casinos and the gaming equipment without cash winnings.

The final thesis proposes a new interpretation of the phenomenon and a different set of taxation more consistent and coherent approach to the particular matter of the games.