

REPUBLIC OF SOUTH AFRICA

(DRAFT) EXPLANATORY MEMORANDUM

FOR

**THE (DRAFT) INTERACTIVE GAMBLING TAX
BILL, 2008**

9 June 2008

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BACKGROUND

The purpose of the Bill is to tax interactive gambling with the tax falling on interactive providers. The genesis of this Bill stems from the National Gambling Amendment Bill (Section 88A), which calls for a tax on interactive gambling. The initial National Gambling Act, 2004 (Act No. 7 of 2004) generally made interactive gambling illegal (section 11), but the National Gambling Amendment Bill reverses this result.

TABLE OF CONTENTS

Section 1	Definitions
Section 2	Charging provision
Section 3	Rate of tax
Section 4	Gross Gambling Revenue
Section 5	General Anti-Avoidance Rule
Section 6	Short title and commencement

SECTION-BY-SECTION EXPLANATION

Definitions: Section 1

Most of the definitions in this section are contained in the National Gambling Act or the National Gambling Amendment Bill. However, the definitions of “gross gambling revenue”, “interactive gambling transaction”, “interactive provider”, and “registered player” are worthy of note.

Charging provision: Section 2

This subsection operates as the core charging provision. Under this subsection, the interactive gambling tax is imposed on an interactive provider. An “interactive provider” is an interactive provider as defined in the National Gambling Act (or a person providing an interactive game played by any other person). The interactive provider will be required to hold a license (issued by the National gambling Board) in accordance with the National Gambling Amendment Bill and have a physical presence in the Republic (server must be located in South Africa).

This subsection outlines that the interactive gambling tax imposed is in respect of the gross gambling revenue of that interactive provider. The term “gross gambling revenue” means that the tax is applied to “net cash gains” generated by the interactive provider. The net cash gains of an interactive provider are derived solely from “interactive gambling transactions”, i.e. when a “player account” (being an account held in the name of the player with an interactive provider) is debited in the amount of a wager and concludes when the player account is credited with the amount of winnings, in the case of a winning bet or “registered player” loses. The registered player being a person registered or provisionally registered to participate in interactive gambling activities in terms of the National Gambling Amendment Act

The charge applies per assessment period. As with other nationally imposed taxes, the interactive gambling tax will be added to the general National Revenue Fund.

DRAFT

Furthermore, there is no tax on the punter. Although the tax will not be visible to the player, she or he will bear some of the tax burden through the pricing structure and odds of winning. Lastly, there will be no exemptions in the Bill.

Rate: Section 3

The rate of tax with respect to the interactive gambling tax is a flat six (6) per cent of the gross gambling revenue for each assessment period. The rate of the interactive gambling tax is applied to the gross gambling revenue of the interactive provider in order to determine the tax liability due.

Gross Gambling Revenue: Section 4

Subsection 1 (general rule)

This subsection sets out the total inclusions that form the base for the tax. Gross gambling revenue is the aggregate amount debited to player accounts. The tax thus applies to “net cash gains” generated by the interactive provider. This amount is the total player account debits (payments to the account), less (i) player account credits transferred to the nominated accounts (player winnings); (ii) prizes collected by the winners, (iii) amounts paid to the State, and (iv) the negative gross gambling revenue carried forward (see below).

Example. Facts. In June 2010, Interactive Provider received R16 million of payments from players into various player accounts. During the same period, Interactive Provider credited R5 million to player accounts and paid prizes of R1 million.

Result. Interactive Provider has a net cash gain of R10 million. Interactive gambling rate of 6 per cent multiplied by the net cash gains of interactive provider of R10 million equals a R600 000 liability.

Subsection 2 (specific exclusions to gross gambling revenue calculation)

DRAFT

Value-added Tax inputs and outputs do not form part of the calculation of gross gambling revenue amount. Inclusion would have effectively amounted to a “tax on tax.”

Subsection 3 (negative gross gambling revenue)

In instances where the calculation of gross gambling revenue for an assessment period results in a negative amount, that negative amount will be used in the calculation of the gross gambling revenue for the succeeding assessment period (i.e. by deducting the negative amount from the gross gambling revenue of the succeeding assessment period). This rule ensures that gross gambling losses do not give rise to refunds while providing some level of offset in a later period.

Example. Facts. In June 2011, Interactive Provider has a net cash loss R2 million in respect of all of Interactive Provider’s player accounts. In July 2011, Interactive Provider has a net cash gain of R2,8 million..

Result. Interactive Provider does not have any tax obligation in respect of the June 2011 period. Interactive Provider has a liability of R48 000 in respect of the July 2012 period ((R2,8 million less R2 million) multiplied by 6 per cent).

Section 5: General anti-avoidance rule

The general anti-avoidance rules are consistent with other South African tax instruments. For instance, this section is modelled after the general anti-avoidance rules contained in the Securities Transfer Tax, the Value-added Tax and Royalty Bill.

Subsection 1 (general rule)

This section provides the National Gambling Board (“the board”) with the power to target schemes that inappropriately undermine the application of the

DRAFT

interactive gambling tax, including any specific steps thereto. Pursuant to their power, the board will determine the liability for tax imposed under this Act and the amount thereof as if the scheme had not been entered into, or carried out or in the manner as in the circumstances of the case that the board deems appropriate for the prevention or diminution of the tax benefit. In order for this power to be triggered, the transaction must be entered into or carried out for providing a tax benefit, and one of two following events must occur:

- (a) *Abnormality test*: The steps entered into or carried out must not normally be employed for bona fide business purposes (other than the obtaining of a tax benefit); or
- (b) *Arm's length test*: The rights and obligations must not normally be created between persons dealing at arm's length in a situation where the parties are solely or mainly acting to obtain a tax benefit.

The board will make the determination of the liability of tax imposed under this Act as if the scheme had not been entered into or carried out, or in such a manner as in the particular circumstances dictate.

Subsection 2

This subsection provides the key definitions relating to the general anti-avoidance rule. The term "dealing at arms length" means a transaction in the open market in which two or more independent persons acting in good faith (without regard to the interactive gambling tax) would freely and without conflict of interest agree to transact in the ordinary course of business. The term "scheme" includes any transaction, operation, scheme or understanding (whether enforceable or not), including all steps and transactions by which it is carried into effect. Lastly, the term "tax benefit" includes—

- (i) any reduction in the liability of any person to pay any tax or other amount imposed by this Act;
- (ii) any increase in the entitlement of any person to a refund of any tax or other amount imposed by this Act; and

DRAFT

- (iii) any other avoidance or postponement of liability for the payment of any tax or other amount imposed by this Act.

Section 6: Short title and commencement

This Act will be titled the Interactive Gambling Tax Act, 2008. This Act will come into operation on a date to be fixed by the Minister of Finance by notice in the Gazette.