

REPUBLIC OF SOUTH AFRICA

(DRAFT) INTERACTIVE GAMBLING TAX (ADMINISTRATION) BILL

(Minister of Finance)

9 June 2008

DRAFT

BILL

To administer matters in connection with the imposition of an interactive gambling tax on interactive providers and to provide for matters connected thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. (1) In this Act, unless the context indicates otherwise—
“**assessment period**”, in relation to an interactive provider, means a calendar month or any other period that the board may determine after taking into account the circumstances of the interactive provider;
“**board**” means the board defined in section 1 of the National Gambling Act and includes any inspector appointed by the board as mentioned in section 76 of that Act;
“**notice of assessment**” means a notice of assessment mentioned in section 5;
and
“**Interactive Gambling Tax Act**” means the Interactive Gambling Tax Act, 2008.

(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Interactive Gambling Tax Act bears that meaning for purposes of this Act.

Returns and payment

2. (1) An interactive provider must submit to the board a return of gross gambling revenue for an assessment period, together with payment of the tax imposed by the Interactive Gambling Tax Act in respect of that assessment period, within 25 calendar days after the last day of that assessment period, or within such period as the board may determine.

Form, manner, and place determined by board

3. All returns, forms, and payments required in terms of this Act or the Internet Gambling Tax Act must be submitted in the form, manner (including electronically), and place as determined by the board in respect of any matter necessary to administer this Act or the Interactive Gambling Tax Act.

Maintenance of records

4. (1) An interactive provider must retain records necessary to observe the requirements of this Act and the Interactive Gambling Tax Act, including—
- (a) the aggregate amount debited to player accounts as mentioned in section 5A(a) of the National Gambling Act;
 - (b) the aggregate amount credited to nominated accounts of those player accounts mentioned in paragraph (a);
 - (c) the amount of any prize mentioned in section 6A(2) of the National Gambling Act collected by the winner of that prize;
 - (d) the aggregate amount paid to the State as mentioned in section 6A(3)(b) of the National Gambling Act; and
 - (e) the aggregate amount carried forward as mentioned in section 4(1)(d) of the Interactive Gambling Tax Act;
 - (f) a ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, electronic transfer, invoice, other book of account, or financial statement; and
 - (g) any information required by the board.
- (2) An interactive provider's records must be retained (either in their original form or in any other form permitted by the board) for five years after the date of the submission of the return to which the records relate.

Assessments to re-determine, recalculate and estimate amounts

5. (1) If—
- (a) an interactive provider fails to furnish a return;
 - (b) the board is not satisfied with a return furnished by an interactive provider; or
 - (c) the board has reason to believe that an interactive provider has failed to pay the interactive gambling tax for which that interactive provider is liable,

the board may issue to that interactive provider a notice of assessment of the interactive gambling tax payable for the assessment period concerned.

(2) If an interactive provider defaults in furnishing a return or information in respect of that return or the board is not satisfied with that return or information, the board may estimate the amount upon which the interactive gambling tax is payable in respect of that return.

(3) The board must, in a notice of assessment, give notice to an interactive provider that an objection or appeal may be lodged with the board in respect of that notice of assessment.

(4) An interactive provider receiving a notice of assessment must pay the amount of the interactive gambling tax so assessed to the board within 25 calendar days after the last day that notice of assessment was issued.

(5) An interactive provider that lodges an objection or appeal against a notice of assessment must pay the tax so assessed in respect of that notice of assessment within 25 calendar days after the last day that notice of assessment was issued, and if that notice of assessment is not final by the last day of five years from the day that notice of assessment was issued, that interactive provider must retain all records relevant to that objection or appeal until that notice of assessment becomes final.

Time limit for assessments

6. (1) The board may not issue a notice of assessment more than five years after the due date for the submission of a return of gross gambling revenue to which that notice of assessment relates.

(2) The five-year limit with respect to a notice of assessment mentioned in subsection (1) does not apply if the board has reason to believe that an interactive provider failed to pay the tax to which that notice of assessment relates due to fraud, misrepresentation, or non-disclosure of material facts.

Refunds

7. (1) An interactive provider may claim a refund of any amount of tax paid to the extent that amount exceeds—

- (a) in the case where that amount was paid in respect of a notice of assessment, the amount so assessed; or
- (b) in any other case, the amount of tax properly chargeable under the Interactive Gambling Tax Act with respect to that interactive provider.

(2) The board may refuse to authorise a refund under subsection (1) if the interactive provider has failed to furnish—

- (a) a return for any assessment period as required by this Act until that interactive provider has furnished that return as required; or
- (b) the board in writing with particulars of that interactive provider's banking account or account with a similar institution to enable the board to transfer a refund, if any, to that account until that interactive provider has furnished the particulars as required.

(3) If a refund mentioned in subsection (1) is due to an interactive

provider that has failed to pay any amount of tax, interest or penalty levied or imposed under the Interactive Gambling Tax Act or any other Act administered by the board, within the period prescribed for payment of the amount, the board may set off against the amount which that interactive provider has failed to pay any amount which has become refundable to that interactive provider under this section.

Penalty

8. (1) If an amount of tax payable under this Act or the Interactive Gambling Tax Act is not paid within the period prescribed for payment of that amount, the interactive provider concerned must pay a penalty in respect of that tax at a rate of ten per cent of that amount for each month (or part of a month) during which that amount remains unpaid.

(2) The penalty mentioned in subsection 1 may not exceed twice the amount of tax payable.

(3) If the board is satisfied that the failure on the part of an interactive provider to make payment of the tax within the prescribed period was not due to an intent to avoid or postpone liability for payment of that amount due, the board may remit in whole or in part any penalty payable in terms of this section.

Interest

9. (1) The board must pay interest calculated on a monthly basis in respect of any amount of tax paid to the extent that amount exceeds—

(a) in the case where that amount was paid in respect of a notice of assessment, the amount so assessed; or

(b) in any other case, the amount of tax properly chargeable in terms of the Interactive Gambling Tax Act,

if that excess is not refunded within 25 calendar days after the day of receipt of a refund claim mentioned in section 7 in respect of that excess.

(2) An interactive provider must pay interest calculated on a monthly basis for an amount due in respect of an assessment period that is not paid within 25 calendar days after the last day of that assessment period.

(3) Interest required under this section must be calculated at the rate mentioned in paragraph (b) of the definition of prescribed rate in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Administration of Act

10. (1) The board is responsible for administering this Act and the Interactive Gambling Tax Act.

(2) For purposes of this section, 'administering this Act and the Interactive Gambling Tax Act' means—

- (a) determining the correctness of a return, financial statement, document, declaration of facts, or notice of assessment relevant to this Act or the Interactive Gambling Tax Act;
- (b) determining and collecting any amounts due under this Act or the Interactive Gambling Tax Act;
- (c) determining whether an offence has been committed under this Act or the Interactive Gambling Tax Act; and
- (d) performing any other administrative function necessary for carrying out this Act or the Interactive Gambling Tax Act.

Applicability of the National Gambling Act

- 11.** (1) The provisions of the National Gambling Act relating to—
- (a) the exercise of powers and performance of duties;
 - (b) preservation of secrecy;
 - (c) the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
 - (d) objections and appeals;
 - (e) settlement of disputes;

- (f) the payment and recovery of the interactive gambling tax, interest and penalties;
- (g) offences;
- (h) reporting of unprofessional conduct; and
- (i) jurisdiction of courts,

apply, with changes required by the context, to the interactive gambling tax in terms of this Act and the Interactive Gambling Tax Act.

(2) Any person that is not satisfied with any decision given in writing by the board—

- (a) in terms of section 5 in respect of a notice of assessment issued to that person; or
- (d) in terms of section 7 in respect of the board's refusal to make a refund,

may note an objection thereto with the board.

Rules

12. The board may make rules with respect to any matter necessary to administer this Act or the Interactive Gambling Tax Act.

Short title and commencement

13. This Act is called the Interactive Gambling Tax (Administration) Act, 2008, and comes into operation on a date to be fixed by the Minister of Finance by notice in the Gazette.

**MEMORANDUM ON THE OBJECTS OF THE INTERACTIVE GAMBLING
TAX (ADMINISTRATION) BILL, 2008**

1. OBJECTS OF BILL

The Interactive Gambling Tax (Administration) Bill, 2008 (this Bill), accompanies and seeks to provide for administrative matters pertaining to the Interactive Gambling Tax Bill, 2008.

2. BACKGROUND

The genesis of this Bill stems from the National Gambling Amendment Bill, 2007 (Section 88A) to the National Gambling Act, 2004 (Act No. 7 of 2004), which calls for a tax on interactive (internet) gambling. Initially, the National Gambling Act made interactive gambling illegal (section 11), but the National Gambling Amendment Bill reverses this result. It is proposed that the tax on interactive gambling be imposed on a national level and administered by the National Gambling Board (the board).

The purpose of this Bill is to administer matters in connection with the imposition of an interactive gambling tax on interactive providers. This Bill provides that all interactive providers must register with the National Gambling Board for purposes of collecting the tax. Provision is made to pay the interactive gambling tax twelve times per year (roughly every month).

3. SUMMARY OF BILL

Definitions: Clause 1

Clause 1 provides definitions for terms used in this Bill. If a word has been defined in the Interactive Gambling Tax Bill, it has the same meaning in this Bill.

Returns and payment: Clause 2

Clause 2 proposes that an interactive provider must submit a return and payment of its gross gambling revenue to the board within 25 days of end of each calendar month (assessment period).

Form, manner and place determined by board: Clause 3

Clause 3 proposes that the board administer the submission of returns, forms and payments.

Maintenance of records: Clause 4

Clause 4 proposes that interactive providers submitting monthly returns must retain sufficient books and records for the board to verify compliance. These books and records must be maintained for a minimum of 5 years.

Assessments to re-determine, recalculate and estimate amounts: Clause 5

This Bill proposes a self-assessment system. If the board has reason to believe that sufficient tax has not been paid, this clause proposes a notice of assessment (in which the board may estimate the interactive gambling tax payable) be sent to an interactive provider. This notice of assessment is subject to objection and appeal.

Time limit for assessments: Clause 6

This Bill proposes a 5-year time limit for notices of assessment. This 5-year period begins to toll only after the submission of a return to which that assessment period relates. Thus, if a return is not submitted, the time limit for assessment continues indefinitely. Finally, if a return is submitted, the 5-year time limit does not apply if the board has reason to believe that failure to pay the interactive gambling tax stems from fraud, misrepresentation or non-disclosure of material facts.

Refunds: Clause 7

Clause 7 proposes that refunds for overpayment of the interactive gambling tax may be claimed within a 5-year time limit.

Penalty: Clause 8

For anti-avoidance purposes, clause 8 proposes that if the interactive gambling tax is not paid within the period prescribed for payment, that amount of tax owing is subject to a penalty equal to up to double the tax owing.

Interest: Clause 9

Clause 9 proposes that interest calculated on a monthly basis be payable on underpayments and overpayments (as the case may be). The interest rate will be determined in terms of section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962).

Administration of Act: Clause 10

Clause 10 proposes that the responsibility for administering this Bill and the Interactive Gambling Tax Bill be conferred on the board.

Applicability of the National Gambling Act: Clause 11

Clause 11 proposes that administrative processes falling within the purview of this Bill be covered by reference to the National Gambling Act. Decisions by the board are subject to objection and appeal.

Rules: Clause 12

Clause 12 proposes that the board may make rules with respect to any matter necessary to administer this Bill and the Interactive Gambling Tax Bill upon the enactment of those Bills.

Short title and commencement: Clause 13

Clause 13 provides for the short title and a commencement date to be fixed by the Minister of Finance by notice in the Gazette.

2. PERSONS AND INSTITUTIONS CONSULTED

The provisions contained in this Bill were published for public comment on the National Treasury website. Comments were received from interested parties. These included professional bodies and business institutions.

3. FINANCIAL IMPLICATIONS FOR STATE

Financial implications for the State will be provided for in the budgetary process.

4. CONSTITUTIONAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, The National Treasury and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, as it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.