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## TAXATION OF GAMBLING WINNINGS IN EUROPEAN COUNTRIES

*In his budget speech on 23 February 2011, the Minister of Finance proposed that with effect from 1 April 2012 all gambling winnings above R25 000, including those from the National Lottery, be subject to a final 15 per cent withholding tax.*

While CASA has publically expressed its dismay at the proposed tax, and in a letter requested an opportunity to meet with the minister in order to find a mutually beneficial way forward, there has been no indication of the detail of how the proposed tax is to be collected, what periods are to apply for its calculation, whether losses will be capable of being off-set against winnings, and numerous other detailed matters that are of importance to the industry.

To assist CASA members to prepare themselves in this information vacuum, we have sourced a report from the European Association for the Study of Gambling which gives a comprehensive overview of the situation regarding the taxation of gambling winnings in the 27 European Union member countries.

The report reveals a very complicated situation. Not only are there different rules in different countries, there are also different tax rules for different forms of gambling (casinos, lotteries, sports-betting, etc.). And even within individual countries big differences can exist, for example where different rules are applied in different provinces.

However, what does emerge is that in most EU countries it is the supplier that pays the tax, and that tax is not a tax on winnings, but rather a tax on revenues or profits. In the few instances where the winner has to pay the tax, it is not a pure winning tax, but rather income tax as winnings are regarded as income.

So while we still have no indication of how the government plans to approach this

issue, the European study does give an overview of how taxation on winnings can be applied, and give us some indication of the types of scenarios we can expect in a few months' time while highlighting the reasons why a tax of this nature would be inappropriate in the South African context.

The report consists of two parts: Part 1 gives a summary of the findings in the individual EU countries, while Part 2 looks at the situation in each country in more detail.

It is essential reading for all members active in the gambling industry. Below is the table of summary of findings. To request a full copy of the report please email [info@casasa.org.za](mailto:info@casasa.org.za).

Source: EASG: *Situation regarding taxation of gambling winnings in European Countries*- May 2011.

### Table of summary of findings of EU countries

	Tax on winnings	Taxes paid by casino	Taxation on lotteries
Austria	No	35-80% on stakes minus winnings	Federal license of 2-17,5%
Belgium	No	A yearly contribution for every type of operation license	
Bulgaria	No	A fee of 17500 for each location and each license. A fixed amount of tax for every roulette and other life game table	A fee of 10000 euro per game and license and 15% tax on the value of bets
Cyprus	N/A	Casino gaming services cannot lawfully be supplied in Cyprus	Only state lotteries: whole net profit goes into public funds
Czech Republic	No	6-20% on the profits	N/A

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The Minister of Trade and Industry, Dr Rob Davis, tabled the report by the Gambling Review Commission in Parliament on Wednesday, 29 June. He said the report had been presented to the Cabinet, and that National Assembly will now have to review the report and make recommendations and develop gambling policies based on the report.

The following comment was issued by the South African Government News Service following the release of the report:

Compiled by the Government Communication and Information System  
Date: 29 Jun 2011



## Title: Illegal gamblers warned By Francis Hweshwe

Cape Town - Trade and Industry Minister Rob Davies has warned offshore gambling operators that setting up businesses in the country would not force his department to introduce forms of gambling which were deemed illegal here.

He also warned South African online gamblers that the Reserve Bank was monitoring illegal transactions and they would not get their monies even if they won.

He emphasised that online gambling remained illegal in the country. The minister was addressing journalists on Wednesday on the outcomes of the Gambling Review Commission.

Baby Twaya, the National Gambling Board chief executive, said one could be fined up to R10 million if caught engaging in online gambling or face 10 years in jail. The commission was set up three years ago

by the department to look into the gambling landscape from 1996 to the present and assess its social and economic impact on people, among other things.

In its findings, the commission has said that since 1996, gambling had grown into a "small but maturing sector."

It said that gross gambling revenues had doubled between 2001 and 2009 and now stood at R15.921 billion (R18.129 billion including Lotto).

In 2009 alone, the industry had generated R1.5 billion in tax revenues for provincial governments.

The gambling sector also accounted for 56 958 direct jobs, while the casino industry had created 51 317 jobs.

The commission has also revealed the

gambling industry drew most of its clientele locally, rather than from tourists.

Among its suggestions, the commission said that winnings on the Unlimited Payout Machines should be raised from the current R500, as the rollout of the machines in poorer communities had not been successful.

Davies, who briefed Parliament's Portfolio Committee on Trade and Industry, said both the National Assembly and National Council of Provinces would look into the report and make recommendations.

He said at the moment, nothing would change in the gambling industry and they would stick to the 40 casino licenses across the country.

*Reported by: South African Government News Service*

# Table of summary of findings of EU countries continued from page 1

	Tax on winnings	Taxes paid by casino	Taxation on lotteries
Denmark	No	45-75% on gross gaming revenue	15-17,5% on the prize that exceeds 26 euro
Estonia	N/A	958 euro per gambling table. 18% of stakes for other games	From 10-18%
Finland	No	8,25% on net profit	9,5%
France	Yes in case of land based casinos	Winner pay 12% each time they win more than 1500 euro	69,1% on stakes minus winnings and VAT of 19,6%
Germany	No and winnings are not subject to income taxation	State owned casinos: 80% of gross gaming revenue. Private casinos are treated very differently	16,7% on turnover
Greece	No for casinos. A lottery winner has to pay 10% of the winning amount	20-33% on GGR, 2-5% on GGR to municipality, a fixed fee and 20% Corporate Income Tax	Lotto has to pay 50% and Proto has to pay 36%
Hungary	No	30%	From 16-24% (mostly on monthly prize pool)
Ireland	N/A	There are no casinos in Ireland	Approved lotteries are exempted from taxes.
Italy	No	1-% on revenues	36%
Latvia	Yes 25%	Fixed amounts for licenses	N/A
Lithuania	N/A	Fixes amounts for each gaming device	15% of income minus paid winnings
Luxembourg	No	10-80% on revenues	N/A
Malta	No	A license fee of 46000 euro and 15-40% on gross turnover	12,5-20% on gross turnover and a license fee of approx. 46000 euro
Netherlands	No in case of casino winnings, yes in case of lottery winnings	40,85% on net gaming revenue	If winnings are higher than 454 euro winners pay a winning tax of 29%
Poland	N/A	45%	10% (award lotteries) to 45% (video lotteries)
Portugal	No for casinos. Prizes for lottery are taxed with rates up to 35%, different per lottery	30-50% on gross revenue; bingo winnings 25%	No taxes for SCML
Romania	No	N/A	N/A
Slovakia	No clear regulation about gambling	27% of financial guarantee	15% of financial guarantee
Slovenia	In casinos: no, in lotteries a winning tax of 50% if you win more than 4000 euro	18% of GGR, concession tax form 5-20%	5% on GGR, concession tax between 25-35%
Spain	No, winners have to declare their winnings as income	20-61%	
Sweden	No	State owned casino: no tax on profits. Other casinos: fixed amount per roulette table	36%
United Kingdom	No	2,5-40% of gross gaming revenue	12% on turnover

N/A = information not available / applicable

Source: EASG: Situation regarding taxation of gambling winnings in European Countries- May 2011.

## THE EFFICACY OF REGULATIONS AND RULES IN THE GAMBLING INDUSTRY: OPPORTUNITIES FOR REFLECTION

The recent publication for information and comment of the Regulations proposed to be made in terms of the newly enacted KwaZulu-Natal Gaming and Betting Act, Act 8 of 2010, has brought into renewed focus a number of issues, common to many provinces, in relation to the legal framework within which subordinate legislation is formulated and implemented, as well as the subject matter with which it deals. This has provided a timely opportunity for reflection regarding the extent to which there is an appropriate alignment between national and provincial primary and subordinate legislation pertaining to gambling throughout the country and whether the provisions of this legislation are responsive, on a practical level, to the day-to-day operational framework within which the gambling industry functions.

The primary principle to which regard must be had in the context of formulating, implementing, applying and interpreting all legislation pertaining to gambling is that bodies such as provincial licensing authorities ("PLA's") are creatures of statute. Their powers derive exclusively from the statute in terms of which they have been created. In essence, this means that bodies such as PLA's can perform only such functions and exercise only those powers, which have been expressly conferred on them by legislation. For every exercise of a power or performance of a function, there must be an enabling provision in the primary legislation which makes provision for the exercise of such power or the performance of such function.

This first principle finds further expression in the pre-requisites for the enactment of subordinate

legislation, such as Regulations or Rules made in terms of a gambling Act. These are briefly that in order to be validly enacted, such subordinate legislation must not be in conflict with or otherwise inconsistent with the Act itself. Accordingly, Regulations or Rules cannot be used as a mechanism for broadening the scope of the Act, or introducing new legal or regulatory requirements not contemplated in the Act. Similarly, they cannot be used as a vehicle to close loopholes in the Act or to introduce new policies, unless the Act specifically permits this to be done. In the event that there are deficiencies in a gambling Act which need to be addressed, this must be done by amending the Act itself.

The subordinate legislation of many provinces appears to deviate from the above principles in a number of respects. A common example is the tendency to prescribe, whether by way of Regulations or Rules, additional grounds for disqualification for licensing, over and above those specifically listed by the relevant legislature in the enabling statute. In this manner, additional barriers to entry to the industry, not contemplated by the legislature when it exercised its powers to make the law, are created without the assent of the legislature itself.

The status of primary legislation dealing with gambling, and the relationship between primary and subordinate legislation appears also to be misconstrued in another important respect. A noteworthy example is the extensive provision made in the National Gambling Act, 2004, and the Regulations made pursuant thereto, for a registration and approval process to be undertaken in respect of

gambling devices and equipment, and a national database or register of such equipment. Despite this, the Regulations or Rules of many provinces require a similar process to be implemented on a provincial level. It should, however, be recognised that a process of this nature is no longer necessary, as all gambling machines and devices are required to be registered as part of the national registration process put in place by sections 19 through 25 of the National Gambling Act and duly certified as complying with the applicable national standards before they may lawfully be exposed for play by the public. This process contemplates a single national registry of gaming machines and devices, which will record the details of each and every such device, making provision for its initial identification, at the time of manufacture thereof, its registration on the national registry, details regarding its ownership and location, as well as any subsequent transfer of ownership or possession in respect thereof. In the national registry, each such device is assigned a unique registration number. This process enables the ownership and exact location of any such machine or device to be conclusively established and confirmed at any time, by reference to a single, nationally maintained registry which is accessible to each and every provincial gambling board, in terms of the provisions of the National Gambling Act. To the extent that the implementation of the national register has not been fully implemented, efforts should be focused on finalising this, rather than creating parallel processes at provincial level.

In view of the above, it is neither necessary nor desirable to require the registration of machines or other equipment with





a PLA, way of a separate registration process, taking into account that such a process entails an unnecessary duplication of effort and expense, not least of all on the part of PLA's, which would have apply their resources towards the management of such a process on an ongoing basis.

On a more fundamental level, the Regulations or Rules of certain provinces require persons acquiring a financial interest of any nature whatsoever in a licence holder to obtain the approval of the relevant PLA to hold such interest. This poses fundamental difficulties where parties acquire a modest indirect shareholding in a licence holder, without the knowledge of that licence holder, owing to the fact that listed companies hold interests in the licence holder. The impracticalities of these requirements, and the possible adverse implications for licence holders, from a compliance-related perspective, appear to have been overlooked.

There are a number of similar provisions which appear to merit reconsideration in the subordinate legislation of certain provinces. A clear understanding of the regulatory and legislative mandate of PLA's and a focused review of prevailing subordinate legislation would promote the overall goal of ensuring that the regulatory and legislative requirements with which the industry is required to comply are, and remain, those which were intended by the legislature in the first instance and are practically manageable and sustainable in the conduct of its day-to-day operations.

# East Coast Radio's Winter Warmth Campaign receives donation from Sibaya

East Coast Radio's Winter Warmth Campaign received a cheque from Sibaya Casino & Entertainment Kingdom for R20 000.00.

Sibaya Casino realises that many South Africans find themselves destitute with no other alternative than to bravely face the bitter cold outside and so as a result of this money, 571 blankets can be distributed to help keep people warm this winter.



*L-F Natasha Close (Sibaya CSI Member) Jimmy Stewart (Sibaya CSI Member) Neville Pillay (East Coast radio DJ) and Thivashnie Reddy (Sibaya CSI)*



*Sibaya Casino CSI - Waterloo U17 Team Soccer Kit Handover*

In June Sibaya Casino donated a complete soccer kit to Waterloo's talented U-17 soccer team. The kit included brand new boots, a complete trendy blue and white soccer outfit, socks, gloves, practice gear, sports bags and soccer balls.

This Waterloo U-17 team assured us that their new kit will bring them luck when they compete on 25 June 2011 in a local soccer tournament held in Waterloo.



# Sibaya Celebrates World Environmental Day

**On Sunday 5 June 2011, the world celebrated World Environmental Day 2011 and the chosen theme for this year is Forests: Nature at your Service.**

As a part of Sibaya Casino and Entertainment Kingdom's commitment to the environment and assisting underprivileged schools and communities, twelve trees were delivered to Waterloo Primary School on Friday 3 June 2011, just inland from Sibaya Casino.

Waterloo is a vibrant growing community with low-income housing and these twelve trees will most definitely contribute to happy memories in the future.



*Paula Bell (Sibaya Casino Training Manager) and Solomon Khumalo (Health Safety Officer)*



*Mrs S Muthan Mr D Dube (Waterloo Primary School Principal) Mrs T A Ngidi Mr S Pillay Mrs N Ngcobo Mr S Khumalo (Sibaya Casino)*