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## MORE QUESTIONS THAN ANSWERS:

### Proposed withholding tax on gambling winnings

“Government proposes 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. Similar gambling taxes exist in India, the Netherlands and the United States.”

There can be little doubt that the proposed new withholding tax will pose a significant further challenge to licensed casino operations which have been fighting to hold their own in a depressed economic climate marked by a decrease in entertainment and leisure spend. In announcing the intention of the government to introduce a withholding tax, the Minister of Finance remarked that one of the objectives which it was hoped would be achieved, was to contribute towards curbing excessive gambling in South Africa. Whether the introduction of a withholding tax on gambling winnings is in any way capable of meeting this objective is doubtful, and remains to be seen.

The absence of any specific information regarding the manner in which the proposed tax will be administered and enforced, and what role, if any, licensed gambling operators will be expected to play in terms of record keeping and/or reporting and/or themselves potentially collecting these taxes up-front from patrons on behalf of the government, compounds the difficulties inherent in projecting its impact.

While government has pointed to the fact that similar taxes exist in other countries, this in itself does not dispose of the questions

which will arise in the South African context. Certain questions have already been publicly aired, such as the extent to which it will be recognised that winnings are, in a significant percentage of cases, offset by past or future losses. Rendering a withholding tax dispensation which does not recognise this will be unduly punitive. Will the collective impact of winnings and losses be taken into account in levying the tax? Or will once-off winning amounts above R25 000 automatically attract the taxes?

It is instructive to examine how the countries referred to by the Minister have approached the issue. In India, for example, lotteries are conducted and regulated by the governments of the individual states, guided by terms and conditions stipulated by the national government. Income won by players on a lottery, or other activities of a gambling or betting nature such as winnings on horseracing, attract income tax payable at a rate of 30%.

Section 194B of the Indian Income Tax Act provides that *“the person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle in an amount exceeding ten thousand rupees shall, at the time of payment thereof,*

*deduct income-tax thereon at the rates in force”*.

It is interesting to note how the Indian model operates. The State governments administer the registration of lottery outlets. Lottery tickets are sold by organising agents appointed by the relevant State government. The State government itself is responsible for paying prize money to winners, and deducting the relevant tax at source in cases where they exceed ten thousand rupees. In addition, the State government is responsible for making payments to the organising agents in relation to prize winning tickets which are either unsold or remain unclaimed. This model is materially dissimilar to the South African lottery regulatory framework, in terms of which the lottery operator conducts the lottery under authority of a licence for its own account, and itself makes payment of winnings. Accordingly, although there is a withholding tax payable on lottery winnings in excess of Rs 10,000 in India, the collection of these taxes is easily accomplished as it is directly administered by the state government itself, without recourse to the holder of a licence, and without any disclosure being required of the taxpayer concerned.

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Source: extract from press release issued by CASA 3 March

# TAX ON GAMBLING WINNINGS WILL LEAD TO LOWER TAX INCOME, JOB LOSSES

**The Casino Association of South Africa (CASA) has expressed its dismay at the proposed 15% withholding tax on gambling winnings of R25 000 and more which was announced in Finance Minister Pravin Gordhan's budget speech on 23 February, saying the proposed tax will have a negative impact on the industry.**

"This proposal will lead to lower turnover, reduced tax income for the government and provinces, and significant job losses," said Derek Auret, CASA chief executive.

"Notwithstanding the fact that the casino industry is already heavily taxed, contributing R4 billion in taxes during 2010, the fact that the announcement was made without any form of consultation with the gambling industry is extremely frustrating," says Derek Auret. "Moreover, other than an indication of the date on which the envisaged tax regime will commence, we have received no detail of how the proposed tax will be collected, what periods are to apply for its calculation, or whether losses should be off-set against winnings and numerous other detailed matters that are of importance to the industry."

According to Auret, CASA wrote a letter to Minister Gordhan following the announcement in his 2010 budget speech that some form of tax was being considered for gambling winnings.

"We expressed our concern at this possibility and requested an opportunity to engage with the Minister, but unfortunately no response to this request was received," Auret said. "The announcement in the budget speech on 23 February 2011 is the first that the industry has heard in this regard since the initial announcement some 12 months ago.



"Since this matter represents a serious challenge to the operations of what has up to now been a stable and, certainly for the government, lucrative revenue generator, we have sent another letter to the minister, expressing our belief that it is of the utmost importance that we get the opportunity to meet with him in order to find a mutually beneficial way forward," Auret said.

CASA's membership includes Tsogo Sun, Sun International, Peermont and London Clubs International, who together operate

35 of South Africa's 37 casinos. The combined investment of these companies in the country is in excess of some R17 billion, and together they employ upwards of 50 000 people. In addition, these casinos generated revenue in excess of R13.5 billion out of a total of R16.2 billion for all forms of gambling during 2010.

"This turnover already represents significant tax generation, especially for the provinces where casino taxes and levies in most cases represent the largest percentage of own-revenue," Auret said. "In fact, an analysis of the value added statement of the casino industry clearly indicates that the government is the largest beneficiary in this regard, and that for the 2010 financial year some 37.14% of income from the industry accrued to it. By all accounts these figures reflect a significant economic sector in South Africa.

"There is little doubt that the imposition of the proposed tax will have an overall negative impact on casino turnover and thus on the tax payable to provinces, as well as on the sustainability of the significant number of jobs that the industry currently maintains. While we await the Minister's response to our letter, we are preparing to participate in all proceedings where it is possible to do so. When this matter comes before Parliament we shall deal with the implications of this decision," Derek Auret said.

In the Netherlands, there is a tax of 29% recoverable from any person who has won an amount in excess of €454 in a game of chance, including property or goods with a market value in excess of the stipulated threshold. Such taxes are however not payable if the amount spent exceeds the prize money. The lottery operator itself pays the net prize, having deducted the withholding tax, which it then pays over to the government.

It is important to note that the operational landscape in the Netherlands differs substantially from that in South Africa.

Casino games are primarily offered by the State-controlled Casino Holland, and are therefore relatively monopolised, while in respect of other games of chance a State-sponsored duopoly is in place. The National Sports Totalisator Foundation ("De Lotto"), a non-profit-making private law entity controlled by the State, holds an exclusive licence to organise sports-related prize competitions, lotteries and number games, while Scientific Games Racing BV holds the monopoly on betting on horseracing. This oligopolistic scenario, with its high level of State involvement and control, creates an enabling environment for the imposition and administration of withholding taxes in respect of games of chance.

In the United States, the third country the Minister referred to in support of the imposition of the tax, a number of factors play a role in determining the amount of withholding taxes payable by recreational gamblers. These include the type of gambling engaged in, the amount won, and the ratio of the winnings to the amount staked. A licensed operator effecting payment of winnings to a recreational gambler who has won \$600 or more at a race track, \$1200 on bingo or a slot machine game, or \$1500 at keno, must get the winner's Social Security Number and provide information concerning the amount won to the Internal Revenue Service ("IRS"). In most cases, the entity making the payment will also withhold federal taxes at a rate of 25%, while providing the winner with a Form W-2G, reflecting the amount of the winnings, as well as the taxes collected in respect thereof.

Amounts won which are less than the specified threshold amounts, remain classed as taxable income for the gambler, irrespective of the fact that it is unreported.

These must be reported to the IRS in the ordinary manner, together with the cash value of any prizes won by the taxpayer.

However, gambling losses sustained by the taxpayer may be itemised as deductions, provided that they exceed the standard deduction amount of \$5700, do not exceed the total amount paid out in winnings to the taxpayer, and are appropriately substantiated by supporting documentation. In addition, unlike certain other claimable deductions in the US, gambling losses are not subject to a minimum limit. Accordingly, there is a significant measure of relief extended to taxpayers in recognition of the fact that gambling winnings are usually counterbalanced by prior or subsequent gambling losses. However, in the South African context, it is doubtful that this relief will be available to gamblers. *TimesLive* recently reported that "while betting losses can be claimed against the tax on winnings in some US states, Treasury official Cecil Morden told the Sunday Times, "I don't think we want to go that way."

If South Africa is not to "go that way", the question which must arise is which way it will go. If the implication is that gambling losses will not be taken into account and cannot be deducted from taxable income even though they can be satisfactorily proven to have been incurred, the impact on all sectors of the industry is likely to be markedly negative. As various industry representatives have already pointed out, the taxes payable in respect of gambling transactions are already substantial, with

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☐ CORRECTED

PAYER'S name  Street address  City, state, and ZIP code  Federal identification number      Telephone number	1 Gross winnings	2 Federal income tax withheld
	3 Type of wager	4 Date won
	5 Transaction	6 Race
	7 Winnings from identical wagers	8 Cashier
WINNER'S name  Street address (including apt. no.)  City, state, and ZIP code	9 Winner's taxpayer identification no.	10 Window
	11 First I.D.	12 Second I.D.
	13 State/Payer's state identification no.	14 State income tax withheld
Under penalties of perjury, I declare that, to the best of my knowledge and belief, the name, address, and taxpayer identification number that I have furnished correctly identify me as the recipient of this payment and any payments from identical wagers, and that no other person is entitled to any part of these payments.		
Signature ▶		Date ▶

OMB No. 1545-0238

2011

Form W-2G

Certain Gambling Winnings

For Privacy Act and Paperwork Reduction Act Notice, see the 2011 General Instructions for Certain Information Returns.

File with Form 1096.

Copy A

For Internal Revenue Service Center

Form W-2G

Cat. No. 10138V

Department of the Treasury - Internal Revenue Service

casinos, for example, currently passing on 37% of the revenues generated by their licensed activities to government. In the horseracing betting industry, the winnings of patrons are already subject to a withholding tax. In general, it can be expected that the imposition of an additional withholding tax in an already strained economic climate will deter a significant proportion of the public from participating in gambling in South Africa, and encourage customers to seek out more tax-friendly offshore gambling opportunities. This has been demonstrated in sports betting, which, having previously been subject to a withholding tax in South Africa, was recently zero-rated on a trial basis to enable local licensed bookmakers to address, and hopefully to reverse, customer migration to person-to-person betting exchanges. These carry no betting taxes for the winning bettor and will allow licensed South African bookmakers to compete with these entities on even terms.

**Faced with the prospect of a significant tax on winnings above a certain (and not unduly high) threshold, the public can be expected to vote with its feet.**

The losses in revenue (and the provincial gambling taxes payable thereon) may indeed significantly outweigh any gains to government as a result of the withholding tax.

In addition, a number of questions remain as to how and when such a tax will be payable in day-to-day operations. What will be classified as a "win" for the purposes of this tax? This is borne out by the example of a patron playing at a high stakes gambling table in a casino, who, on a given succession of hands:

- (i) loses R20 000,
- (ii) then wins R10 000,
- (iii) then loses R10 000,
- (iv) then wins R10 000,
- (v) then loses R15 000,
- (vi) then wins R10 000.

In this scenario, how much, if anything, has the patron "won" for the purposes of the proposed tax? Will he be regarded as having won R30 000, or as having lost an effective amount of R15 000? Will this effective "loss" be of no consequence?

**At what point should the extent of the patron's "winnings" be determined, given the continuous and ongoing nature of play at a gambling table?**

Will only once-off payments in excess of R25 000 qualify for the imposition of the tax, and, if this is the case, at what point is the patron regarded as having won the relevant amount: when the chips in that amount are handed to the player, or when those chips are physically cashed in? What of the patron who, in a single transaction at a gambling table, stakes R20 000, but wins R26 000? What is the quantum of the win in such a case? Does the amount staked bear no relevance whatsoever in determining the amount won?

Will the licence holder be expected to recover the withholding tax from the patron, and if so, at what stage must it do so? Must play be interrupted in order to recover the tax from the player, and if so, in what manner can this be done without materially disrupting licensed operations on a regular basis? Must documentation be completed, recording the withholding transaction, and if so, by whom and in what manner, given the live casino environment, the number of patrons *vis-a-vis* the number of casino personnel, and the thousands of transactions which take place at licensed casinos per minute? The answers to these questions are certainly far from apparent, and will be of crucial significance in gauging the full impact of the proposed dispensation.

What is apparent, however, is that the countries quoted by the Minister as being proponents of a this type of taxation, display operational or other features which bear no

meaningful relationship to the environment in which the industry operates in this country. In India and the Netherlands, the high level of State involvement and control over gambling activities significantly simplifies the collection of a withholding tax, while in the United States, although a withholding tax is collected, this is offset by the ability of the taxpayer to claim deductions in respect of amounts lost in gambling. In addition, in the Netherlands, the withholding tax is not payable if the amount wagered exceeds the amount won. Since in South Africa the State is prohibited by law from holding an interest in an activity which it is charged to regulate, and since it appears that gambling losses will not be recognised as offsetting gambling winnings for the purpose of the tax, there is no basis for comparison between the operational and policy conditions in these countries and those in force in South Africa for the purpose of implementing such a tax. In fact, such a comparison reveals only enormous disparities, and highlights the reasons why a tax of this nature would be inappropriate in the South African context.

**In the final analysis, there certainly are many more questions than answers.**

**Clear answers are needed, and as soon as possible,**

**in order to enable meaningful interaction with government before policy decisions are made to the detriment of all gambling-related sectors in the country, and the economic interests of the country as a whole.**



# R6-M CONTRIBUTION TO CORNUBIA HEALTHCARE FACILITY BY AFRISUN KZN

**An agreement that will see the Afrisun KZN Community Development Trust and Sibaya Casino & Entertainment Kingdom provide R6-million towards the establishment of a health care facility in Cornubia was signed at the Sibaya Casino.**



The healthcare facility will be a core feature in the giant Cornubia Development project outside Umhlanga that will eventually house some 200,000 people in 30,000 homes. When completed, the R20-billion project will incorporate low income and middle-income housing, schools, businesses, clinics and other infrastructure aimed at delivering primary and secondary economic opportunities.

At the signing ceremony today, the KwaZulu-Natal Health Department was represented by the District Manager for Health, Miss Sybongile Shezi and Afrisun KZN (Pty) Limited, by its chairman, Vivian Reddy. Several other senior officials also attended, including eThekweni Metro Deputy Mayor Logie Naidoo.

According to Reddy, Sibaya Casino and Sun International have a long history of investing in the community that goes beyond legal and operational requirements.

"Although our operating licence requires that we allocate 1.5% of our attributable earnings to grants and donations to beneficiaries through a Corporate Social Investment (CSI) Fund, Sibaya's mission statement from the outset stated that we will share our successes with the community," Reddy said. "Sibaya currently scores the maximum 5 points in the B-BBEE scorecard for Social Economic Development (SED) through its CSI initiatives.

"Sibaya's management team has been particularly successful in applying its SED

policy, which aims to enable sustainable access to the economy by beneficiaries in the surrounding communities through CSI projects targeting education, community programmes, job creation and health and welfare.

"Prior to today's announcement, Sibaya and the Trust have invested nearly R13.4-million on CSI projects in the area over the past ten years, comfortably exceeding its licence requirements. Of this R5.7-million was spent on healthcare projects, R5.7-million on education and R1.8-million on sports, arts and culture."

Work on the first phase of the Cornubia project, which includes 5 000 housing units, is scheduled to start this year.

# Launch of Sibaya - Cornubia Health Care Project

**Afrisun and Sibaya are enormously proud to be associated with the Cornubia Health Care Project and have had no hesitation in agreeing to contribute R6 million towards the completion of this very important and necessary facility.**

It is now six years since the eThekweni Municipality first mooted Cornubia as an integrated, mixed-use development, destined to become the eThekweni municipality's flagship housing project. Ultimately, the entire Cornubia project will accommodate almost 200 000 people, at an estimated cost of R24 billion. Not only will Cornubia go a long way towards reducing the municipality's formidable housing backlog, but it will incorporate a range of commercial sites, schools, clinics and other social facilities, aimed at delivering economic and employment opportunities to those who will eventually call it home.

Spread over 1 200 hectares, the planning of Cornubia is based on the principles of sustainable development with higher densities, an emphasis on public transport, extensive open spaces and the opportunity to live, work, shop and play in a precinct that is highly accessible to major centres of Durban and beyond.

Cornubia thus offers a variety of exciting opportunities for bodies such as the Afrisun KZN Community Development Trust and the Sibaya Casino Corporate Social Investment Fund, which exist for the sole purpose of contributing to the social and economic upliftment of communities among whom they operate and conduct their business.

The Afrisun KZN Community Development Trust was established in 1998 to fund precisely such community development projects, particularly on the North Coast.

The Development Trust has a 9.3% stake in Afrisun KZN, and has contributed

R2.9 million to community projects since its inception.

When Sibaya was extended last year, at a cost of R41 million, we were very happy to accept, as a further licence condition, that we should spend R6 million on CSI initiatives. After consultation with the Gambling Board, the Department of Health and the eThekweni municipality, we are delighted to have entered into an agreement that will see the Afrisun KZN Community Development Trust and Sibaya Casino & Entertainment Kingdom contribute this handsome sum towards the establishment of a much-needed health care facility.

Our record over the past decade demonstrates that we have met – and in most cases exceeded – the requirements and conditions of our casino licence, and will show the very considerable impact which Sibaya's operations have had on the economies and communities in we operate.

During the almost four years of its operation as a temporary facility, the Sugarmill Casino invested over R680 000 in CSI. Since the opening of Sibaya in late 2004, the company has invested a further R9.7 million in community projects. The greatest part of that investment has been in the fields of education and health, predominantly in our neighboring areas of KwaMashu, Phoenix and Tongaat. Sibaya's expenditure on CSI has seen R5.7 million allocated to health care projects and a similar amount to education projects.

The total Trust spend of R2.9 million together with the Afrisun CSI spend of R10.4 million

is in addition to the R6 million spend which has been committed to the Cornubia Project.

This is not the first health project to have benefitted from Afrisun's various CSI programmes. Sibaya, for example, contributed R2.1 million for the construction of the Mahatma Ghandi Crisis Centre in Phoenix, where victims of crime, rape and other abuse are able to access support, counselling and treatment.

Our contribution to this project thus represents a very considerable portion of our CSI spend over recent years and is certainly one of the largest private-sector donations to community services ever made in KwaZulu-Natal.

It also represents further fulfillment of Sibaya's mission statement, which states that "we will share our successes with the community".

The money that has been handed over today is also an indication of our confidence in eThekweni's demonstrated ability to operate the Cornubia clinic efficiently and effectively, as part of its district health service. It is a service which already manages 59 of the municipality's 102 fixed clinics, providing a comprehensive range of primary health care services. In addition, it provides reduced-hours services at a further 23 health posts and one-a-week services at 30 mobile clinic sites.

More than 9,000 visits are paid to Durban's clinics on an average day – which provides an indication of how great is the need for facilities such as this one.



We make donations such as this because we believe that business is about so much more than the balance sheet. It was for that reason that Sun International was one of the first companies in South Africa to make a strong commitment to corporate social responsibility and it remains to this day one of the pillars on which the company's philosophy is founded. And it explains why, in order to make a meaningful and measurable contribution to the society within which Sun International operates, that a significant percentage of our after-tax profits goes towards social investment programmes and enterprise development projects. In the last financial year, the Group's total corporate social investment spend was R20 million.

As the record demonstrates, Sibaya is committed to assisting the KwaZulu-Natal economy by the enthusiastic implementation of our transformation objectives and targets. Increasingly, we are placing the levers of economic influence firmly in the hands of those who were denied opportunities in the past. We are fully committed to achieving

transformation in this province's leisure and tourism industry through recruiting, training, procurement, outsourcing, and other black economic empowerment measures which are constantly monitored by the authorities.

Sibaya currently scores the maximum five points in the B-BBEE scorecard for social economic development through its CSI initiatives.

We at Afrisun KZN need to be seen to be serving the public interest, insistent in our conviction that we are accountable, not only to our shareholders, but to the broader South African society in which we operate. At Sibaya, we have insisted on strict adherence to the responsible gambling imperatives of our casino licence, and have worked hard to develop and sustain a reputation as a safe, reputable and honest venue for KwaZulu-Natal's gambling public.

In pursuit of our obligations to society and community, Sibaya will continue to contribute tangibly to public benefit through its public infrastructure and corporate social

investment projects, and to adhere to the most exacting standards in terms of industry probity and customer protection.

The Cornubia Health Care Project is a particularly valued example of that commitment, and I therefore regarded it as a great honour to be present at the historic signing ceremony. It is the culmination of very constructive negotiations between ourselves and the eThekweni municipality, and represents a public-private partnership which will be essential to the success of the Cornubia development as a whole.

Work on the first phase of the Cornubia project, which includes 5 000 housing units, is scheduled to start within the next few weeks. We shall be watching with keen interest as development proceeds over the years to come.

In handing over our cheque for R6 million, I can only say that we are proud and privileged to be a partner in this great enterprise and wish it every success.



# The Centre for the Rehabilitation of Wildlife (C.R.O.W)

A non-profit organization, established in 1980, C.R.O.W focuses on the welfare of indigenous wildlife and is committed to the rescue, rehabilitation and release of orphaned and injured wildlife. In order to rehabilitate and prepare animals to be introduced back into their natural environment, is a very specialised and dedicated process and should be admired and supported by all children and adults.

C.R.O.W runs a series of unique educational campaigns to install caring, compassion, love and respect for all forms of life, in the hearts of children. These projects are included in a number of school outreach programmes.

**In an ongoing drive to assist local charities, the staff from Sibaya Casino & Entertainment Kingdom recently handed over a cheque for R4 456.11 to The Centre for the Rehabilitation of Wildlife (C.R.O.W).**

The black springbok in the picture was found abandoned in the veld of the Eastern Cape and is probably one of the rarest animals to have been treated at C.R.O.W.

This latest donation from Sibaya Casino & Entertainment Kingdom arises out of the innovative scheme implemented by the casino in 2008, whereby day cardholders

visiting the casino are encouraged to return their cards to the casino. These cards can then be reused and any money left on the cards is then tallied up by Sibaya's auditors and donated to the casino's chosen charity. To date, Sibaya has donated a total of R84 494.08 through this scheme.

