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The National Treasury
40 Church Square
Old Reserve Bank Building
Pretoria
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By email: gamblingtax@treasury.gov.za

Dear National Treasury

SAICA COMMENTS ON THE NATIONAL ONLINE GAMBLING TAX DISCUSSION PAPER

The South African Institute of Chartered Accountants (SAICA) welcomes the opportunity to make a submission to the National Treasury ('NT') on the National Online Gambling Tax Discussion Paper.

We once again thank National Treasury for the ongoing opportunity to provide constructive comments in this regard.

SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges and should you wish to clarify any of the above matters please do not hesitate to contact us.

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A REGULATORY FRAMEWORK THAT IS FIT-FOR-PURPOSE

1. Gambling in various forms in South Africa is a regulated activity and in a particular form such as interactive or online gambling, excluding sports betting, it is an illegal activity¹.
2. Historically, gambling was a physical presence activity located and limited by regulation to a particular geographic area. Tax policy correctly followed this regulatory regime and the regulation and tax was therefore imposed at provincial level.
3. We submit that tax is in principle the consequence of an activity and tax policy should follow not lead legally regulatory activities in the economy.
4. In terms of policy, South Africa has adopted but not implemented legislation to regulate and legalise interactive gambling in its totality².
5. In addition, as set out in the discussion document, gambling has on large scale joined the digital economy which does not apply to or respect borders or demarcated geographical boundaries, such as used in our current gambling regulatory and tax regime.
6. To overcome this hurdle, the discussion paper proposes the new tax as a tax competency of the national government, on the basis that there is a legal framework for this, which does not impede on the rights of provinces to raise tax revenue in terms of the Constitution. However, as the proposed tax is being implemented in a policy and legal regulatory vacuum at a national level, formal regulation of gambling activities remains at provincial level with informal coordination required at national level.
7. Unfortunately, the national regulatory framework for gambling, underpinned by the National Gambling Act, 2004 (NGA), is over 20 years old and is considered to be outdated in its attempt to address the current gambling landscape. Efforts to update the legislation have stalled, even after the introduction of the National Gambling Amendment Act, 2008, which will only come into effect on a date fixed by the President by proclamation in the Government Gazette.
8. It has been 17 years since the introduction of this Amendment Act, and it is still not in effect. The discussion paper correctly points out that the lack of development of appropriate legislation has created regulatory gaps.
9. In South Africa, our courts have confirmed the principle that even illegal contracts and activities can have fiscal consequences³.
10. However, we submit that this is a far cry from creating specific tax policy and legislation for taxing an illegal activity e.g. just like creating a direct tax on the sale of illegal narcotics rather than indirectly taxing these activities after initial enforcement of the law through the relevant law enforcement agencies.
11. By not seeking to first regulate the activity, which has become a conflated activity in many instances with legal gambling⁴, it creates fiscal policy that would have a primary law enforcement objective, creating other challenges as discussed below.

¹ [Is-online-gambling-legal-in-South-Africa.pdf](#)

² National Gambling Amendment Act, 2008 (Act no. 10 of 2008)

³ [MP Finance Group CC \(in liquidation\) v Commissioner for South African Revenue Service \(41/06\) \[2007\] ZASCA 71; 2007 \(5\) SA 521 \(SCA\); 69 SATC 141 \(31 May 2007\)](#)

⁴ [Portapa \(Pty\) Limited t/a Supabets and Others v Casino Association of South Africa and Another \(182/2024; 215/2024\) \[2025\] ZASCA 158; \[2025\] 4 All SA 534 \(SCA\) \(21 October 2025\)](#)

12. Submission: We submit that Government should first implement the current legislation and probably update the relevant gambling legislation further (be it via amendments to the NGA or a separate Act for online gambling) before introducing a National Online Gambling Tax. Such a tax should only supplement a clear, underlying regulatory framework aimed at limiting online gambling in general, if this is indeed the government policy goal. The tax should not serve as the sole instrument to discourage such gambling.

IS THIS PROPOSAL A BEHAVIOURAL TAX?

13. The discussion paper correctly notes the negative societal effects of pathological and problem gambling, which are classified as a mental disorder and addiction.
14. However, the paper is ambiguous on the question of whether it is government policy to reduce online gambling overall and states:

“From a public policy perspective, there should be no problem with recreational gamblers as they do not place any external costs on society. However, to the extent that problem and pathological gambling impose a cost on society (externalities), it is in the public interest that such behaviour be regulated or reduced.” (own emphasis)
15. Although government seems not to have a problem with gambling in general, its goal of seeking to reduce pathological/problem gambling will likely reduce gambling overall. If this is indeed a government policy goal, we submit that the use of tax policy that does not directly engage the behaviour of the gambler (i.e. it must be seen and directly felt by the gambler) to achieve this objective is inappropriate and unlikely to succeed.
16. The discussion paper asserts that the objective of the proposed Online Gambling Tax is not to raise further revenue, but to discourage problem and pathological gambling and their ill effects i.e. a behavioural changing tax.
17. However, National Treasury proposes to levy the tax on operators and not gamblers even if it’s the latter’s behaviour it seeks to change.
18. We note that Treasury correctly in 2008, as relates proposing an actual behavioural tax, proposed to tax the gambler but changed the proposal after consultation to tax the operator due to “operational challenges and complexity”.
19. However, this change also fundamentally impacts the nature and effectiveness of what was supposed to be a behavioural tax to merely being a normal tax instrument.
20. In principle there seems to be no objection to taxing gambling activities as just a normal economic activity. If however changing behaviour is the “sole or main” intended purpose and not revenue (which also means this will not be a section 77 Money Bill), then this fundamental principle should be applied to any tax proposed or if it is not possible, reconsideration of the tax in totality as an instrument to change the behaviour vs other legal instruments.
21. For example, Government was able to significantly reduce smoking during the 2000s primarily through enacting laws that:
 - a. banned smoking in most public spaces, but allowed it in partially enclosed places and,
 - b. banned the advertising of tobacco products.
22. This is supplemented by the excise duty on cigarettes, though this addition, although very punitive, arguably has driven the illegal trade as well without impacting the prevalence of smoking due to it be a sin tax on an addiction, (not just an unwanted behaviour) and the smoker does not see the tax, they only “feel” it in the price. The latter arguably has little

impact when addressing addictions, as addictions are much more price inelastic than normal economic activity, though may drive addiction preference (e.g. smoke less expensive brand of cigarette)⁵.

It is highly unlikely that imposing the excise duty by itself would have significantly reduced smoking without an overall regulatory framework which explicitly sought to reduce smoking.

23. **Submission:** Behavioural taxes are most effective when they are visible to the consumer at the point of decision (for example, plastic bag levies or explicit excise duties). It is therefore submitted that imposing the tax on the operators will not give would-be gamblers the necessary direct price deterrent signal required to discourage them from the activity. Indirect impact through just higher prices or lower payouts would be little or zero, given the intended behaviour of the gambler to be influenced is partly price inelastic.
24. However, fiscal policy and taxing economic activity should not be constrained by good intentions and if this is a prevalent economic activity Treasury believes should be taxed under a revised regime, it should be done under normal fiscal policy considerations, not under the scope of “behavioural taxes”.

UNDUE BURDEN PLACED ON SARS

25. SARS’ main function is the efficient and effective collection of revenue.
26. In seeking to achieve this it has enforcement functions related to “tax acts” and revenue collection.
27. It however does not have a primary law enforcement objective.
28. As online gambling is an illegal activity, this begs the question as to the SARS’ role in both extracting taxes from such activities and its legal duty to both report to others (e.g. SARB, FIC etc) and directly enforce the law against illegal online gambling.
29. The fact that the illegal activity is an unregulated digital economic activity and is also subject to mixture with legal activities, further complicates this task, as seen in current challenges with the legal and illegal sale of cigarettes and conflation of supply chains.
30. The National Gambling Board (‘NGB’) has stated that online betting on the outcome of sports events and horse racing is legitimate, while all other forms of online interactive gambling are illegal.
31. However, the case of *Portapa (Pty) Limited t/a Supabets and Others v Casino Association of South Africa and Another [2025] ZASCA 158 (21 October 2025)* showed a bookmaker/operator which had attempted to classify a game of roulette as a sporting event in an attempt to remain compliant with the Gauteng Gambling Act, which permits online gambling on a sporting event, but expressly forbids offering fixed odds bets on non-sporting events.
32. It is likely that there are a number of operators that have sought to circumvent the online betting restrictions in this manner, and that the revenue currently being earned by a number of bookmakers likely arises from both legal and illegal online betting. The discussion paper seems to admit this, stating that “...where the local industry players are”

⁵ [The Economic Analysis of Substance Use and Abuse: An Integration of Econometric and Behavioral Economic Research; The price elasticity of demand for illicit drugs: A systematic review](#)

involved in interactive gambling, which is still illegal, they will also be subject to the proposed tax..." (own emphasis)

33. National Treasury concedes that it seems traditional location-based casinos etc have been unable to compete with online gambling, which dominates the gambling industry. This create an incentive for traditional location-based casinos to enter the online gambling space. Sports betting, as the only allowable form of online gambling, "muddies the waters" as it provides opportunity to clothe illegal gambling activities as legal online sports betting.
34. This significantly increases SARS' enforcement obligations to track illegal online activities, evaluate between different conflated activities and in addition, meet its legal duty to report and address criminal activity to enforcement agencies. SARS would also have to deal with jurisdictional issues as it would also have to determine which transactions fall under the auspices of the provincial government vs national government as SARS only has authority as relates the latter.
35. This can all be avoided by the implementation of a proper legal and regulatory framework and legislation as relates to these online gambling activities and the proposed multi-tiered and stratified by type gambling tax regime.

36. Submission: Taxing this blended revenue seems to implicitly legitimise an illegal activity and undermines the moral and legal stance that such activities are prohibited. It furthermore puts SARS in the position of primary enforcer of gambling legality instead of a mere tax collector.

37. In the course of assessing the online gambling tax payable by the operators, SARS would have to audit complex, high volume online betting systems with thousands of events and transactions and distinguish between legal sports betting and illegal interactive gambling.

38. The relevant legislation would then compel it to report the illegal activity to law enforcement, similar to the tobacco and gold industries, where taxing a partially illegal industry has increased enforcement burdens on SARS and failed to eliminate illegality.

39. We submit this burden falls outside of SARS' core mandate and that the additional resources required to audit and enforce this additional tax against a partly legal and partly illegal online gambling industry should be deferred until such online industry becomes fully regulated. This again does not detract from SARS currently seeking to tax online gambling activities where it falls within its current competencies such as VAT.

END.