

The role of government in the South African gambling industry: Regulator versus Stakeholder

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ABSTRACT

The role of government in the South African gambling industry: Regulator versus stakeholder

Additional tax on gambling winnings was announced by the Minister of Finance, Mr. Pravin Gordhan in the 2010 National Budget Speech. This additional tax was proposed to discourage excessive gambling in South Africa. In 2011, it was proposed that all winnings above R25 000 will be subject to a final 15 per cent withholding tax. Gambling plays a significant role in the South African economy and contributes to job creation, infrastructure investment and overall economic growth.

The Government faced negative comments from the gambling industry where the administrative challenges of implementing a withholding tax were emphasised. Challenges such as the difficulty in implementing, controlling and administering the proposed tax were mentioned.

The objective of the proposal was questioned because excessive gambling declined in South Africa during the last few years.

This led to the Government changing their proposed method in 2012 from a withholding tax at 15 per cent to a national gambling tax, based on gross gambling revenue, on a uniform provincial gambling tax base, which constitutes an additional 1% national levy.

This raised two main problem statements. The first is which role of government, regulator versus stakeholder, is taking precedence through the implementation of the proposals to levy additional taxes on gambling in South Africa? And the second, is this role (identified above) the correct role that government should play that best supports government's objective of curbing excessive gambling in South Africa and does it justify the need for an additional tax to be levied on South African gambling?

The two proposed methods were scrutinised to identify the ultimate role of the government. The fact that only the winnings will be subject to a withholding tax system did not contribute to a regulator role to decrease excessive gambling and thereby minimising negative externalities. Not all gamblers will be directly affected by this type of tax. The provincial tax base taxes all gambling activities, as all gamblers participating in gambling will be subject to the additional levy. The problem here is that the gambler will not be directly taxed and will then not be directly influenced to have any effect on their gambling behaviour.

The government also recognised that they want to decrease the negative externalities that are associated with excessive gambling. It would seem that the main objective should rather be to address the negative externalities rather than the excessive gambling. It is debatable whether an additional tax levied in any form other than a sin tax would achieve this goal and give the role of regulator precedence.

The role as stakeholder took precedence when the government decided to move to a provincial tax base. Research indicated that the main motivational factor behind the election was purely driven on how government would be successful in implementing an additional tax in the most administratively efficient and cost effective manner, while still benefiting from it through the collection of additional state revenue.

Keywords: Excessive gambling, externalities, gambling, government, government revenue, problem gambling, proposal, regulator, stakeholder, withholding tax

OPSOMMING

Die rol van die regering in die Suid-Afrikaanse dobbelindustrie: Reguleerder teenoor belanghebbende

In die 2010 Nasionale Begrotingstoespraak is addisionele belasting op dobbelprysgeld deur die Minister van Finansies, Pravin Gordhan aangekondig. Hierdie addisionele belasting is aangekondig om oormatige dobbel te ontmoedig. In 2011 is aangekondig dat alle dobbelprysgeld bo R25 000 onderhewig sal wees aan terughoudingsbelasting teen 15 persent. Dobbelspeel 'n belangrike rol in die Suid-Afrikaanse ekonomie en dra by tot werkskepping, belegging in infrastruktuur en ekonomiese groei.

Die regering het kritiek vanaf die dobbelindustrie ontvang waar uitgewys is dat die administrasie van 'n terughoudingsbelasting 'n struikelblok kan wees. Funksies soos implementering, beheer en die administrasie van die belasting is as struikelblokke aangedui.

Die doel van die voorstel is bevraagteken weens die feit dat oormatige dobbel in Suid-Afrika oor die afgelope paar jaar afgeneem het.

Dit het daartoe gelei dat die regering hul voorgestelde metode verander het vanaf 'n terughoudingsbelasting teen 15 persent na 'n nasionale dobbelbelasting gebaseer op bruto dobbelinkomste op 'n eenvormige provinsiale dobbelbelastingbasis, wat uit 'n een persent nasionale heffing bestaan.

Twee probleemstellings het as gevolg van dié belasting ontstaan. Die eerste hiervan was watter rol die regering speel, dié van reguleerder of dié van belanghebbende en watter een van hierdie twee rolle die regering aanneem deur die voorstel vir die implementering van die addisionele heffing op belasting in Suid-Afrika. Die tweede probleemstelling is of die rol wat die regering speel die korrekte rol sal wees om 'n effek te hê op oormatige dobbel en of dit dan die voorstel vir die addisionele belasting regverdig.

Die twee voorgestelde metodes is onder oorsig geneem om die uiteindelijke rol van die regering in die dobbelindustrie te bepaal. Die feit dat slegs die wengeld uit dobbelaktiwiteite aan die terughoudingsbelasting onderhewig sal wees, ondersteun nie die rol van die regering as 'n reguleerder nie. Dit beteken dat oormatige dobbel en negatiewe eksternaliteite nie verminder sal word nie. Alle dobbelaars sal nie direk deur die belasting beïnvloed word nie. Die provinsiale belastingbasis belas alle dobbelaktiwiteite. Alle persone wat aan dobbelaktiwiteite deelneem sal

aan die addisionele heffing onderhewig wees. Die probleem ontstaan egter dat die dobbelaar nie direk belas sal word nie en dus sal dit nie die dobbelgedrag direk beïnvloed nie.

Die regering het ook besef dat nie net die oormatige dobbel 'n probleem is nie, maar so ook die negatiewe eksternaliteite wat die gevolg van oormatige dobbel is. Dit wil voorkom asof dit eerder die hoofdoel moet wees om die negatiewe eksternaliteite aan te spreek. Dit is debatteerbaar of hierdie vorm van belasting, of enige ander vorm as 'n sondebelasting, sal bydra tot die doel wat die regering wil bereik en dan ook die rol van die regerings as reguleerder sal ondersteun.

Die rol as belanghebbende het meer gewig begin dra toe die regering besluit het om na 'n provinsiale belastingbasis te beweeg. Navorsing dui aan dat die keuse vir dié tipe belasting beïnvloed is deur die effektiwiteit van administrasie en koste bestuur. Die belasting wat die maklikste geïmplementeer kan word en steeds tot regeringinkomste kan bydra, is gekies.

Sleutelwoorde: Belanghebbende, dobbel, eksternaliteite, oormatige dobbel, probleem dobbel, regering, regeringsinkomste, terughoudingsbelasting, voorstel

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List of Abbreviations

FICA	-	Financial Intelligence Centre Act
GGR	-	Gross Gambling Revenue
LPM's	-	Limited Payout Machines
NGB	-	National Gambling Board
PAYE	-	Pay As You Earn
SARS	-	South African Revenue Service
US	-	United States
VAT	-	Value-Added Tax

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CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

1.1.1. THE HISTORY OF GAMBLING IN SOUTH AFRICA

Gambling is referred to as the act of staking money or some other item of value on the outcome of an event determined by chance (Blaszczynski, Sagris & Dickerson, 1999:4). Before South Africa became a democratic country in 1994, most gambling activities in the country were illegal (Gambling Act No. 51 of 1965), except for casinos in some of the semi-independent homelands, including Transkei, Bophuthatswana, Venda and Ciskei. The homelands had 17 casinos that had the right to perform gambling activities. As a result, South African gamblers either had to travel to other countries in Africa where gambling was legal, or had to partake in local, but illegal, gambling activities.

The Wiehahn Report, which was issued at the end of 1994, suggested that a revised gambling policy should be established to legalise gambling. It was submitted that, if gambling was not legalised, illegal gambling would have increased, creating an environment attracting externalities such as drug abuse, domestic violence, crime and gang-related activities (Collins, Stein, Pretorius, Sinclair, Ross, Barr, Hofmeyer, Sharp, Spurrett, Rouseau, Anslie, Dellis, Kincaid & Bak, 2011:722).

Since 1994, the scope of legal gambling activities in South Africa was extended from horse racing to include casinos, bingo, sports betting, the national lottery and limited pay-out machines (LPMs). The first casino license in South Africa was issued during the second half of 1997, after which a rapid growth was seen in the establishment of casinos between 1998 and 2000. The National Lottery was officially launched during March 2000 (Ligthelm & Jonkheid, 2009:1).

The contribution of the gambling industry to the South African economy is significant in respect of job creation, infrastructure investment and overall economic growth. Gross gaming revenues (GGR) have increased dramatically since the turn of the century and amounted to just under R17 billion (R18 billion including the national lottery) in 2010. In the casino industry alone, income taxes of roughly R4 billion were paid over to the South African

Revenue Service (SARS) during 2010 (CASA, 2011:2). It is clear that the gambling industry grew to be an important economic sector, which plays a prominent role in the South African economy.

1.1.2. THE GAMBLING TAX POSITION BEFORE PROPOSALS TO LEVY ADDITIONAL TAXES ON GAMBLING

In addition to the economic contribution that the gambling industry makes, it also contributes to government revenue through taxation. The gambling industry is subject to various forms of taxation at both national and provincial level. Contributions to the national fiscus are made by way of normal income tax levied on the profits of gambling operators, as well as VAT collected from gambling operators registered as VAT vendors. On a provincial level, levies are collected from gambling institutions through various provincial gambling boards situated across the nine provinces of South Africa.

The base for calculation, as well as the applicable rates for collection, differs depending on the type of gambling mode, which will be mentioned later in the study, but is the same for all the provinces. However, differences do exist between provinces in respect of licensing requirements, conditions of license, license durations, license processes as well as the interpretations of rules and standards governing each province (Standish, Boting & Swing, 2010).

For the gambler him-/herself, the tax position will depend on whether the gambler is classified as a professional gambler or not. A non-professional gambler is regarded as a person who participates in gambling activities as a pastime or for entertainment. Non-professional gamblers in South Africa currently find themselves in a neutral position for normal income tax purposes. The proceeds from gambling winnings are treated as amounts of a capital nature and do not form part of 'gross income' as defined in Section 1 of the Income Tax Act (58 of 1962) as amended (the Act). These taxpayers are also not allowed to deduct any expenditure incurred in respect of gambling activities as it is not incurred in the production of income. Furthermore, paragraph 60 of the Eighth Schedule to the Act determines that winnings from gambling, games or competitions, which are authorised by and conducted under the laws of South Africa (for example, the National Lottery) will also be exempt for capital gains tax purposes.

For professional gamblers, on the other hand, it was established in *Morrison v CIR 1950* that where gambling activities are undertaken in a scheme of profit making or to the extent that it becomes a business, the proceeds will be regarded as income in nature and will be included in 'gross income', constituting taxable receipts. Expenditure incurred in generating such winnings (not of a capital nature) will be allowed as a deduction against such winnings. However, any losses created (where deductions exceed income or winnings) will be 'ring-fenced' and may not be deducted from income not pertaining to such gambling (Section 20A(2)(b)(viii) of the Act).

1.1.3. PROPOSALS TO LEVY ADDITIONAL TAX ON GAMBLING

Despite all the taxes and levies that the South African gambling industry and its customers are already exposed to, the government made various proposals in order to levy additional tax on gambling in South Africa.

The Minister of Finance (the Minister), Mr Pravin Gordhan, announced during the National Budget Speech in 2010 that the taxation of gambling winnings would come under review in order to ensure the efficient tax collection and measures to be put in place to limit opportunities of unlicensed online gambling and money laundering (National Treasury, 2010:80).

The latter intentions of the Minister, which proposed that future changes are inevitable, were confirmed in his consecutive Budget Speech in 2011 when he stated the following:

"...last year we indicated that the taxation of gambling winnings would come under review. With effect from 1 April 2012, all winnings above R25 000, including pay-outs from the National Lottery, will be subject to a final 15 per cent withholding tax."

The Minister defended the introduction of the proposed withholding tax on gambling winnings by indicating that similar gambling taxes exist in India, the Netherlands and the United States. He also stated that the objective behind the need for the proposed gambling tax is an attempt to discourage excessive gambling in South Africa (National Treasury, 2011:71).

In 2012, it was proposed that a national gambling tax, based on gross gambling revenue, will be introduced from 1 April 2013. This tax will, on a uniform provincial gambling tax base, constitute an additional 1% national levy (National Treasury, 2011:71).

1.1.4. ROLE AND RESPONSIBILITY OF GOVERNMENT IN THE GAMBLING INDUSTRY

The National Gambling Board (NGB) was established in terms of the National Gambling Act (33 of 1996) replaced on 1 November 2004 by the National Gambling Act (7 of 2004). The National Gambling Act makes provision for the oversight of matters relating to casinos, gambling, betting and wagering and promotes uniform norms and standards in relation to gambling throughout South Africa. The NGB's primary focus is to act as regulator of the gambling industry in South Africa.

A regulator is defined as “a person or body that supervises a particular industry or business activity” (Oxford English Dictionary, 2012c). Within the context of this study, it means that the government is proposing to implement new legislation to regulate the social impact that gambling has on the South African community.

As this new proposed legislation would not only strive to regulate, but also generate additional state income, it seems as if government will also be taking on the role of stakeholder.

A stakeholder is defined as “a person with an interest or concern in something, more in terms of business” (Oxford English Dictionary, 2012b). Within the context of this study, it means that government is proposing the implementation of new legislation to ensure income through gambling tax as an income generating instrument. As a result, it seems as if government would be playing conflicting roles in the gambling industry.

1.2. PROBLEM STATEMENTS

The aim of this study is to explore the following two research questions:

- Which role of government, regulator versus stakeholder, is taking precedence through the implementation of the proposals to levy additional taxes on gambling in South Africa based on the fact that there was a shift from one proposal to another?

- Is this role (identified above) the correct role that government should assume which would:
 - best support government's objective of curbing excessive gambling in South Africa? and
 - justify the need for an additional tax to be levied on South African gambling?

1.3. LIMITATION OF SCOPE

This research study focuses purely on tax as an instrument used by government to either regulate gambling or to benefit from it. Other interventions and initiatives undertaken by government which could have an impact on gambling regulation, for example initiatives by the National Gambling Board, were not considered as part of this study.

1.4. RESEARCH OBJECTIVES

In order to answer to the problem statements the following research objectives were addressed:

- I. To define and state the characteristics of taxes (including sin taxes, withholding taxes and normal income tax as a government revenue instrument) that could be used to discourage unwanted behaviour.
- II. To determine the need for as well as the impact of the proposed taxes in curbing excessive gambling.
- III. To analyse the proposals made to levy additional taxes on gambling in South Africa and to compare and measure it against the taxes discussed under the first objective.
- IV. To determine the possible reasons behind the shift in the gambling tax proposals from a withholding tax to a tax levied on a national provincial tax base.
- V. To determine who will benefit most from the proposed method of levying an additional tax on gambling in South Africa.

1.5. RESEARCH METHODOLOGY

In order to achieve the research objectives, the research method followed in this study consists of a literature review conducted through an online search on various tax articles and opinions on the related topic. Current information released by the Department of National Treasury, income tax legislation (although limited), peer-reviewed articles, legal judgements, dissertations and media studies were utilised as part of the literature review.

Data was gathered and scrutinised in such a way that it contributes in concluding on the role of government, as either regulator or stakeholder, in the final chapter.

1.6. STRUCTURE OF THE STUDY

Chapter 2 considers the relevant literature on the meaning and existence of excessive gambling in South Africa as well as the associated externalities relating to it. This chapter further focuses on literature to define and state the characteristics of different types of taxes that could be applied by government as an instrument to change behaviour as well as successes reached through its application in the past. It also provides a brief overview on how the South African gambling industry is currently regulated and will address the research objectives in paragraph 1.3(I) and 1.3(II) on page 6.

The mechanisms of the two proposals to levy an additional tax on gambling are set out in Chapter 3. This chapter will critically analyse the functioning of each of the two proposals made by government, will highlight the benefits and weaknesses of each, investigate possible reasons for the shift from the one proposal to the other, and indicate who will benefit from these proposals. The proposals are also evaluated with reference to the different tax types that could be applied as an instrument to levy an additional tax on gambling in order to curb excessive gambling and its related externalities and will address the research objectives in paragraph 1.3(III) and 1.3(IV) on page 6.

Chapter 4 will conclude the study with a summary of the findings and conclusions reached with regard to the problem statement. Based on this conclusion reached, recommendations are also made as to the possible interventions that could be taken to support the role that government should play in the gambling industry and will address the research objectives in paragraph 1.3(V) on page 6.

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CHAPTER 2: LITERATURE REVIEW

2.1. INTRODUCTION

Different types of taxes could be applied by government in order to impose an additional tax on the gambling industry. The Minister indicated that the reason for the need to levy an additional tax on gambling is to curb excessive gambling (National Treasury, 2012:5). Therefore, the type of tax and the method in which it operates are crucial in order to be effective in changing unwanted behaviour and ultimately addressing the social problem of excessive gambling. Firstly, this chapter will critically analyse relevant literature on the meaning and existence of excessive gambling in South Africa, as well as the associated externalities relating to it. Secondly, it will focus on literature in order to define and state the characteristics of different types of taxes that could be applied by government as an instrument to address the problem of excessive gambling and will address the research objectives in paragraph 1.3(I) and 1.3(II) on page 6.

2.2. EXCESSIVE GAMBLING

2.2.1. THE MEANING OF EXCESSIVE GAMBLING

Blaszynski, Walker, Sagris and Dickerson (1999:6) define excessive gambling as “*a chronic failure to resist gambling impulses that result in disruption or damage to several areas of a person’s social, vocational, familial or financial functioning*”.

Excessive gambling occurs when a person spends more time and money than what he/she can afford on gambling. A person who spends too much time and money on gambling is also classified by the National Responsible Gambling Programme to be a ‘problem gambler’ (Ligthelm & Jonkheid, 2009:39). Gambling becomes problematic when it reaches the degree where it disrupts or damages family, personal or recreational pursuits (Orford, Sproston & Erens, 2003:41) and is characterised by having difficulty in limiting money and/or time spent on gambling, which leads to adverse consequences for the gambler, others, or for the community (Neal, Delfabbro & O’Neil, 2005: 125).

From the above literature, it is concluded that the term 'excessive gambling' used by the Minister of Finance also refers to 'problem gambling' as the problem that should be curbed and that 'excessive gambling' and 'problem gambling' have the same meaning.

2.2.2. IS EXCESSIVE GAMBLING REALLY A PROBLEM IN SOUTH AFRICA?

Gamblers living in different regions are influenced by different factors (Reith, 2006: 57), and in order to identify problem gamblers, there needs to be a focus on a person's dependence on gambling and gambling-related problems (Orford *et al.*, 2003:53). Literature shows that it is very difficult to determine the extent of problem gambling (Ligthelm & Jonkheid, 2009:39) due to the large number of variables that need to be considered in order to reflect all the dimensions of gambling to accurately identify problem gamblers.

Of the approximate 49 million people in South Africa, almost a third of these individuals (15 million) are dependent on social grants (Tyawa, 2012:94). This is an indication that there are vast numbers of poor people living in South Africa. Poor people are more likely to gamble than rich people (Blaszynski *et al.*, 1999:9). A study performed in South Africa found that the average gambler, earning an income of R2 500, spends 10 per cent of his/her income on gambling. The percentage that higher income earners spend on gambling was found to be the same. This indicates that lower income earners spend a higher proportion of their income on gambling than higher income earners do (Reith, 2006:59-60; Volberg, Gerstein, Christiansen & Baldrige, 2001:89-93). As problem gamblers are characterised by spending more than they can afford on gambling, it seems as if a large number of gambling participants constitute problem gamblers.

It is interesting to note that there seems to be a decline in problem gambling in South Africa. The National Responsible Gambling Programme conducted a study estimating problem gambling at 6.8 per cent of gambling participants in 2003, declining to 4.8 per cent in 2005. Collins *et al.* (2011:723) indicate that excessive gambling has further decreased from 3% in 2008 to 1% in 2011. Another report by Tyawa (2012:96) indicated that South Africa has a low percentage of problem gamblers and that the percentage of problem gamblers might even have decreased further up to 2012.

This declining effect could be due to an increased awareness of problem gambling in the country. The fact that South Africa has been affected by the spill-overs of a worldwide

economic recession since 2009 also could have contributed to the decline in overall gambling participation rates during recent years (Ligthelm & Jonkheid, 2009:30).

It is questionable as to why government would want to introduce an additional tax on gambling to curb excessive gambling, if this issue is already declining on its own without the intervention of an additional tax. It seems as if the problem that government would like to address is larger than just problem gamblers who gamble excessively, but extends to the social impact and cost that excessive gambling, together with its associated externalities, has on society.

2.2.3. EXTERNALITIES ASSOCIATED WITH EXCESSIVE GAMBLING

Externalities are defined by Walker and Barnett (1999:189) “as the action taken by one person that will impact the welfare of another who has no control over the person taking the actions”. The impact on the other person could either be positive or negative. Externalities are regarded as positive when the actions of a person will result in a benefit to another person without imposing any additional cost on the latter. On the other hand, externalities will be seen as negative when those actions impose a cost on the other party for which he or she is not compensated (Black, Calitz & Steenekamp, 2008).

It is important to note that not all externalities result in a social cost. Externalities could either be classified as technological or pecuniary (Walker & Barnett, 1999:190).

Technological externalities affect the utility, production and non-monetary functions. Where more resources are required to produce the same output as a result of the action of one person, this will be classified as a technological externality. Technological externalities result in social costs more often than pecuniary externalities do. Crime is an example of technological externalities, where individuals now need to pay extra money for security, which would have been spent on something else that could have increased the wealth of the individual.

Pecuniary externalities have an impact on prices and on the wealth of a person or the wealth of society. Gambling is an example of a pecuniary externality. Although the cost benefit has a net effect of zero on society, because the money spent by the gambler is still in the economy, the money spent has an impact on the wealth of the gambler.

Problem gamblers can impact society directly or indirectly. A direct impact will be the effect on immediate family, while an indirect impact will be on the society that will suffer a social cost. The Australian Productivity Commission found that between five and ten people (including spouses, children and other family members, friends, co-workers and employers as well as those involved in financial relationships) are affected by every individual who is a problem gambler (The Scottish Centre of Social Research & Reith, 2006:42). In order to determine the social cost that problem gamblers impose on society, the focus will be on technological externalities.

To define the social cost, Walker and Barnett (1999:185) used the welfare economics measure, which defines “a social cost as the amount by which that action reduces aggregate societal real wealth”. Some social costs that were investigated include income lost from missed work, decrease in productivity, depression and ill health, suicide, bail-out costs, unrecovered loans, unpaid debts and bankruptcy, fraud, corruption, strain on public services, industry cannibalisation and divorce (Walker & Barnett, 1999:184; Reith, 2006:42-43). Problem gambling can lead to more problems than only financial strain. Other problem areas that are associated with problem gambling are family, social and work-related problems (Blaszynski *et al.*, 1999:7).

Negative displacement of income also takes place where money is spent by the breadwinner of a household on gambling activities that could have been utilised in more productive ways, such as towards educational or household expenditure or towards finding work.

Legalising gambling in South Africa was also criticised for creating an industry where drugs, corruption and gang-related activities would possibly increase. All of the aforementioned creates externalities impacting the social wealth of society (Nzimande, Louw, Manny, Bodasing & Ludin, 2010:27-29). Therefore, another social cost associated with legalised gambling is the cost of crime. Gambling addicts may resort to criminal activities in order to finance their addictive habit. Research shows great concern about an increase in illegal gambling in the rural areas of South Africa (Collins *et al.*, 2011:722). Illegal gambling can harm the society even more in an environment where government is not able to effectively fulfil its role as regulator.

The literature shows that it is difficult to assign or calculate financial value to the externalities; therefore, you cannot compare this to the income generated through taxes on gambling activities. This could indicate that government is taking on the role of regulator

because there are no successful studies to determine the actual cost of problem gambling in order to establish proof of possible profits that government is realising in its capacity as stakeholder (Reith, 2006:57). The reason for the implementation of a tax on gambling will then be to protect the society as regulator and not to generate income through taxation.

Considering the fact that there is a decrease in the number of problem gamblers in the country, it seems as if it is not the negative effect that this psychologically addictive behaviour has on the problem gambler itself that needs to be addressed, but rather the cost imposed by this behaviour on society at large. This may call for government intervention in an attempt to mitigate these costs. It is questionable whether the levying of an additional tax on gambling is the best method to ensure that the cost of externalities associated with excessive gambling will be internalised by gamblers and the gambling industry, as government would not only be taking on the role as regulator, but also as stakeholder because income will be generated through taxation contributing to the national fiscus.

2.3. TYPES OF TAXES

In general, governments could tax wealth, income and consumption (including sales taxes and tariffs) (Lorenzi, 2004:60). Each of these taxes could be applied as instrument to curb excessive gambling. Before it is applied to the gambling scenario for evaluation under each of the proposals to levy an additional tax on gambling (refer Chapter 3), it is necessary to state, define and consider the characteristics (such as equity, economic efficiency, administrative efficiency, flexibility, certainty and convenience) (Smith, 1776; Schmidt, Barr & Swanson, 1997:1679-1681) of each of these types of taxes to provide a better understanding as basis for continued discussion.

The equity in taxation should be considered as this might influence the effect that the different types of taxes have on the consumer. As all taxes impose a burden on the taxpayer, while most taxes affect the behaviour of a taxpayer, it is important that the introduction of a new tax should be designed in such a manner that its distorting effects on choices made by the taxpayer are limited to the minimum (Black *et al.*, 2008:120). Equity in taxation refers to both horizontal and vertical equity, also known as regressive and progressive tax. Horizontal equity is most commonly referred to as the equal treatment of equals. This is usually a fixed rate of tax charged. Vertical equity is referred to as an appropriate differentiation among unequals (Musgrave, 1990:113). This, on the other hand, is where an individual is taxed in proportion to the income that is earned.

In order for the introduction of a new tax to be administered efficiently, the cost of regulation and administration, which will ensure compliance, should be limited as far as possible. If the tax takes on characteristics such as tax simplicity, certainty and convenience, it would be easier to achieve administrative efficiency (Smith, 1776:680). It is further important for a new tax to be introduced to be flexible. This implies that the functioning of the tax should be designed in such a manner that it would be easy to adjust for different economic times and environments.

The taxes (including sin taxes, withholding taxes and normal income tax as a government revenue instrument) that could be applied to discourage unwanted behaviour as well as the successes reached through its application in the past will now be defined and the characteristics thereof stated.

2.3.1. SIN TAXES

Sin taxes are levied where government believes that they need to step in where individuals do not take into account future damage caused to themselves and others by consuming sinful goods (Gremer, De Donder, Maldonado & Pestieau, 2012:102). Sin taxes are a popular term used where fees are charged for the guilty pleasures of human indulgence, such as smoking cigarettes and drinking alcohol.

Characteristics of sin taxes:

Lorenzi (2004:60) defines sin taxes as “those government revenues garnered from the purchases or consumption of resources or services that encapsulate the following characteristics:

- Consumption exhibits an inelastic demand curve where the behaviour is addictive. A small change in behaviour will generate significant tax revenues, yet not eliminate the behaviour.
- The behaviour could be considered self-destructive or harmful to the individual. Immediate or negative long-term consequences are the cause of sinful behaviours.
- The behaviour generates negative externalities causing not only the sinner, but also the people around the sinner, to suffer.
- The sinful behaviour is generally considered to be socially undesirable or to be dysfunctional in terms of social welfare.”

Sin taxes are also known as excise duties and levies. As per the South African Revenue Service (SARS), these taxes are levied to firstly ensure constant and easily collectable revenue for the government. Products selected by the SARS for this purpose must be fast-moving, high-volume, daily consumables and non-essential products. The second reason behind sin taxes levied by the SARS is to influence consumer behaviour. The SARS will levy sin taxes on the consumption of certain products believed to be harmful to the consumer or the environment. The main reason for this is to discourage consumption (SARS, 2013:1).

Sin taxes are currently levied in South Africa on the following products that meet the requirements stated in the previous paragraph:

- Specific Excise Duty Products:
 - Fuel/Petroleum products
 - Tobacco products
 - Malt beer
 - Traditional African beer
 - Spirits/Liquor products
 - Wine
- Other Fermented Beverages
 - Ad Valorem Excise Duty products
 - Motor vehicles
 - Electronic equipment
 - Perfumeries
 - Etc.

These sin taxes are levied in terms of Schedule No. 1 Parts 2, 3 and 5 of the Customs and Excise Act (91 of 1964). It is believed that sin taxes generate revenue of approximately 10% of the total national SARS revenue (SARS, 2013:1). The consumer is taxed directly relative to the consumption of a sinful product.

Sin taxes are levied horizontally as it is at a fixed rate. This means that the tax is regressive and is the same for consumers irrespective of what the consumer's income is. Poorer people might end up paying a higher rate on taxes relative to their income than richer people. The government charges these taxes firstly to create a constant government stream and secondly to discourage the use of the products on which the tax is levied (SARS, 2013:1).

The economic efficiency of a sin tax is determined by the ability of the sin tax to cover the external costs arising from the action that is taxed (Manning *et al.*, 1989:1). This way, the person performing the action that is taxed will carry the costs they cause to others around them.

The administration of sin taxes is easy as it is only a fixed percentage charged on the price of the product. This also makes sin taxes more flexible and easy to adjust as it is only one rate that needs to change if the government wants to increase or decrease this tax.

2.3.2. WITHHOLDING TAXES

Withholding taxes are described as a tax withheld or deducted by source (Oxford English Dictionary, 2013). The source refers to the person or institution where money will be received from. Withholding taxes are applied by taxation authorities as an administrative mechanism to retain relevant taxes within the tax net before a non-resident escapes from the grasp of the authority to which the source belongs to (Roberts, 2012:37). The Income Tax Act (58 of 1962) (the Act) provides for five types of withholding taxes, subject to double taxation agreement relief. Four of these taxes relate to payments made to a non-resident coming from a South African source. The withholding tax is withheld by the person making the payment to the non-resident. The withholding tax is then paid to the SARS on behalf of the non-resident. The ultimate tax liability remains that of the non-resident. These types of withholding taxes are divided into 5 categories.

Withholding taxes on royalties is when a non-resident who receives royalty income from a source within South Africa will be liable to a 12% withholding tax on the gross amount of royalty received (Section 35 of the Act). This will change to 15% in terms of section 49A-49G with effect from 1 March 2014 after the deletion of section 35 (National Treasury, 2013:12).

Withholding tax on payments to non-resident sellers of immovable property is when a non-resident who sells immovable property in South Africa will be liable for withholding tax of 5% (if the non-resident is a natural person), 7.5% (if the non-resident is a company) or 10% (if the non-resident is a trust) of the amount payable, which must be withheld by the buyer on behalf of the non-resident (Section 35A of the Act).

Withholding tax on interest is a withholding tax at a fixed rate of 15% of the amount of any interest received by or accrued to any foreign person from a source within South Africa is

payable from 1 March 2014 (National Treasury, 2013:12) in terms of Section 37I to 37O of the Act.

Withholding tax on payments to foreign entertainers and sport persons is a withholding tax at a fixed rate of 15% of the amount received by or accrued to such a person in respect of a 'specified activity' is payable (Section 47A-47K of the Act).

The fifth type of withholding tax is dividends tax. Dividends tax became effective in South Africa on 1 April 2012 and is levied at a rate of 15% on the amount of any dividend paid in cash or *in specie* by any company other than a headquarter company (Section 64E(1) of the Act).

The company that declares and pays the dividend is obligated to withhold the dividends tax and to pay the dividends tax to the SARS (Section 64G(1) of the Act).

Characteristics of withholding taxes:

Withholding tax is charged at a fixed rate (namely 15% in most cases except on fixed property) and therefore it is regressive. The administrative efficiency of this type of tax also contributes to higher state revenue as the possibility of tax evasion is decreased because of the way in which withholding tax is collected (Harwood, Larkins & Martinez-Vazquez, 1991:17).

2.3.3. NORMAL INCOME TAX

Income tax is a tax levied by a government directly on income, especially an annual tax on personal income (Oxford English Dictionary, 2013). Individuals are taxed on a progressive basis. Income tax is the government's main source of income (SARS, 2013). Residents of South Africa are taxed on their world-wide income. Non-residents are taxed on income derived from a source in South Africa (Stiglingh *et al.*, 2013:53).

Different methods are used to collect income taxes in South Africa. The different methods help to ensure better cashflow and collection of taxes (Stiglingh *et al.*, 2013:449). This leads to economic and administrative efficiency and the methods are regulated by the Fourth Schedule to the Act.

Individuals working for an employer will pay employees' tax known as 'Pay As You Earn' (PAYE) on a monthly basis. Employers are required to withhold employees' tax from the remuneration paid to their employees and to pay it over to the South African Revenue Service (SARS) before the seventh day of the month following the month in which the remuneration was paid to the employee. Companies or individuals earning income other than 'remuneration' as defined in paragraph 1 of the Fourth Schedule will be liable to make advanced payments known as provisional tax payments.

Provisional tax payments are calculated using an estimate of the taxpayer's normal income tax liability for each year of assessment based on its taxable income earned. Provisional taxpayers are obliged to make two provisional tax payments based on estimates of taxable income during each year of assessment. There is a third voluntary payment (generally referred to as a top-up payment), which could be made should it be found that the estimates for the first two payments were inadequate. The third payment is made in order to avoid the possibility of being exposed to additional interest that could be levied on arrear payments due to inadequate estimates (Stiglingh *et al.*, 2013:449).

Characteristics of income tax as income generating instrument:

Income taxes for individuals (natural persons) are levied vertically as it is levied at various rates stretching between 18 and 40% depending on the individual's taxable income. This means that the tax is progressive as it is different for each individual in respect of his/her own income. Each company that is a resident is taxed as a separate taxpayer in South Africa at a flat rate of 28%. Non-resident companies that trade in South Africa through a branch are also subject to taxation at a rate of 28%. Income taxes for companies are levied horizontally as it is levied at a fixed rate, which means that the tax on companies is regressive. This is the same for all companies irrespective of the size or income of the company (Stiglingh *et al.*, 2013: 486). Ordinary trusts in South Africa are also taxed horizontally and are taxed at a fixed rate of 40% (Stiglingh *et al.*, 2013:805), while special trusts will be taxed in terms of the same progressive rates of tax applicable to natural persons.

2.4. CURRENT REGULATION OF THE SOUTH AFRICAN GAMBLING INDUSTRY

Government is currently regulating the South African gambling industry through two independent statutory bodies, namely the National Gambling Board (NGB) and the National Lotteries Board. The NGB is responsible for the regulation of all types of gambling modes

including casinos, bingo, horse/sports betting and LPMs with the exception of the lottery games. The national government promulgated the National Gambling Act to ensure that the industry is regulated and co-ordinated on a uniform basis that adheres to high norms and standards. It is the National Lottery Board that is responsible for the regulation of all lottery games, which include the lotto, the lotto plus as well as scratch cards (Ligthelm & Jonkheid, 2009:2). A Gambling Review Commission was established by the Minister of Trade and Industry that reviews the South African gambling policy and its framework on a regular basis.

The decision to legalise gambling in order to have more control and to be able to regulate the industry, resulted in the external factor that it also generates additional government revenue. Government is criticised for making recent proposals to apply an additional tax to be levied on gambling in an attempt to curb excessive gambling, because it is used as a shield to hide from the fact that government will in effect benefit from this. If government really wants to reduce gambling participation, it should be more stringent on how it regulates the marketing and advertisement of gambling activities attracting and encouraging people to partake in gambling activities.

Section 15 of the National Gambling Act (7 of 2004) regulates the restrictions placed on advertising and promotions of gambling activities. In terms of section 15, it is not allowed to advertise or promote any gambling activity in a manner to target or attract minors and must include a statement (in the prescribed manner and form) warning the general public against the dangers of addictive and compulsive gambling. In their research report Jonkheid and Mango (2008:32) found that the public feels casino advertising was misleading and that the negative impacts of gambling were not clearly stated, therefore it would seem that government is not fulfilling its role as regulator because these advertisements are still allowed.

Research performed by Monaghan, Derevensky and Sklar (2008:263-265) indicated that in many jurisdictions there is no existence of an arm's-length safety net between revenue boards and government regulation. In order for government to better fulfil its role as regulator, the regulations for gambling advertisements should be mandatory, more effectively enforced and be evaluated on a continuous basis by an independent regulatory body. The Government has the responsibility to protect society against addictive gambling behaviour and the gamblers against themselves (Volberg, Gerstein, Christiansen & Baldrige, 2001:83; Smith, 1999:4; O'Brien, Cartmill, Persaud, Moran & Frada, 1995:1225).

2.5. CONCLUSION

From the study it was found that excessive gamblers are regarded as persons who gamble so excessively that the gambling causes disruptions in the family, work, social and financial areas of their lives. These disruptions to society are referred to as the so-called externalities. A tax imposed on gambling will only be effective if the tax equals the cost of externalities that are caused by excessive gambling.

It was determined that 'excessive gambling' in effect refers to 'problem gambling'. Although research shows that problem gambling in South Africa is currently declining, it seems as if the main problem that government is facing is not problem gambling itself, but rather the regulation of externalities caused by problem gambling, which imposes a cost on the South African society at large. The regulation of externalities is problematic because it is difficult to quantify due to the vast number of variables that it is being affected by.

It is clear from the discussions in this chapter that the scope of externalities associated with problem gambling is quite significant. The fact that this is recognised by the South African government through its attempt to address the issue on hand by utilising tax as an instrument to counteract the problem is a clear indicator that government is accepting its responsibility to act as regulator of the gambling industry. It is still questionable whether the levy of a tax is the best instrument to curb excessive gambling together with its related externalities.

Three types of taxes were identified that are currently applied by government to levy taxes. Each type of tax was analysed in order to identify the characteristics of each. These three taxes are sin tax, withholding tax and income tax. Sin tax and withholding tax are taxed on a regressive basis, whereas income tax is taxed on a progressive basis.

Sin taxes are usually used by the government to discourage behaviour and the tax is imposed directly on the product. It is imposed on products that would be fast moving and provide constant revenue to the government. Sin tax can only be economically efficient if the tax imposed could cover the cost of the externality it causes in the first place.

Withholding taxes are withheld by the source and are then paid over to the SARS. This type of tax appears to be more efficient compared to normal income tax in minimising tax evasion, as income tax requires self-declaration by the taxpayer and is not levied at the

source of the income. There are five types of withholding taxes in South Africa. Withholding tax is also a regressive tax as it is also charged at a fixed rate.

Income tax is a progressive tax as the amount of tax to be paid increases as the income increases for individuals. Income tax for companies, however, is regressive as they need to pay tax at a fixed rate of 28%. There are different methods used to collect income tax in South Africa.

The manner in which the gambling industry is currently regulated by government in South Africa was highlighted. It is clear that the current regulation process still creates conflict between government's role as regulator as opposed to stakeholder, where government is still benefiting through the collection of taxes. Although government indicated that the proposed tax on gambling should be levied in order to discourage excessive gambling, it is in contradiction with its marketing and advertising policies still allowed to be performed by gambling operators to encourage the public to partake in gambling activities. It seems as if the regulations on marketing and advertising of gambling are not enforced effectively enough and should be enforced and monitored by an independent regulatory body.

Chapter 3 seeks to investigate and analyse the proposals made by government to levy an additional tax on gambling and evaluates the effectiveness and weaknesses of each. It is further compared to the characteristics of the taxes identified in Chapter 2 that could be applied by government to levy an additional tax on gambling in an attempt to change unwanted behaviour and to regulate and internalise the cost of externalities caused by problem gambling. The success to be reached through its applications and the stakeholders that will benefit from it will indicate the role that government would be taking on in the gambling industry as either regulator or stakeholder.

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CHAPTER 3: ANALYSING THE PROPOSALS TO LEVY ADDITIONAL TAX ON GAMBLING

3.1. INTRODUCTION

The South African government made two proposals in order to levy additional tax on gambling in South Africa. The objective behind the proposals was to discourage excessive gambling. In this chapter, the two proposals are firstly analysed for their practicality in terms of the successful implementation and collection of taxes. Secondly, this chapter evaluates the effectiveness and weaknesses in influencing behaviour in order to address the problem of excessive gambling and its related externalities. If the proposal is found to be effective to discourage excessive gambling, the proposal to levy an additional tax on gambling will support government's role as regulator. If the proposal is found not to be effective in discouraging excessive gambling, this will indicate that government has other intentions behind the introduction of an additional tax on gambling, such as gaining from it. The latter will support government's role as stakeholder in the South African gambling industry.

3.2. FIRST PROPOSAL

3.2.1. DESCRIPTION

It was proposed in 2011 that a gambling tax will be levied on gambling winnings at 15% as a final withholding tax, where the first winnings of R25 000 will be exempt from tax (National Treasury, 2011:71). It was also indicated that similar gambling taxes exist in India, the Netherlands and the United States, and that this tax will assist in discouraging excessive gambling in South Africa.

3.2.2. ANALYSIS OF THE PROPOSAL

The proposed gambling tax will operate in the form of a final withholding tax. Withholding taxes are applied to various types of income, such as interest, royalties, dividends and income earned by foreign entertainers and sport persons (as discussed in Chapter 2 under part 2.3) and are regulated by various sections enacted on different dates in terms of the Act. All these various types of withholding taxes applied to various incomes and regulated by various sections of the Act resulted in a lack of coordination between the different withholding taxes (Viviers & Lubbe, 2013:32).

3.2.2.1. THE PROPOSED RATE

In evaluating the 15 per cent rate at which the proposed gambling tax will be levied, it is questionable how this rate was determined and whether it could be considered as fair and reasonable. Recently, changes to the manner in which withholding taxes in South Africa are regulated and levied were introduced in terms of the Taxation Laws Amendment Bill (2012) and the Tax Administration Bill (2012) in order to unify the withholding tax regimes and to ease and reduce its compliance and administrative burdens. One of these prominent changes is the standardisation of the withholding tax rate to be applied to interest, royalties, dividends and income earned by foreign entertainers and sport persons at a fixed rate of 15 per cent.

In light of this standardisation, it seems as if the proposed gambling withholding tax was determined at a rate of 15 per cent in order for it to be on par with the fixed rate of 15 per cent to be applied to all the other withholding taxes in South Africa (except the withholding tax on the disposal of immovable property situated in South Africa by a non-resident as discussed in Chapter 2, part 2.3.2.2). This will promote consistency and uniformity between the different withholding taxes within the South African withholding tax regime.

In order to establish whether the proposed rate of 15 per cent is a fair and reasonable rate to be levied on gambling winnings, it is compared to the tax rate levied on gambling winnings in countries such as India, the Netherlands and the United States (all countries referred to by the Minister of Finance when he proposed the new gambling withholding tax).

Section 194B in terms of the Income Tax Act of India determines that a tax will be levied on any income by way of winnings from any lottery or crossword puzzle, including card games or other game of any sort, at the time of payment thereof at the rate in force. The current tax rate in force in India is 10%. In the Netherlands, a tax is levied at 29% on the winnings of any person in excess of €454 in any game of chance (CASA, 2011:3). In the United States, recreational gamblers will be liable for a withholding federal tax of 25% on gambling winnings.

In comparison to the countries mentioned above, the proposed South African withholding tax on gambling winnings at a rate of 15 per cent seems fair and reasonable as it constitutes a rate that falls between the low rate of 10% applicable in India and the high rates of 29% en

25% of the Netherlands and the United States, respectively, all countries on which the concept of a South African tax on gambling winnings is based on, as described by the Minister of Finance (CASA, 2011:3).

3.2.2.2. THE PROPOSED EXEMPTION THRESHOLD

The second component to be considered is how the R25 000 threshold was determined and whether it could be considered as fair and reasonable. It was indicated that all gambling winnings above R25 000 will be subject to the withholding tax. It seems as if the exemption threshold of R25 000 will be allowed to compensate for the fact that the gambler will not be allowed to get a tax deduction for expenditure incurred in the production of gambling income (winnings). This is in line with the approach followed in India where section 194B of the Income Tax Act of India indicates that only winnings exceeding ten thousand rupees will be subject to the 10% withholding tax, as well as the practice followed in the Netherlands where only amounts in excess of €454 will be subject to the gambling tax of 29%. The system in the United States is more detailed where it makes provision for different thresholds depending on the type of gambling mode. A licensed operator in the US will, for example, only levy a tax at 25% where payment is made to a recreational gambler at a race track with winnings of \$600 or more, to a gambler partaking in bingo or slot machine activities with winnings exceeding \$1 200, or to a gambler partaking in keno with winnings exceeding \$1 500 (CASA, 2011:3).

The proposed exemption threshold of R25 000 seems to correspond with the limit referred to in Section 28 of the Financial Intelligence Centre Act (FICA) (38 of 2001) that requires all accountable- and reporting institutions to report cash transactions above the prescribed limit of R25 000 in an attempt to fight financial crime, such as money laundering and tax evasion.

To whom FICA is applicable to is best described in the Report of the Portfolio Committee on Trade and Industry on the Report of the Gambling Review Commission (South Africa 2012:1):

“FICA is applicable to “accountable institutions”, “reporting institutions” and “supervisory bodies”, as set out in Schedules 1 to 3. The National Gambling Board is a supervisory body and any person who “carries on the business of making available a gambling activity as contemplated in section 3 of the NGA” is an accountable institution. The NGA section 3 states that gambling activities involve the placing or accepting of a bet, or totalisator bet or playing bingo, an amusement game or an interactive game (or making it available for play).”

In terms of the FICA regulations, the institutions and bodies, as described above, have the responsibility to report cash transactions above R25 000 as described in Section 28 of the FICA Act. The details of these recipients should therefore already be captured on a system that could be applied or integrated with the tax collection process that would support and ease the withholding tax administration process. This might be the main reason why a threshold of R25 000 was elected, as it would be aligned with current systems that are already in place that are able to record winnings being paid out to winners above this limit.

A winner of more than R50 000 in the National Lottery could only collect the winnings from the gambling operator, while in the case of a casino, the winnings could be traced through the use of an electronic game card that gamblers need to buy in order to partake in gambling games provided by casinos (Roberts, 2012:56-57).

The fact that the exemption threshold of R25 000 was proposed to be standardised in order to apply to all types of gambling modes, as opposed to different thresholds applying to different gambling modes such as in the US, would also contribute to simplifying the administration process of the threshold's application.

It seems, although not perfectly clear, as if the threshold of R25 000 could be regarded as a proxy for expenditure incurred by the gambler in order to generate gambling winnings, which will only be taxable beyond the R25 000 limit. This is because it seems as if no other expenditure or losses incurred would be allowed as a tax deduction and that the threshold must act as compensation for this.

3.2.2.3. REGULATORY ENVIRONMENT

Apart from the manner in which the tax rate and the exemption threshold for the proposed gambling tax was established and whether it could be regarded as fair and reasonable, it is also necessary to consider the type of regulatory environment in which the proposal will operate.

The Minister of Finance briefly referred to India, the Netherlands and the US as countries that are successful in collecting gambling taxes through a withholding tax system (National Treasury, 2011:71). It is questionable whether practices applied by these countries could be applied successfully in South Africa due to the differences in regulatory environments

between countries. The differences between the regulatory environments of these countries will now be discussed.

In India, the lottery is regulated by the State. The Government has the responsibility to pay the winnings to the winner and to withhold the tax when an amount that exceeds ten thousand rupees is won (CASA Newsletter, 2011:1-2). The State involvement in India contributes to the administration of the withholding tax.

The gambling industry in the Netherlands is also controlled by the State. Casinos are specifically operated by the State-controlled Casino Holland. Other gambling activities are regulated by the state through monopolies, duopolies or oligopolies. The control that the State has over the gambling industry ensures the successful administration of collecting the withholding taxes (CASA Newsletter, 2011:1-2).

In the US, specific gambling activities are regulated differently compared to the countries mentioned above. The license operator needs to report to the Internal Revenue Service in specified manners and this system was specifically designed to fit the US (CASA Newsletter, 2011:1-2). In the US, the individual can also deduct the losses they made from the winnings as it is believed that most gamblers make a net loss. This can add to the administration burden that the gambler might face to prove the losses, but at the same time it makes it fairer towards the gambler (Roberts, 2012:41).

Gambling activities in South Africa are controlled by private gambling operators. The operator needs to obtain a license from Government and needs to comply with the license requirements. This is not similar to any of the countries mentioned by the Minister. The Government does not control the gambling industry, but merely provides guidelines to follow and license requirements to meet. The Government also does not collect the money itself, and would have to rely on the private gambling operators to withhold the gambling tax. Although these other countries are successful in applying withholding tax on gambling winnings, South Africa does not have the same regulatory environment as these countries and therefore there is no certainty that it would be practical for South Africa to impose a withholding tax on gambling (Roberts, 2012:38-40).

3.3. PRACTICALITIES AND ADMINISTRATION

The South African gambling industry is diverse in nature. Gamblers have the opportunity to partake in a wide variety of gambling modes and activities, which include games of chance, for example slot machines, baccarat and roulette, but also games of skill, for example card games such as black jack and poker. Apart from the aforementioned gambling modes mainly provided by casinos, there are also other types of gambling modes available, which include horse racing, the national lottery, bingo, and online or Internet gambling (although currently still illegal in South Africa) (Ligthelm & Jonkheid, 2009:21).

Each one of these gambling modes is unique in the way that it is operated as well as the manner in which it is administered and controlled. As it was indicated in the first proposal that the withholding tax system would apply to the winnings from all types of gambling modes (including the national lottery), it is important to consider the practicalities surrounding the implementation, control and administration of this proposal within the context of the main types of gambling modes.

3.3.1. PRACTICAL CONSIDERATIONS OF LEVYING A WITHHOLDING TAX ON DIFFERENT GAMBLING MODES

3.3.1.1. CASINOS

Some casinos are also giving the option of using electronic cards to gamblers onto which money is loaded and which enable gamblers to gamble. These cards can contribute to keeping record and ease the administration process of winnings (Jonkheid & Mango, 2008:40). Personal information of the gambler, as well as a complete record of all the gambler's winnings and losses, is captured on the card that is integrated with database system hosted by the gambling operator. This record of information could be utilised by the SARS as an audit trail to verify whether the correct amount of tax was withheld from winnings per individual gambler above the R25 000 thresholds.

These cards can also be used for games played on slot machines (Jonkheid & Mango, 2008:43). The control and administration of winnings and the application of the R25 000 exemption threshold can become complex and problematic as soon as winnings from slot machines need to be combined with winnings from other gambling modes, for example table games, such as poker or black jack. Gamblers partake in table games by playing with chips

and not with electronic cards. This complicates the administration process of accurate record keeping of winnings between these two types of gambling modes.

A further practical problem is the fact that gamblers are permitted to leave the casino premises with their electronic gambling cards without cashing in on their winnings. This raises questions on the timing of the tax event and at what given period in time the withholding of the tax on winnings should take place. Various options are available when the withholding of the tax could occur, for example:

- as soon as winnings exceed the exemption threshold of R25 000; or
- each time a win takes place; or
- as soon as the gambler is handing in his/her electronic gambling card for a cash payout on net winnings.

If measured against the definition of gross income as defined in Section 1 of the Act, the tax event on normal income should occur on the earlier of receipt or accrual. However, if compared to the application of other withholding tax regimes already applied within the South African context, special rules are prescribed in terms of the Act that determine a specific time period that is allowed per type of withholding tax on when withholding should take place and when the amount of tax should be paid over to the SARS. Because all the withholding taxes (except for the withholding tax on the disposal of immovable property situated in South Africa by non-residents) are classified as final taxes, the Act provides for exemption provisions to exempt the receipts from normal income tax in order to avoid a double tax position. If this proposal is to be implemented, detailed legislation is to be issued by SARS in order to regulate the timing of the withholding tax as well as its integration with normal income tax.

3.3.1.2. BINGO

Since 2005, the collection of Bingo revenue has started to play a more prominent role in the South African gambling industry. Bingo operating licences have been awarded to three of the nine provinces in South Africa. As opposed to the original paper-based bingo games, the operation of this type of gambling mode has shifted to Electronic Bingo Terminals (EBTs). Currently, these machines make use of unique codes, awarded to each individual gambler, which could be utilised in a similar manner as the electronic cards mentioned above (Nzimande *et al.*, 2010:53).

Although it is highly unlikely that a single win from Bingo will exceed R25 000, the same practical problems on timing of the tax event and integration of winnings with other gambling modes are raised when the withholding tax system under the first proposal is applied to Bingo.

3.3.1.3. LIMITED PAYOUT MACHINES (LPMs)

LPMs are restricted to pre-determined maximum stake and prize limits, varying between R5 and R500 (Nzimande *et al.*, 2010:57). Due to these low amount restrictions, it seems as if the proposed withholding tax on gambling winnings will not be applicable as winnings will be far below the exemption threshold of R25 000. It must be kept in mind that when LPMs' winnings are combined with winnings of the same taxpayer from other gambling modes, it is possible that the exemption threshold could be exceeded. Record keeping of a large number of low amount LPMs' transactions that could possibly result in a withholding tax liability (if any), will place a large administrative burden on LPMs' gambling operators that would be obliged to keep records of all these transactions, which in most cases would be redundant.

3.3.1.4. NATIONAL LOTTERY

In terms of the National Lottery Participant's Code of Practice (2000:15), gamblers should claim their lottery winnings of up to R5 000 directly from the retailer where the lottery ticket was purchased (for example a convenience store). Prize money between R5 001 and R50 000 should be collected from an Authorized Prize Payment Centre. Furthermore, as soon as a winning exceeds the amount of R50 000, it should be collected directly from the National Lottery Regional Office. This system could once again result in mismatches on keeping record of a gambler's winnings through the lottery when in aggregate it should be compared against the exemption threshold of R25 000.

A possible solution to this would be to decrease the R50 000 pay-out limit by the National Lottery Regional Office to R25 000 in order to align it with the proposed exemption threshold. This would ease the administration process of the withholding tax on lottery winnings. However, it will still be problematic where lottery winnings need to be integrated with winnings from other gambling modes putting a large administration burden on gambling operators as a whole.

3.3.1.5. BETTING

Horse racing constitutes the main form of betting with a total of ten horseracing tracks across South Africa (Ligthelm & Jonkheid, 2009:2). Administration to determine and pay over the

tax would increase costs for this sector and this could lead to lower employment in an industry responsible for some of the biggest employment in South Africa (Roberts, 2012:15). Another concern is the impact that a withholding tax will have on Totalisator Betting (known as Tote), because punters could easily shift from Tote to bookmakers. Bookmakers provide the option of an 'open bet' under a wider variety of gambling options, which allow punters to break up their bets. This creates the loophole to keep winnings below the proposed exemption threshold of R25 000. This would call for regulatory intervention from the SARS's side to level the playground between Tote and bookmakers.

3.3.2. WINNINGS AWARDED AS PROPERTY IN KIND AND NOT IN CASH

Another practical issue raised is the scenario where a gambling operator, for example a casino, awards a motor vehicle or a family holiday (a prize in kind) as a jackpot prize. The taxability of a prize awarded in kind, as opposed to a prize awarded in cash, creates problems where a withholding tax under the first proposal needs to be levied. As the winning gambler only receives a prize in kind with a determinable market value attached to it and not an amount in cash, it is questionable whether it would be fair to collect a tax from this gambler at 15% of its market value after the exemption threshold of R25 000 was deducted from it (Roberts, 2012:33).

A similar problem occurred under the newly introduced dividends tax withholding system where a dividend is being distributed as an asset *in specie*, as opposed to a dividend in cash. Under the dividends tax system, the liability of the dividends tax is shifted to the resident company distributing the asset *in specie* in terms of Section 64EA(b) of the Act, meaning that the liability of the tax will not rest upon the beneficial owner of the share. Practical problems such as this would once again only be resolved and overcome if detailed legislation is to be issued by the SARS on the practical application of prizes in kind. It is not certain whether the liability to pay the gambling withholding tax of 15% will fall upon the gambling operator awarding property in kind as a prize to gamblers.

3.4. IMPACT OF THE PROPOSAL TO CHANGE GAMBLING BEHAVIOUR THAT WILL REFLECT GOVERNMENT'S ROLE

3.4.1. TAX TYPE AND METHOD

The proposed method whereby the additional tax to be levied on gambling activities will function as a withholding tax. In Chapter 2, it was already established that a withholding tax is regressive in nature and very efficient in that it prevents tax evasion. However, it was determined that this proposed withholding tax system would be very difficult to administrate, especially where the winnings from different types of gambling modes need to be combined. Other practical difficulties in the implementation and administration of the proposed withholding tax system were discussed under the '*Analysis of the Proposal*' (see part 3.2.2). As the proposed withholding tax will only apply to winnings, it is questionable whether it would really be effective in discouraging gamblers from partaking in gambling activities and be successful in changing gambling behaviour. The objective behind the tax is to discourage excessive gambling (with reference to problem gamblers as discussed in Chapter 2), but it will not only apply to the winnings of problem gamblers, but also to the winnings of recreational and pathological gamblers. Furthermore, only gamblers who will be lucky enough to actually win an amount in excess of the R25 000 exemption threshold would be exposed to and feel the effect of the withholding tax.

It is further believed that the impact of the withholding tax on the gambler would be minimal, because winnings will still be received. It is uncertain whether the fact that only the net amount of winnings (after the withholding tax was withheld) will impact the pocket of the gambler, as the fact of the matter remains that something is still won. It is questionable whether a reduction of 15% in prize money will really make a gambler think twice before partaking in gambling activities or will change or discourage gambling behaviour.

An alternative tax type or method that could be considered is to classify the additional tax to be levied on gambling activities as a sin tax, which will operate as an excise tax. A sin tax would be more successful in that it would be a tax levied on all gamblers partaking in gambling activities and not only on gambling winners. The negative side of applying a sin tax instead of a withholding tax is that government could then be accused of its role as stakeholder taking precedence because a sin tax on gambling activities would result in constant and easily collectable government revenue without making participation to the

activity illegal. A sin tax is also regarded to be regressive in nature, meaning that the rich and the poor would be liable for the same amount of tax irrespective of their level of income.

3.4.2. TARGET GROUP AND GAMBLING MODE

The proposed withholding tax system indicated that this system will apply to all types of gambling modes in an attempt to reduce excessive gambling. Although research shows a decline in problem gambling, it was indicated in Chapter 2 that it is rather the cost of externalities affecting individuals that needs be internalised through the proposed tax on gambling activities.

According to a survey conducted by the National Gambling Board in 2009, approximately one third (refer to Table 3.1 below) of South Africans participated in one or more gambling modes of which the National Lottery was indicated to be the most preferred gambling mode (National Gambling Board Survey, 2009).

TABLE 3.1: PARTICIPATION IN GAMBLING ACTIVITIES IN SOUTH AFRICA

Gambling mode	Percentage participation (%)
Lotto	29.2
Scratch cards	6.4
Casino gambling	6.3
Horse / sports betting	2.9
No participation	65.1

Source: National Gambling Board Survey conducted in 2009 (Multiple participation between different gambling modes possible) (Ligthelm & Jonkheid, 2009:5)

Furthermore, the percentage of individuals that participate in the National Lottery comprises 26.4 per cent of unemployed individuals and pensioners (refer to Table 3.2 below).

TABLE 3.2: PARTICIPATION BY GAMBLING MODE AND WORK STATUS

Gambling mode	Employed full time (%)	Employed part time (%)	Unemployed or looking for employment (%)	Retired or pensioner (%)	Home duties (%)	Student (%)
Lotto	35.0	34.2	26.4	21.3	19.5	21.4
Casino gambling	9.0	7.2	3.0	4.5	4.9	5.3
Limited pay-out machines	1.0	0.2	0.9	0.3	0.8	0.7
Wagering (betting on horses)	2.0	0.7	0.9	0.3	0.8	0.7
Sports betting	2.3	1.4	2.1	0.0	0.0	1.8
Bingo	0.1	0.5	0.1	0.8	0.0	0.4
Scratch cards	7.4	10.0	5.4	2.8	4.1	5.3
Interactive gambling	0.3	0.2	0.3	0.0	0.8	1.4
Fafi	2.0	2.8	4.1	2.3	0.0	0.4
Dice	1.6	0.9	1.7	0.5	0.8	1.1
Gaming competition e.g. SMAS	3.9	4.0	2.9	1.3	2.4	4.9
Other	0.3	0.2	1.6	0.0	0.8	0.7
No gambling participation	58.5	60.2	68.2	74.2	77.2	73.0

Source: National Gambling Board Survey conducted in 2009 (Participation by work status) (Ligthelm & Jonkheid, 2009:9)

The table shows that low-income earners are the National Lottery's primary subscribers, making the national lottery inherently regressive in nature.

It is suggested that the additional tax to be levied on gambling activities should first be targeted at the National Lottery as the only gambling mode, as the National Lottery is proven to be the most popular gambling mode of all gambling modes. Furthermore, because the majority of participants in the National Lottery constitute low-income earners who cannot afford to partake in gambling, it is these individuals that need to be protected by government.

In most countries, national lotteries are government managed, operated and owned. This makes it a form of direct taxation and not just taxes on the proceeds of gambling where the cost of purchasing a lottery ticket is a tax, while lottery awards represent the cost of collecting the tax (Lorenzi, 2004:62). Therefore, it seems that governments are encouraging people to 'legally' partake in gambling activities and there is doubt as to whether or not this is an appropriate government activity (McGowan & Brown, 1994).

In South Africa, the National Lottery is conducted by an operator under the authority of a license for its own account where winnings above R50 000 are paid directly by the operator to the winners (National Lottery, 2013:1). Because the lottery is privatised and taxed, it could be argued that the government would be less responsible for encouraging people to partake in lottery activities. This strengthens government's image in the role as regulator, rather than stakeholder.

3.4.3. BENEFICIARIES OF THE FIRST PROPOSAL

It seems as if government would be the party that will benefit the most from the proposed withholding tax system. Government would be able to generate additional revenue and broaden the tax base. Because only winnings will be subject to the tax, it is expected that the withholding tax system would not have the desired effect on excessive gamblers as only winners will be taxed, and not all problem gamblers.

Government could be taking on the role as either stakeholder or as both stakeholder and regulator, depending on how it will utilise and apply the generated revenue. If government has the intention to only impose the withholding tax with the purpose to generate revenue and to broaden the tax base, it will portray the role of stakeholder. If government effectively applies the generated revenue to add to the national fiscus as well as to distribute it in the support of problem gambling rehabilitation programmes through which society at large will benefit, it will take on both the roles of regulator as well as stakeholder.

3.5. POSSIBLE REASONS FOR THE SHIFT TO THE SECOND PROPOSAL

At the time that government announced the shift from its original proposal to levy a withholding tax of 15 per cent on gambling winnings to another proposal to rather levy an additional one per cent national levy on a provincial tax base, the South African government felt the spill-overs of a worldwide economic recession. In order to respond to an economic crisis, there is the need to introduce tax legislative reforms through the development of tax compliance strategies that will enhance and facilitate tax administration and revenue collection (Brondolo, 2009). The regulation of gambling activities and compliance to socially responsible codes of conduct are further complicated by the increasing revenue that gambling creates for government (Monaghan *et al.*, 2008:253).

The gambling industry raised great concerns regarding the proposed 15% withholding tax on gambling winnings in South Africa. It was believed that the industry would be negatively affected because the gambling operators would need to invest in better administration methods for the collection of this type of tax to be successful. This administrative burden will lead to higher cost, lower income and eventually lower taxable income for the gambling operators (Viviers & Nel, 2012:27).

From the discussion on the practicalities of the first proposal (under part 3.2.2.3), it seems that the administration of the tax under this proposal seemed to be very problematic. This might be due to the various problems identified surrounding the implementation, control and administration of this proposal. These aspects, based on investigation, could have been the major contributing factor as to why government had to seek an alternative through which an additional tax on gambling activities could be implemented.

Government's decision to reject the first proposal and to shift the focus to the second proposal might be an indication that government has elected an option that best suits their needs above the actual purpose behind the tax. As discussed below (see part 3.6), the second proposal would be more beneficial to government from an implementation and administrative perspective, while at the same time, government revenue will still be generated. Based on these factors, it seems as if government has placed its position as stakeholder above its responsibility to act as regulator, whereby it should have put the needs of problem gamblers and their effect on the society at large, above its own needs.

3.6. SECOND PROPOSAL

3.6.1. DESCRIPTION

In 2012, it was proposed that a national gambling tax based on gross gambling revenue will be introduced from 1 April 2013. In 2013, the effective date of the imposition of gambling tax was extended to 1 December 2013 (National Treasury, 2012:16). This tax will, on a uniform provincial tax base, constitute an additional one per cent national levy. This means that an additional one per cent will be levied in excess of an existing provincial gambling tax base on any proceeds derived by a taxpayer from gambling (Paulsen, 2013:1).

3.6.2. ANALYSIS OF THE PROPOSAL

The South African gambling industry is already subject to provincial taxes, national taxes and Value-Added Tax (VAT) (Roberts, 2012:3). A tax system should not place society under a burden of tax stress, although government needs to generate more funds in order to combat poverty and to improve infrastructure. The easiest manner in which government can achieve this, is by increasing taxes or finding new areas or items to tax (Magashula, 2010:16). It is questionable whether another tax on gambling might be the solution.

The second proposal can be compared to a type of sin tax that the government wants to impose. The proposed tax has some characteristics of sin taxes as discussed in Chapter 2. The tax is fixed at a rate of one per cent, which makes it regressive in nature. If poor people gamble more than rich people do, then it would have a greater effect on them, as they have less income available to spend on gambling. If the percentage of poor people who end up as problem gamblers (because they want to escape poverty) decreases, then a regressive tax approach could be appropriate. The problem with this proposal, however, is that although sin taxes are regressive towards the user, the additional levy will be regressive towards gambling operators. The effect could be that the gambler is totally unaware of the tax that is paid by the operator. If this is the case, it is questionable whether this proposal would be successful in changing gambling behaviour.

Another aspect to consider is whether the rate of one per cent could be regarded as sufficient to influence gambling behaviour. Research conducted in the US confirmed that people are willing to contribute to government revenue through taxes in exchange for gambling opportunities (Sauer, 2001:14). Bermaki and Zangeneh (2007:581) found that the youth will gamble even if the probabilities to win are against them. It seems as if gamblers do not mind paying taxes if they can still have the opportunity to gamble. This supports the statement made by economists that gambling is just another form of consumption (Wisman, 2006:957). However, gambling demand is still price sensitive, due to the availability of illegal gambling activities. If legal gambling becomes too expensive, due to an increase in tax for example, people will turn to illegal gambling attracting its own set of negative externalities (Anderson, 2005:317).

Additional taxes levied by government on gambling activities should be carefully managed. Although difficult to establish, it will be important for government to determine the exact tax rate at which people will not be affected negatively, specifically problem and pathological

gamblers, and where they will not turn to illegal gambling activities. This will assist government in effectively regulating the gambling industry.

Government indicated in the Budget Speech (National Treasury, 2011:71) that they want to implement the tax under the second proposal in order to discourage and to minimise problem gambling together with the negative externalities associated with it. Sin taxes are set in place for the same reasons. Persons responsible for future negative externalities need to be taxed now in order to cover costs that might be associated with future damages caused by it.

Sin taxes are also usually levied upon fast-moving, non-essential products. Gambling is not a product, but a service provided to the consumer. Gambling is not regarded as essential for everyday survival, but is merely a recreational service provided. The second proposal has some of the main characteristics of a sin tax as defined in Chapter 2, but differs in the fact that it will not have a monetary impact on the gambler directly like normal sin taxes do.

Taxing gambling winnings on a provincial tax base is a pure income generating instrument applied by government in order to ensure an increase in government revenue. The gambler will not be directly affected by the 1% increase. The National Gambling Act (7 of 2004) only states that it is 'desirable' to protect individuals from excessive gambling (2004:1). Because it is only indicated as 'desirable', it seems as if this is not regarded as the regulator's primary function or priority. Based on this, it is clear that although government confirms its desire to curb excessive gambling, it could still also take on its role of stakeholder in the gambling industry.

3.6.3. PRACTICALITIES AND ADMINISTRATION

Different provinces already have different licence fees, gambling tax and different times when the tax is levied (Roberts, 2012:16-26). This will ensure that changes to current systems in order to adapt to the second proposal will be limited to the absolute minimum (if any). No additional administrative burdens will be placed on gambling operators as they are already geared for the collection and administration of the tax on this basis. All aforementioned reasons might have been the reason for the decision to change from the first to the second proposal (Roberts, 2012:55). The one per cent increase as an additional levy will therefore not increase the administration cost to collect the proposed tax. The tax base of the second proposal would also be broader than that of the first proposal, as all gamblers

participating in gambling will be subject to the additional levy and not only the winners as in the case of the proposed withholding tax system.

3.6.4. IMPACT OF THE PROPOSAL TO CHANGE GAMBLING BEHAVIOUR THAT WILL REFLECT GOVERNMENT'S ROLE

The tax levied on a provincial tax base under the second proposal seems as if it would be more effective in affecting the gambler than the withholding tax in terms of the first proposal, because it will not only be a tax on winnings (meaning not only winners will be affected), but also a tax that will affect all gamblers.

However, it seems as if the manner in which this tax will affect gamblers would be too indirect. The reason for classifying the impact on the gambler as 'too indirect' is attributable to the manner in which the tax would be levied. Gambling operators need to pay an additional one per cent on their gross gambling revenue. Therefore, it seems as if it will be the gambling operator and not the gambler him-/herself that will be more directly exposed to the effect of the tax under the second proposal. Although the gambling operator could increase the cost of partaking in gambling activities in order to compensate for the additional one per cent levy to be paid over to the SARS on gross gambling revenue, it is believed that this will not have a significant impact on the gambler him-/herself, as the effect is too indirect.

Although the tax under the second proposal seems to take on some of the main characteristics of a sin tax (as discussed under part 3.6.2), it would not be as effective as a normal sin tax (acting as an excise tax) because it does not have a monetary impact on the gambler (or sinner) directly. The impact of the gambling operator's actions in reaction to the new proposed tax that will spill over to the gambler will be too indirect.

Therefore, it seems as if the tax under the second proposal should rather be classified as a tax levied on normal income. In effect, government is utilising the second proposal as an instrument to generate additional state revenue by levying a tax on the gross gambling revenue of the gambling operators on a provincial level.

Based on the aforementioned arguments raised, it seems as if the tax under the second proposal will not be that effective in discouraging excessive gambling as the direct impact or effect on the gambler him-/herself might be insignificant. This supports government being placed in the role as stakeholder more than that of regulator, as it seems as if the generation

of state revenue through this proposal plays a more prominent role than meeting the objective behind the tax to impact the gambler in order to curb excessive gambling.

3.7. CONCLUSION

Based on detailed discussion and analysis of the proposals made by government to levy an additional tax on gambling activities, it was found that the first proposal would have resulted into too many administrative difficulties once attempted to be practically applied. It was concluded that it would be very difficult to apply and to coordinate the exemption threshold to winnings between different gambling modes. The proposal of a withholding tax under the first proposal was aimed at taxing winnings, while the objective behind the tax is aimed at problem gamblers. It is not only problem gamblers who would take winnings, and it is questionable whether a withholding tax on winnings would be effective in changing gambling behaviour.

Although withholding tax systems on winnings was implemented successfully in other countries (such as India, the Netherlands and the US), the differences in the regulatory environments between these countries compared to South Africa makes it difficult to draw a comparison (CASA, 2011:3).

The first proposal demonstrated administrative difficulties and practicalities for government in order for it to be successfully implemented in an already administrative intensive environment. This might be the reason why government rejected the first proposal and shifted to the second proposal as an alternative that will be much easier to implement and administrate from the operator's perspective.

It is further concluded that even though the second proposal would be better in affecting all gamblers and not only winnings, the impact on the gambler would not be strong enough to change excessive gambling behaviour. Because the tax is levied under this proposal on gross gambling revenue of the gambling operator, the impact is felt more directly by the gambling operator, rather than the gambler him-/herself.

It is therefore concluded that it is government and not the problem gamblers that will benefit most from the proposed method of levying an additional tax on gambling in South Africa. However, the fact should be recognised that depending on how government will utilise and apply the revenue generated by imposing this additional tax on gambling activities, could

shift the benefit back the problem gambler and the society at large upon which the costs of externalities associated with gambling activities are imposed.

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CHAPTER 4: FINDINGS, CONCLUSION AND RECOMMENDATIONS

4.1. INTRODUCTION

The aim of this study was to explore two main problem statements. The first was to determine which role of government, regulator versus stakeholder, is taking precedence through the implementation of the proposals to levy additional taxes on gambling in South Africa. The second problem statement was whether this identified role is the correct role that government should achieve in their objective of curbing excessive gambling in South Africa, and also whether it justifies the need for an additional tax to be levied on South African gambling and will address research objective 1.3(V) on page 6.

4.2. FINDINGS SUPPORTING GOVERNMENT'S ROLE EITHER AS REGULATOR OR STAKEHOLDER

Government announced that an additional tax on gambling activities will be levied in order to discourage excessive gambling in the country. Chapter 2 investigated the meaning of 'excessive gambling' and also whether it could really be regarded as a problem in South Africa that needs to be addressed. From the relevant literature it was found that excessive gambling in effect refers to 'problem gamblers'. It was further found that recent studies indicate a declining trend in the number of problem gamblers in South Africa over the past few years. Despite this declining trend, the conclusion drawn from the literature is that the externalities caused by problem gambling are the actual significant problems that need to be addressed.

It was found that Government is recognising the negative social impacts and social costs caused by excessive gambling. In an attempt to address the problem, two different proposals were made whereby the additional tax could be levied. This action shows that government is adhering to its responsibility to act as regulator of the gambling industry as there is a need for the cost of externalities to be internalised by those who are responsible for it.

Chapter 2 also went into a detailed discussion on the types of taxes that could be applied by government as an instrument to impose the additional tax against the background of how the gambling industry is currently regulated in South Africa. Sin taxes, withholding taxes and normal income tax were scrutinised and the following conclusions were reached: Sin taxes

are used to discourage behaviour, are imposed directly on the product, directly having a monetary impact on the sinner and are regressive in nature. Withholding taxes are the taxes withheld from source and are most efficient in minimising tax evasion. Income tax is a tax levied on income and could be either regressive or progressive, depending on the type of taxpayer.

From the detailed analysis performed in Chapter 3 on the first proposal made by Government to levy an additional tax on gambling winnings by way of a withholding tax, the following practical problems surrounding the implementation, control and administration of this proposal were identified:

- Difficulty in applying the exemption threshold of R25 000 to winnings from different types of gambling modes;
- Practical difficulty in keeping accurate records of, monitoring and controlling winnings gained from different types of gambling modes as well as the integration thereof;
- Difficulty in determining the timing of the taxable event that will trigger the withholding of tax from winnings (a single win, as opposed to a winning cycle or rather a cash-in and pay-out event) as well as the timing of making payment of the taxes withheld to the SARS;
- Differences in regulatory environments where South Africa is compared to other countries that successfully implemented withholding tax regimes on gambling activities;
- Difficulty in identifying the taxpayer on which the ultimate liability of the withholding tax rests upon where winnings are paid in cash as opposed to winnings awarded as property in kind;
- The administrative burdens to be placed on gambling operators in respect of the responsibility to collect, administer and make payment of the withholding taxes on gambling activities; and
- The financial strain and capital expenditure to be incurred by gambling operators in order to adapt their current systems in order to adhere to and accommodate the administration process of the proposed withholding tax regime on gambling activities.

Based on the aforementioned list of administrative difficulties identified through the analysis, together with the negative response received from the gambling industry, it is concluded that Government realised that the implementation of the first proposal would be problematic. It is further concluded that this was possibly the main reason why there was a sudden shift from the first proposal to the second proposal, as Government was seeking an alternative to replace the original proposal that would be much easier to implement and administrate.

The decision to propose and implement the second proposal resulted in Government moving further away from its objective behind the introduction of an additional tax to be levied on gambling activities. The objective behind the introduction of an additional tax on gambling was to curb excessive gambling in South Africa. However, it seems as if the main motivational factor behind the election of the second proposal was purely driven by how government would be successful in implementing an additional tax in the most administratively efficient and cost effective manner, while still benefiting from it through the collection of additional state revenue. This action taken by government strongly highlights government taking on the role as stakeholder rather than regulator, as it seems as if the needs of government were put in front of the bigger cause of curbing excessive gambling aimed at reducing the externalities associated with it.

Government's role as regulator would have been more prominent if a method was proposed and adopted whereby an additional tax on gambling would have been levied that would result in a greater and more direct monetary impact on the problem gambler in order to discourage the problem gambler from partaking in gambling activities. The impact of simply levying an additional one per cent on proceeds derived by gambling operators on top of the existing provincial gambling tax base, based on the study, it is submitted that it is not likely to impact the gambler him-/herself, but will have a more significant impact on the gambling operator. Therefore, under the second proposal, the impact on the problem gambler, which was intended to attempt to change gambling behaviour, is softened in relation to the first proposal where winnings in the hands of the gambler would have been directly affected by a tax reduction of 15 per cent.

4.3. CONCLUSION

Based on the arguments raised and the findings reached in this study, it is concluded that government's role as stakeholder is taking precedence above its role as regulator in the South African gambling industry through its proposals to levy an additional tax on gambling activities.

This conclusion is mainly based on the fact that under both the proposals the needs of government were put above the greater objective behind the tax, which was to discourage excessive gambling. The reasons identified for the shift from the first to the second proposal were purely based on the fact that it would have been too difficult for government to implement and control the original proposal from an administrative point of view, rather to

have considered how the proposal would have impacted problem gamblers and their behaviour. Government's needs were fully addressed under the second proposal, which was evaluated as a system to be much easier to implement and administrate, while the effect of the tax on the gambler was found to be minimal, very indirect and insignificant (if at all).

However, it is important to state that government should be given the credit for recognising the fact that the externalities caused by excessive gambling and the cost it imposes on society at large are really a significant problem. As research indicated that individuals mostly affected by the externalities of gambling are the youth, the unemployed, the less educated and poor households, government has the responsibility to act as regulator in an attempt to internalise the cost of these externalities in order to protect these parties. Therefore, it could also be concluded that government is fulfilling its role as regulator as it did act on an existing problem.

It is still questionable whether the correct and most appropriate solution to address the underlying problem of excessive gambling is to use the 'levy of a tax' as the instrument to resolve the problem, especially due to the following reasons: the number of problem gamblers in South Africa is on a declining trend; the fact that the party benefiting the most from the proposal to levy a tax is the government itself through the generation of government revenue, which is easily administered; and also the fact that the actual underlying problem is not really effectively impacted. It is believed that the main role that government should play is to act as regulator of the gambling industry, and not as stakeholder.

It is therefore suggested that government should investigate alternative methods (interventions) to be applied as the instrument, other than to use 'the levy of a tax', to curb excessive gambling in South Africa. Possible recommendations on actions to be taken are discussed in the section below.

4.4. RECOMMENDATIONS AND POSSIBLE INTERVENTIONS

Although concluded that government is taking on the role as stakeholder, it is believed that the main role that government should play in the South African gambling industry is to act as regulator. Further studies in future could be focused on the following recommendations to be taken by government that would support and strengthen its role as regulator:

Firstly, the National Lottery was found to be the most popular and most participated gambling mode in South Africa. It was also established that the majority of participants to this gambling mode constitutes gamblers from poor communities, and therefore it is recommended that government should not levy a general tax to all types of gambling modes, but to target the gambling mode that will have the largest impact through taxation in order to meet its objective of discouraging and curbing excessive gambling.

Secondly, the impact of an excise tax as an alternative, could be considered as this type of tax encapsulates the characteristics of a sin tax, which will have a more direct monetary impact on the gambler.

Thirdly, if legislation and guidelines that govern the gambling industry through the National Gambling Board, together with the Provincial Gambling Boards, should be reconsidered, revised where necessary and be enforced more effectively.

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