

A CRITICAL ANALYSIS OF THE TAXATION OF INTERACTIVE GAMBLING INCOME EARNED BY RESIDENT SOUTH AFRICAN INDIVIDUALS

by

HENDRIK JOHANNES MARTHINUS VAN DEVENTER
Student number 22136844

Submitted in partial fulfilment of the requirements for the degree

Magister Commercii in Taxation

in the

FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

at the

UNIVERSITY OF PRETORIA

STUDY LEADER: Mr TL Steyn
CO-LEADER: Prof M Cronje

Date of submission:
2010-09-30



ACKNOWLEDGEMENTS

I would like to extend my gratitude and thanks to my wife, Kim, for her continuous and unconditional love, encouragement, patience and support.

ABSTRACT

A CRITICAL ANALYSIS OF THE TAXATION OF INTERACTIVE GAMBLING INCOME EARNED BY RESIDENT SOUTH AFRICAN INDIVIDUALS

by

HENDRIK JOHANNES MARTHINUS VAN DEVENTER

STUDY LEADER: MR THEUNS STEYN

CO-LEADER: PROF M CRONJE

DEPARTMENT: TAXATION

DEGREE: MAGISTER COMMERCII (TAXATION)

There has been a continuous increase in the popularity of interactive gambling in South Africa due to the wide range of channels in which the public can now quickly and easily access gambling opportunities. Although there is uncertainty related to whether or not interactive gambling is considered to be legal in South Africa, the total value of income earned from interactive gambling by South African residents is conservatively estimated to be between R4 billion and R10 billion per year. Unfortunately, due to the fact that interactive gambling does not have national boundaries, it is difficult to determine the true worth of the industry.

There appears to be no academic research which has examined whether income received from interactive gambling qualifies to be taxed in terms of the Income Tax Act 58 of 1962. This study will contribute to an academic understanding of the interactive gambling industry in South Africa and an understanding of the South African Revenue Service's (SARS's) policies and practices relating to the taxation of income earned from interactive gambling by resident South African individuals.

The purpose of this study was to critically analyse whether income earned from interactive gambling by resident South African individuals should be taxed by SARS. This study also investigated which laws currently regulate the interactive gambling industry within South Africa and how the regulation and taxation of interactive gambling in South Africa

compares to that of other developing and developed countries. This study also investigated the legality and estimated value of interactive gambling income earned in South Africa by resident South African individuals.

This study concluded that income earned from interactive gambling should be subject to either normal income tax or to capital gains tax (CGT), depending on the intention of the taxpayer. This study noted that enforcing regular reporting from local licensed interactive gambling service providers would be the best method of effectively collecting tax that is owed by interactive gamblers on income generated from this form of gambling in South Africa.

This study further concluded that the most appropriate regulatory model to be applied in South Africa would be a protectionist model. This model protects the residents of a country by having a regulated interactive gambling industry that is protected from outside intruders. A regulated industry will result in economic benefits such as taxation, investment and employment within South Africa. The difficulties associated with electronic-commerce could be overcome through regulation of the industry which would be beneficial to SARS.

Keywords:

Gambling

Interactive gambling

Taxation

Gambling regulation

Capital Gains Tax

Online gambling

Remote Gambling

South African resident

Gross income

OPSOMMING

'N KRITIESE ANALISE VAN DIE BELASBAARHEID VAN INTER-AKTIEWE DOBBEL INKOMSTE VERDIEN DEUR SUID-AFRIKAANSE INDIVIDUE

deur

HENDRIK JOHANNES MARTHINUS VAN DEVENTER

STUDIE LEIER: MR THEUNS STEYN

MEDE-LEIER: PROF M CRONJE

DEPARTEMENT: BELASTING

GRAAD: MAGISTER COMMERCII (BELASTING)

Inter-aktiewe dobbel onder die Suid-Afrikaanse publiek is baie populêr en het 'n voortgesette toename vanweë die beskikbaarheid en toeganklikheid wat deur tegnologie daargestel word. Alhoewel daar onsekerheid is aangaande of inter-aktiewe dobbel wettig is al dan nie, word die inkomste wat deur Suid Afrikaanse inwoners verdien word konserwatief geraam en beloop tussen R4 en R10 biljoen per jaar. Aangesien die toeganklikheid wat deur die internet gebied word nie net tot Suid-Afrika beperk is nie, maar wêreldwyd strek, is dit feitlik onmoonlik om die waarde van die industrie te bepaal.

Daar is tot op hede geen akademiese navorsing gedoen om te bepaal of inkomste verdien uit inter-aktiewe dobbel belasbaar is ingevolge die Inkomstebelastingwet 58 van 1962. Hierdie studie sal bydra tot 'n akademiese begrip van SARS se beleid en die toepassing daarvan op inkomste verdien uit inter-aktiewe dobbel deur Suid-Afrikaanse individue.

Dus was die doel van hierdie navorsingstudie om te bepaal of inkomste verdien uit inter-aktiewe dobbel deur 'n Suid Afrikaanse individu deur SARS belasbaar is of nie en die aspekte krities te analiseer. Hierdie studie ondersoek ook die wette wat huidiglik die belasbaarheid van inkomste uit inter-aktiewe dobbel in Suid Afrika reguleer asook hoe die regulasies vergelyk met die van ander ontwikkelende en ontwikkelde lande. Verder word ondersoek ingestel om die wettigheid van inter-aktiewe dobbel en die waarde daarvan te bepaal.

Die gevolgtrekking is dat inkomste verdien uit inter-aktiewe dobbel onderhewig moet wees aan of normale belasting of kapitaalwinsbelasting. Die navorsing en studie toon ook dat daar gelisensieerde inter-aktiewe dobbel diensverskaffers moet wees wat dan die invordering van die inkomste uit hierdie tipe dobbel kan beheer en dat inter-aktiewe dobbelaars wel die nodige belasting oorbetaal uit inkomste verdien in Suid-Afrika op hierdie manier.

Ter afsluiting van die navorsing word daar 'n model voorgestel wat toegepas moet word in Suid-Afrika, eerstens om die inwoners van die land te beskerm deur 'n goed-gereguleerde inter-aktiewe dobbel stelsel daar te stel en tweedens moet daar ook die nodige beskerming verleen word teen buitelandse indringers. 'n Goed gereguleerde model vir die industrie sal voordelig wees vir Suid Afrika deurdat die belasbaarheid van die inter-aktiewe dobbelinkomste 'n inspuiting vir die ekonomie kan wees, sowel as werkskeppingvoordele bied. Wetstoepassing en regulering van die industrie sal ook voordelig wees vir SARS aangesien die probleme wat nou geassosieer word met elektroniese-handel voorkom en tot die minimum beperk kan word.

Sleutelwoorde:

Dobbel

Aanlyn Dobbelaar

Inter-aktiewe dobbel

Afstand Dobbelaar

Belasting

Suid-Afrikaanse inwoner

Dobbel regulasies

Bruto Inkomste

Kapitaalwinsbelasting



TABLE OF CONTENTS

| | | |
|------|--|----|
| 1 | INTRODUCTION AND PROBLEM STATEMENT | 1 |
| 1.1 | BACKGROUND | 1 |
| 1.2 | PROBLEM STATEMENT | 2 |
| 1.3 | PURPOSE STATEMENT | 2 |
| 1.4 | RESEARCH OBJECTIVES | 3 |
| 1.5 | IMPORTANCE AND BENEFITS OF THE STUDY | 3 |
| 1.6 | DEFINITION OF KEY TERMS | 4 |
| 1.7 | CONTEXT OF STUDY | 6 |
| 1.8 | RESEARCH METHODOLOGY | 6 |
| 1.9 | DELIMITATIONS | 7 |
| 1.10 | CONCLUSION..... | 8 |
| 2 | INTERACTIVE GAMBLING IN SOUTH AFRICA..... | 9 |
| 2.1 | INTRODUCTION | 9 |
| 2.2 | HISTORY..... | 9 |
| 2.3 | LEGISLATION REGULATING INTERACTIVE GAMBLING IN SOUTH AFRICA | 10 |
| 2.4 | THE ESTIMATED VALUE OF INCOME EARNED FROM INTERACTIVE GAMBLING IN SOUTH AFRICA | 14 |
| 2.5 | CONCLUSION..... | 19 |
| 3 | TAXATION LEGISLATION REGARDING INTERACTIVE GAMBLING INCOME EARNED BY A RESIDENT SOUTH AFRICAN INDIVIDUAL | 21 |
| 3.1 | INTRODUCTION | 21 |
| 3.2 | APPLICATION OF THE RESIDENCE PRINCIPLE TO INTERACTIVE GAMBLING..... | 21 |

| | | |
|-------|---|----|
| 3.3 | INCOME TAX DEFINITION AND THE APPLICATION THEREOF – INCOME TAX | 22 |
| 3.4 | INCOME TAX DEFINITION AND THE APPLICATION THEREOF – CAPITAL GAINS TAX | 31 |
| 3.5 | DISTINGUISHING BETWEEN TAX AVOIDANCE AND TAX EVASION | 34 |
| 3.6 | FUTURE DEVELOPMENTS FOR TAXATION OF INTERACTIVE GAMBLING INCOME | 35 |
| 3.7 | DIFFICULTIES EXPERIENCED IN TAXING INCOME EARNED FROM INTERACTIVE GAMBLING | 36 |
| 3.7.1 | Identification and location of taxpayers | 37 |
| 3.7.2 | Identification and verification of taxable transactions | 37 |
| 3.7.3 | Establishing a link between taxpayers and their taxable transactions | 38 |
| 3.7.4 | Enforcing payment | 39 |
| 3.8 | CONCLUSION..... | 40 |
| 4 | CRITICAL ANALYSIS OF THE SOUTH AFRICAN APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING..... | 42 |
| 4.1 | INTRODUCTION | 42 |
| 4.2 | LEGISLATIVE MODELS APPLIED TO INTERACTIVE GAMBLING | 42 |
| 4.3 | THE APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING IN CANADA | 44 |
| 4.4 | THE APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING IN AUSTRALIA | 46 |
| 4.5 | THE APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING IN THE UNITED STATES (US) | 48 |
| 4.6 | THE APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING IN THE UNITED KINGDOM (UK) | 50 |
| 4.7 | A BRIEF SUMMARY OF THE APPROACH TO REGULATING INTERACTIVE GAMBLING IN VARIOUS OTHER COUNTRIES..... | 51 |
| 4.7.1 | Austria | 51 |



| | | |
|-------|---|----|
| 4.7.2 | Finland..... | 51 |
| 4.7.3 | France | 52 |
| 4.7.4 | Germany..... | 52 |
| 4.7.5 | Hong Kong | 52 |
| 4.7.6 | Ireland | 53 |
| 4.7.7 | The Isle of Man..... | 53 |
| 4.7.8 | New Zealand | 53 |
| 4.8 | REGULATING AND TAXING INTERACTIVE GAMBLING IN SOUTH AFRICAN..... | 54 |
| 4.9 | CONCLUSION..... | 58 |
| 5 | CONCLUSION | 60 |
| 5.1 | INTRODUCTION | 60 |
| 5.2 | PURPOSE STATEMENT AND OBJECTIVES..... | 60 |
| 5.3 | SUGGESTIONS FOR FURTHER RESEARCH..... | 61 |
| 5.4 | CONCLUSION..... | 61 |
| | LIST OF REFERENCES..... | 63 |



LIST OF FIGURES

| | | |
|----------|--|----|
| Figure 1 | Gambling turnover and revenue returned to players | 18 |
| Figure 2 | Gross gambling revenue and taxes collected | 18 |
| Figure 3 | Five models used to categorise interactive gambling legislation..... | 44 |

LIST OF TABLES

| | | |
|----------|---|----|
| Table 1: | Top 20 interactive gambling jurisdictions at August 2010 | 15 |
| Table 2: | South African financial information pertaining to land based gambling | 17 |



LIST OF ABBREVIATIONS

Abbreviation

CEO

CGT

DTI

E-commerce

SARS

UIGEA

UK

US

VAT

Meaning

Chief executive officer

Capital gains tax

Department of Trade and Industry

Electronic-Commerce

South African Revenue Service

Unlawful Internet Gambling Enforcement Act

United Kingdom

United States

Value added taxation

A CRITICAL ANALYSIS OF THE TAXATION OF INTERACTIVE GAMBLING INCOME EARNED BY RESIDENT SOUTH AFRICAN INDIVIDUALS

CHAPTER 1

INTRODUCTION AND PROBLEM STATEMENT

1.1 BACKGROUND

There are people in South Africa who play interactive poker as a profession on a full time basis (Freemantle, 2010:104). These professional gamblers can earn, or lose, as much as R200 000 in one night, although they are not willing to disclose details of their exact earnings from interactive gambling as they are afraid SARS will tax them on the money. These players do pay tax on tournament winnings and on the online money that they deposit into their bank accounts, but as one of the interviewed players noted, “one way of avoiding massive payouts is to keep a huge bank balance online, using the poker interface as a bank account”. (Freemantle, 2010:104.)

The report highlighted two facts which need to be considered. Firstly, the interactive gambling industry in South Africa is growing. Collins (2009), an executive director of the National Responsible Gambling Programme in South Africa, commented that the popularity and the reason for the rapid global expansion in interactive gambling is due to the wide range of channels in which the public can now quickly and easily access gambling opportunities. Secondly, the industry is still largely unregulated Collins (2009) also commented that until recently, despite the easy access to interactive or remote gambling in South Africa, this sector was not recognised and thus not regulated.

How much money resident South African Individuals earn from interactive gambling and how the South African Revenue Service (SARS) tax the income generated from interactive gambling activities, needs to be considered. An extensive search of leading electronic journal databases, including SA e-publications, EBSCOhost, Proquest, Emerald, Google

Scholar and ScienceDirect suggests that no academic research has examined whether income received from interactive gambling will qualify to be taxed in terms of the Income Tax Act 58 of 1962 (the Income Tax Act).

1.2 PROBLEM STATEMENT

There has been a continuous increase in interactive gambling in South Africa with Puttergill (in Baumann, 2010) estimating the local interactive gambling industry to be worth between R400 million and R1 billion. Unfortunately, due to the fact that interactive gambling does not have national boundaries, and with many websites based offshore but available to South Africans, it is difficult to determine the true worth of the industry (Baumann, 2010). The rapid development of technology has also brought further difficulties to the already complex world of gambling regulation. Interactive gambling has long been a reality in South Africa but this sector of the industry was not, until recently, regulated and the legality of the industry still remains unclear (Collins, 2009).

Considering the increase in interactive gambling and the ineffective regulation of the industry, it is imperative that tax strategies and tax policies be appropriately designed, applied and continuously monitored so as to optimise revenue collection and ultimately support the strategies of revenue authorities (Gcabo & Robinson, 2007:357). Research addressing transactions such as interactive gambling and the taxation thereof is still very limited due to the fact that current tax systems are designed to operate in physical environments (Pienaar, 2008:1).

1.3 PURPOSE STATEMENT

The purpose of this study was to critically analyse whether income earned from interactive gambling by resident South African individuals should be taxed by SARS. This study also investigated which laws currently regulate the interactive gambling industry within South Africa and how the regulation and taxation of interactive gambling in South Africa compares to that of other developing and developed countries.

1.4 RESEARCH OBJECTIVES

The following specific objectives guided this study:

- to determine whether interactive gambling is considered legal within South Africa;
- to establish the value of income earned by individuals participating in interactive gambling in South Africa;
- to determine whether resident South African individuals should be taxed on income received from interactive gambling activities; and
- to critically analyse SARS's policies and practices relating to taxation of income earned from interactive gambling in relation to other developing and developed countries.

1.5 IMPORTANCE AND BENEFITS OF THE STUDY

This study critically analysed the regulatory and legal framework of the interactive gambling industry in South Africa and uniquely contrasted SARS's policies and practices related to the taxation of such income against policies and practices implemented internationally.

From a theoretical perspective, this study will greatly contribute to an academic understanding of the interactive gambling industry in South Africa and an understanding of SARS's policies and practices relating to the taxation of income earned from interactive gambling by resident South African individuals.

From a practical standpoint, this study will be helpful to both the taxpayer and SARS to identify possible gaps in South African legislation concerning the taxation of income earned from interactive gambling. The significance of this study is emphasised because it attempts to address very basic principles in South African tax legislation in a new way.

1.6 DEFINITION OF KEY TERMS

The study revolves around a number of key concepts, namely cyberspace, electronic-commerce, electronic transaction, gambling, gambling game, individual, interactive gambling, interactive gambling service provider, land-based gambling, placing a bet or wager, player and player account. The manner in which these key terms have been defined for the purpose of this study is considered below:

Cyberspace

Cyberspace, for the purpose of this study, is defined as the non-physical terrain that is created by computer systems that allows for electronic transactions to occur via the internet (Webopedia, Not dated).

Electronic-commerce (E-commerce)

E-commerce, for the purpose of this study, is defined as a way of undertaking real-time business transactions via telecommunications networks. The customer and the merchant are often in different geographical locations. E-commerce operates via the internet using any combination of technologies designed to exchange data (such as EDI or e-mail), to access data (such as shared databases or electronic bulletin boards), and to capture data (through the use of bar coding and magnetic or optical character readers). (Institute for Telecommunication Science, Not dated.)

Electronic transaction

Electronic transaction, for the purpose of this study, is defined as any transaction that can be made easily and quickly between different jurisdictions without detection in cyberspace (Oguttu, 2006:156).

Gambling

Gambling, for the purpose of this study, is defined as any activity that involves placing a bet or wager (section 3 of the National Gambling Act 7 of 2004).

Gambling game

Gambling game, for the purpose of this study, is defined as any activity that is played upon payment of any consideration with the possibility that the person playing the game might become entitled to, or receive a pay-out and the result of the game may be determined by the skill of the player, an element of chance, or by both (section 1 of the National Gambling Act).

Individual

Individual, for the purpose of this study, will be interpreted to have the same meaning as 'natural person' in terms of the Income Tax Act and will exclude any association, corporation, private company, public company and co-operative (section 1 of the Income Tax Act). For purposes of this study, individual will also exclude any trust.

Interactive gambling

Interactive gambling, for the purpose of this study, is defined as a gambling game played, or available to be played, through the mechanism of a computer program or other automated means accessed over the internet (section 1 of the National Gambling Act). The terms 'online gambling', 'remote gambling' and 'interactive gaming' will be deemed to have the same meaning as the term 'interactive gambling'.

Interactive gambling service provider

Interactive gambling service provider, for the purpose of this study, is defined as any person or company that provides access to gambling games via the internet (section 1 of the National Gambling Act). For the purpose of this study, 'interactive gambling service provider' does not specifically mean that the service provider is licensed as required by the National Gambling Act.

Land-based gambling

Land-based gambling, for the purpose of this study, is defined as traditional gambling that occurs at a physical location rather than on a website (Encata, 2009).

Placing a bet or wager

Placing a bet or wager, for the purpose of this study, is defined as staking money or anything of value on any contingency or with a bookmaker or casino (section 4(1) of the National Gambling Act).

Player

Player, for the purpose of this study, is defined as the individual that participates in placing a bet or wager (section 4 of the National Gambling Act). The terms 'gambler' or 'bettor' will be deemed to have the same meaning as the term 'player'.

Player account

Player account, for the purpose of this study, is defined as an account held in the name of the player with an interactive gambling service provider (section 1 of the National Gambling Act).

1.7 CONTEXT OF STUDY

This study specifically focused on interactive gambling and the taxation of interactive gambling income within South Africa. The focus of the study was also specifically on resident South African individuals who earn income from interactive gambling.

1.8 RESEARCH METHODOLOGY

A search of published legal cases and literature was performed via available functions of relevant software packages, search engines available on the world-wide-web, electronic journal databases available from the University of Pretoria, as well as on SARS's website using the terms 'taxation' and 'interactive gambling'.

An extensive literature study was conducted in order to establish the theoretical platform for the research as well as to obtain an understanding of the basic concepts of interactive gambling and the regulation of interactive gambling. Searches were performed, with regards to the topic, for both local and international studies.

Specific international approaches, legal frameworks, taxation and enforcement of the laws and regulations governing interactive gambling within those countries were investigated. This was done to determine the suitability and possible application thereof to the South African interactive gambling industry.

Only relevant results which had a direct relation and added value to this study were discussed and made applicable to the objectives listed in chapter 1.4 above.

1.9 DELIMITATIONS

It must be noted that this study only considered the following:

- the legality and estimated value of interactive gambling income earned in South Africa by resident South African individuals;
- whether income earned by resident South African individuals is taxable in terms of the Income Tax Act; and
- how South African policies and practices of governing interactive gambling, and taxing interactive gambling income, compares to other developing and developed countries.

It must be noted that this study did not:

- consider which exclusions or deductions might be available to taxpayers, either to those that constitute a trade or business, or to those engaging in the activity of interactive gambling as a hobby or recreational activity;
- consider the effect of double taxation agreements or any other international tax rules;
- focus on specific relief provisions contained within the Income Tax Act that grant relief against double taxation such as section 6quat;
- focus on the definitions and applications of the anti-avoidance provisions contained within the Income Tax Act;
- focus on the tax consequences of income earned by local or foreign interactive gambling service providers;

- focus on exchange control regulations prohibiting cross border gambling; and
- focus on ‘gains or losses on foreign exchange transactions’ as dealt with in section 24I of the Income Tax Act.

1.10 CONCLUSION

Chapter 1 introduced the focus of the study. It provided the background to the study and presented the problem statement, purpose statement and the research objectives of the study. The importance and benefits of the study were highlighted for both the revenue services and the taxpayer. This chapter also defined the key terms used in the study. The context of the study, the research methodology and the delimitations that applied to the study were explained to provide an outline for the remainder of the study.

Chapter 2 will examine the literature available on the history and development of interactive gambling as well as the legislation governing interactive gambling in South Africa. This chapter will also investigate and attempt to estimate the value of income earned by resident South African individuals from interactive gambling.

Chapter 3 will analyse the legislation contained within the Income Tax Act to determine whether income earned by resident South African individuals from interactive gambling should be taxed. This chapter will also examine the intention of SARS to amend the legislation related to gambling proceeds and will consider the difficulty of taxing income that is earned from interactive gambling.

In chapter 4, the literature and legislation available to determine what practices are followed internationally with regard to the regulation and taxation of the interactive gambling industry will be examined. This chapter will also investigate what the best possible solution for South Africa may be in respect of the regulation of the interactive gambling industry, and the taxation of income earned by resident South Africa individuals from interactive gambling.

Chapter 5 highlights the conclusion of the study which is followed by the list of references, legislation and court cases.

CHAPTER 2

INTERACTIVE GAMBLING IN SOUTH AFRICA

2.1 INTRODUCTION

This chapter examines the history of interactive gambling in South Africa and abroad. This chapter will investigate the current legislation that governs interactive gambling in South Africa and will attempt to estimate what the total value of income earned from interactive gambling by South African individuals is.

2.2 HISTORY

Historically most forms of gambling in South Africa were prohibited from as early as 1673 (Rule & Sibanyoni, 2000:8). The Gambling Act 55 of 1965 consolidated all previous restrictions and officially prohibited all forms of gambling in South Africa, with the exception of betting on the results of horse races (Rule & Sibanyoni, 2000:8). The Wiehahn report (1995:143) concluded that there were an estimated 2000 illegal casinos operating within South Africa. In 1996, for the first time in South Africa, the National Gambling Act 33 of 1996 made provision for the granting of licences which would allow for legal casinos and gambling within South Africa (Rule & Sibanyoni, 2000:8).

Internationally, in 1994, the government of the Caribbean nation of Antigua and Barbuda passed the Free Trade and Processing Zone Act 12 of 1994 which legally recognised online or remote gambling for the first time, and legislated to allow licences to be granted to companies that applied to open online casinos (Onlinegambling.com, Not dated). The first online casino was established in Antigua by a company called InterCasino in 1996 which offered some basic casino games which could be played for real money (Cryptologic Casinos, Not dated; Somach, 2007).

In South Africa, until as recently as 2008, online or interactive gambling was not recognised in terms of local legislation. In 2008, the National Gambling Amendment Act 10 of 2008 (Amendment Act) defined terms such as 'electronic betting' and 'interactive

gambling' for the first time, thereby recognising interactive gambling. The purpose of the Amendment Act was to amend the National Gambling Act so as to provide for the licensing and regulation of interactive gambling activities (Rahamim & Mthiyane, 2008:14). The Amendment Act was signed by the president of South Africa and published in the National Gazette on 10 July 2008. The Amendment Act acknowledges interactive gambling, but does not provide much insight into the regulation thereof. The South African Parliament and the Department of Trade and Industry (DTI) have held public hearings on proposed amendments to the interactive gambling regulations, which would either regulate or prohibit interactive gambling, but no decisions have yet been taken (Mahlong, 2010).

Interactive gambling sites have progressed and shown great development since their inception and now feature a variety of games including interactive games, casino games such as blackjack, poker, slot machines and roulette (Snail, 2007a:38). With the growth of the industry and technological advancements, these interactive gambling sites now usually require customers to complete and submit an online registration form and then necessitate that customers either purchase virtual chips or set-up an account with a set minimum amount prior to gambling. Payment is effected by means of a credit card, debit card, electronic funds transfer (EFT) or any other recognised form of electronic payment (Snail, 2007a:38).

2.3 LEGISLATION REGULATING INTERACTIVE GAMBLING IN SOUTH AFRICA

The National Gambling Act 7 of 2004 (National Gambling Act) has been the main regulatory framework governing gambling in South Africa since 2004. Until the National Gambling Amendment Act 10 of 2008 was enacted, online or interactive gambling was not defined and was therefore not recognised as a legal form of gambling in South Africa. The Amendment Act has now recognised interactive gambling and has added several definitions into the National Gambling Act to incorporate interactive gambling.

While the Amendment Act recognises that interactive gambling exists, it unfortunately does not provide much insight into the regulation of the interactive gambling industry. The DTI in South Africa published the 'Interactive Gaming Regulations Bill' and opened it up for

public comment during 2009. Since then, no further progress has been made with regards to the regulation of the interactive gambling industry in South Africa.

The Amendment Act stipulates that only interactive gambling service providers licensed in terms of the National Gambling Act may legally provide interactive gambling services within South Africa. At the time that this study was conducted, no interactive gambling licences had been issued by the National Gambling Board. This effectively means that at present, providing interactive gambling services in South Africa is deemed illegal.

The National Gambling Act also currently considers interactive gambling by South Africans on foreign websites to be illegal. It only allows for citizens of the Republic of South Africa to participate in interactive gambling with interactive gambling service providers that are licensed in terms of the National Gambling Act, of which there are currently none.

The amendments proposed by the DTI in the Interactive Gaming Regulations Bill 211 of 2009 aims at regulating the industry through taking initial steps which seek to protect players from dishonest and unfair practices, and keep money from being spent outside of South Africa (Collins, 2009). There appears to be support for the Interactive Gaming Regulations Bill and Rodrigues (2008:24) states that, even if the Bill increases the cost of legalising interactive gambling in terms of the cost of monitoring and regulating the industry, the interactive gambler will be far better off with the protection it will provide.

The Interactive Gaming Regulations Bill calls for some of the following regulations (South African Proposed Interactive Gambling Regulations, 2009; Rodrigues, 2008:24-25):

- interactive gambling service providers will have to comply with the Financial Intelligence Centre Act 38 of 2001;
- interactive gambling service providers will have to license their employees, premises, manufacturers and suppliers with the National Gambling Board;
- interactive gambling service providers will have to seek approval of their interactive games, interactive gambling equipment and software from the national regulator;
- interactive gambling service providers will have to monitor players' accounts and will have the duty to report unusual and suspicious transactions;

- interactive gambling service providers will have to allow regulators access to their servers and systems to enable verification and monitoring of players' records;
- interactive gambling service providers will be required to register players and to verify players' details, such as age;
- interactive gambling providers will be required to allow play exclusion on a voluntary basis by players; and
- interactive gambling providers will be required to treat registered players fairly. Should a player be dissatisfied with an interactive provider, the dispute can be taken to the National Gambling Board for resolution. The Board will then be able to apply the prescribed complaints resolution procedure it has in place.

The Interactive Gaming Regulations Bill extends to interactive gambling taking place via the internet or other related forms of telecommunication, but excludes interactive gambling activities that take place between two or more persons facilitated by a third party.

The DTI will play an active role in the regulation of the industry. It will have powers to prescribe interactive gambling software and hardware procedures to maintain the integrity of interactive gambling activities, registered player data and game data (Rodrigues, 2008:24). The amendments proposed by the Interactive Gaming Regulations Bill also make provision for the issuing of 10 interactive gambling licences in South Africa (Puttergill 2009:8).

Puttergill (2009:8) is of the opinion that as the penetration of internet access and infrastructure development increases in South Africa, the regulation of interactive gambling is becoming increasingly pertinent and urgent. Puttergill (2009:8) also commented that the legality of internet gambling is currently pending determination by the courts and, until the position is clarified, there is a high degree of risk that current interactive gambling activities could be considered unlawful.

The current National Gambling Act and the proposed Interactive Gaming Regulation Bill do not recognise the most recent addition to interactive gambling known as betting exchanges. Betting exchanges are sites that create a marketplace for bettors whereby they post potential odds and stakes on certain events in the hope that someone will take

them up on their offer. This could be seen as peer to peer betting. The largest betting exchange to date is www.betfair.com (Williams & Wood, 2007:7). The wagers placed on these exchanges are usually on sporting and horse racing events, but also include wagers on politics, reality television events and anything that someone is willing to offer odds on to a potential interactive gambler. Several of these sites have expanded to include peer to peer gambling on traditional casino games as well. (Williams & Wood, 2007:7.)

The Gauteng High Court recently passed a judgement which concluded that interactive gambling is considered to occur where the interactive gambling player is physically situated and not where the interactive gambling service provider's server is situated. This therefore makes all interactive gambling in South Africa illegal until interactive gambling licences are issued by the National Gambling Board (Mawson, 2010). Mawson (2010) comments that the ruling means that it is deemed an offence for internet service providers to facilitate interactive gambling, for the media to run advertisements promoting interactive gambling, and for banks to assist people in gambling online. Anyone involved in interactive gambling including players, interactive service providers and even banks that facilitate money transfers for interactive gambling could face a R10 million fine or a jail term of not more than 10 years (Mawson, 2010). The court's decision is however being appealed by Pigg's Peak Casino, which is based in Swaziland, as it believes interactive gambling occurs legally in Swaziland where the server is located and that the casino does not have to adhere to the National Gambling Act (Mawson, 2010).

It is important to note that this ruling does not impact on online betting activities regulated in South Africa. A distinction exists between interactive gambling and online betting. In online betting, the internet is merely considered a communication medium used between the bookmaker or totalisator operator and the customer (National Gambling Board, 2010b:1). Online betting is not considered to be interactive gambling as customers can physically walk into a betting outlet and place their bets, or they can communicate their bet via the telephone or the internet as long as they have an account and the outcome of the events that are bet on, is determined outside of the betting environment (National Gambling Board, 2010b:2).

Collins (2007:2) is of the opinion that it would be desirable to regulate the interactive gambling industry in such a way that some economic benefits accrue to the general public through various kinds of taxation, investment and employment. Collins (2007:3) also noted that the consequence of prohibition of interactive gambling will only result in the illegal provision of the prohibited goods and services, possibly through organised crime. Illegal interactive gambling is more likely to occur if internet gambling remains prohibited rather than if it is well regulated (Collins, 2007:4).

It will not be possible to protect land-based casinos and betting institutions from cheaper competition on the internet. Such competition is however likely to be more damaging if it originates from unregulated sites abroad rather than from well-regulated South African sites. These sites could be successfully hosted by existing South African land-based gambling companies where such companies will enjoy distinct advantages in respect of marketing and reputation (Collins, 2007:6).

Although there is uncertainty regarding the legality of interactive gambling in South Africa there are several indicators which suggest that interactive gambling activity is taking place within the borders of South Africa, irrespective of its legality. The following section will investigate the factors indicating that South African residents are participating in interactive gambling and will attempt to determine the estimated value of interactive gambling within South Africa.

2.4 THE ESTIMATED VALUE OF INCOME EARNED FROM INTERACTIVE GAMBLING IN SOUTH AFRICA

In August 2010 there were 2 347 interactive gambling websites owned by 662 different companies listed at Online Casino City (<http://online.casinocity.com>). Online Casino City is considered one of the World's most comprehensive and widely used interactive gambling portals. It continually provides updated listings and access to available interactive gambling sites, as well as rankings of their relative popularity based on monitoring and measuring of the actual site usage of millions of online users. The portal also provides a comprehensive listing of interactive gambling jurisdictions, interactive gambling site owners, interactive gambling software, and interactive gambling news.

While it is not possible to independently verify their rankings of gambling site popularity, Williams and Wood (2007:8) have investigated and have found most of the information on the portal to be fairly accurate. The high number of sites relative to owners is due to (Williams & Wood, 2007:8):

- the owners creating multiple sites so as to create a larger presence on the web; and
- the tendency of some of the larger companies to build sites which are then sold to another company to run.

The following table is a summary of the top 20 Interactive Gambling Jurisdictions as at August 2010:

Table 1: Top 20 interactive gambling jurisdictions at August 2010

| Volume of transactions (rank order) | Jurisdiction | Number of interactive gambling sites |
|--|--|---|
| 1 | Netherlands Antilles (Curacao) | 285 |
| 2 | Costa Rica | 212 |
| 3 | United Kingdom | 94 |
| 4 | United States | 21 |
| 5 | Antigua and Barbuda | 77 |
| 6 | Malta | 324 |
| 7 | Isle of Man | 27 |
| 8 | Kahnawake (Quebec) | 171 |
| 9 | Alderney (British Channel Island) | 78 |
| 10 | Oregon (Pacific Northwest region of the USA) | 4 |
| 11 | Cyprus | 44 |
| 12 | Belize | 27 |
| 13 | Italy | 1 |
| 14 | Panama | 45 |
| 15 | New South Wales (Australia) | 3 |
| 16 | Philippines | 13 |
| 17 | Comoros | 2 |
| 18 | Denmark | 1 |
| 19 | Ireland | 6 |
| 20 | Northern Territory (Australia) | 8 |

Source: Online Casino City (Not dated a); Williams and Wood (2007:8).

All of the above listed jurisdictions allow South African players to gamble within their jurisdiction or on websites based in their jurisdictions.

A website exclusively advertising interactive casinos to South African players, <http://www.gamblingsa.com>, currently advertises in excess of 30 interactive casinos. These interactive casinos allow a player to play in South African Rands and offer special cash bonuses for signing up with them. For example, Club Dice Casino (<http://www.clubdicecasino.com>) offer an initial R3 000 sign up bonus to South Africans while City Club Casino (<http://www.cityclubcasino.com>) offers a 400% bonus on the first time deposit, limited to R4 000, by a South African resident. By retrieving the contact details for the various websites, it is important to note that although these websites are advertised to South Africans, none of them are physically based in South Africa (<http://www.gamblingsa.com>, Note dated).

It appears as if these websites specifically target their advertising at South Africans which suggests that there is an interactive gambling market that exists in South Africa. Determining the value of the industry is however more difficult than concluding that the industry exists.

As mentioned in Chapter 1.2, the interactive gambling industry in South Africa is estimated to be worth between R400 million and R1 billion (Puttergill in Baumann, 2010). Unfortunately due to the fact that the industry remains unregulated in South Africa and due to the borderless nature of interactive gambling, it is difficult to determine what the actual current worth of the industry is in South Africa. To determine what the value of the industry is potentially worth, it will be necessary to investigate international trends and statistics.

An estimate of the total income earned by South African individuals from interactive gambling can be determined by applying global interactive gambling statistics to local land-based financial gambling data. The reason for doing this is that documented global statistics exist for interactive gambling and most of these statistics can be quoted as a percentage of land-based financial gambling data.

The total global interactive gambling revenues are predicted at approximately 5,5% of the total global gambling revenue generated each year (Bowsher, 2006). The Gambling Commission in the United Kingdom (2009a:15) released a report stating that approximately 9,9% of United Kingdom (UK) residents participate in interactive gambling. In 2007, Collins (2007:1) predicted that interactive gambling represented approximately 2% of all gambling undertaken by South Africans. Collins (2007:1) did however admit that the popularity was likely to grow substantially as user-friendliness of websites and cheaper technology becomes available. It is also expected that South Africans will become generally more used to participating in e-commerce and online operators will become more successful in attracting customers away from other forms of entertainment. The most recent estimates claim that the interactive gambling industry represents approximately 7% of the global gambling industry (Mawson, 2010).

Based on the above statistical information it is reasonable to assume that interactive gambling represents approximately 2% - 5% of total gambling in South Africa. This figure is substantially less than in the UK. A reason for this could be due to lower penetration rates and the relatively slow speed of internet access in South Africa compared to that of the UK.

According to the National Gambling Board, the following financial information exists for land-based gaming in South Africa for their 2010 financial year:

Table 2: South African financial information pertaining to land based gambling

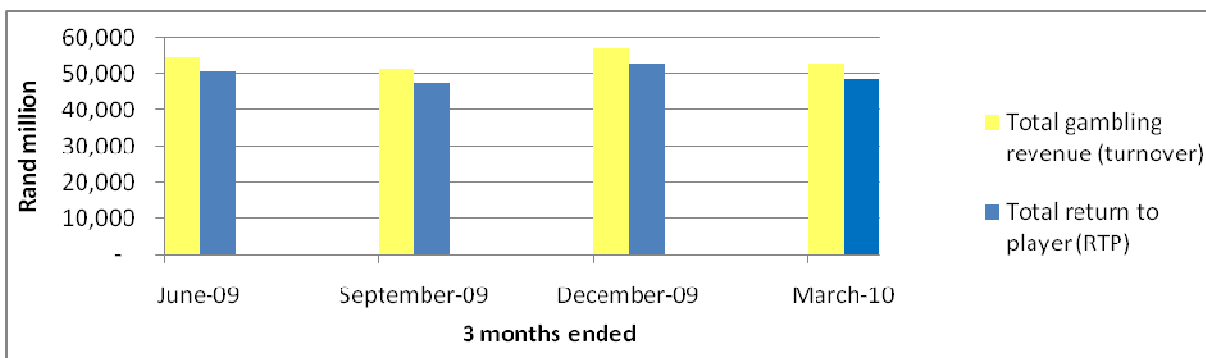
| Description | Total for the financial period 1 April 2009 to 31 March 2010 |
|---|--|
| Total gambling revenue (turnover) (R million) | 215 826 |
| Total gross gambling revenue (GGR) (R million) | 16 266 |
| Total return to player (RTP) (R million) | 199 560 |
| Total taxes collected by provincial licensing authorities (R million) | 1 576 |
| Tax collected as a percentage of GGR | 9,7% |
| Tax collected as a percentage of RTP | 0,8% |
| Gross gambling revenue (GGR) as a percentage of turnover | 7,5% |

Source: National Gambling Board (2010a)

Gambling revenue is the Rand value of money wagered including money wagered from winnings. Gross gambling revenue is the Rand value of the gross revenue of an operator or turnover less winnings paid to players. Return to player is the total value of money paid out to players or punters. Tax is the gambling tax levied by and collected by provincial licensing authorities.

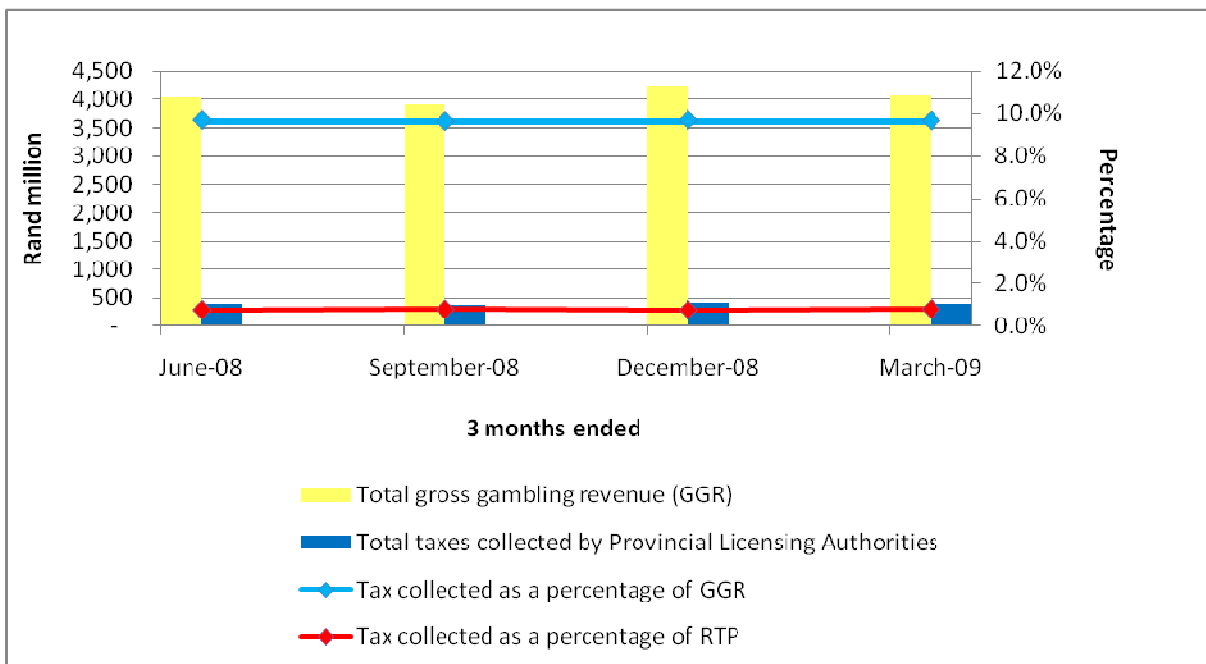
The financial information can be graphically presented on a quarterly basis as follows:

Figure 1 Gambling turnover and revenue returned to players



Source: National Gambling Board (2010a)

Figure 2 Gross gambling revenue and taxes collected



Source: National Gambling Board (2010a)

Based on the above statistical assumption that interactive gambling is approximately 2% - 5% of total gambling revenue, and based on the financial information obtained from the National Gambling Board (2010a), the total value of internet gambling revenue paid out to interactive gamblers (returned to players or punters) in South Africa is currently estimated to be between R4 billion and R10 billion per year. The estimation of money paid out to interactive gamblers in South Africa does not take into account money that could be paid out to South African residents from foreign jurisdictions, as the estimation is only based on total land-based gambling financial data for South Africa. This could result in the estimation being grossly understated.

Current indirect taxation collected by provincial licensing authorities is approximately less than 1% of the total amount paid out to players in South Africa. The money earned by interactive gamblers could result in substantial additional revenue for SARS if the money earned could be taxed. To determine whether the money earned should be taxed, a review of current tax legislation will be performed in the following chapter.

2.5 CONCLUSION

Interactive gambling has come a long way, from a technological and accessibility standpoint, since its inception in Antigua in 1994. There is uncertainty regarding the legality of interactive gambling in South Africa but, irrespective of this legality, interactive gambling activity continues to take place within the borders of South Africa. The National Gambling Act now recognises online or interactive gambling but unfortunately does not provide much insight into the regulation of the interactive gambling industry in South Africa. Since the Interactive Gaming Regulations Bill was published by the DTI, and opened for public comment during 2009, no further progress has been made with regards to the legal regulation of the interactive gambling industry in South Africa.

The current National Gambling Act and the proposed Interactive Gaming Regulations do not recognise the most recent addition to interactive gambling known as betting exchanges.

It has been argued that having a well regulated interactive gambling industry will be more beneficial to South Africa than prohibiting interactive gambling. Prohibiting interactive gambling is likely to have the industry fall into the hands of organised crime. Having a regulated industry is likely to result in some economic benefits accruing to the general public through various kinds of taxation, investment and employment (Collins, 2007:2). The most appropriate companies to host regulated interactive gambling websites may be existing South African land-based gambling companies where these companies will enjoy distinct advantages in respect of marketing and reputation (Collins, 2007:6).

If the income earned from interactive gambling by resident South African individuals were to be taxed it would result in substantial additional revenue for SARS as current estimates of the amount paid out to players is conservatively estimated between R4 billion and R10 billion per year. Currently indirect taxation collected by provincial licensing authorities on such amounts paid out is approximately less than 1% of the total amount paid out to players in South Africa. To determine whether the money earned from interactive gambling should be taxed, a review of current tax legislation is performed in the following chapter.

CHAPTER 3

TAXATION LEGISLATION REGARDING INTERACTIVE GAMBLING INCOME EARNED BY A RESIDENT SOUTH AFRICAN INDIVIDUAL

3.1 INTRODUCTION

This chapter will examine how the residence principle contained in the Income Tax Act applies to interactive gambling and the chapter will also investigate whether interactive gambling income earned by resident South African individuals should be taxed. In addition, this chapter will examine the intention of SARS to amend the legislation related to gambling proceeds and will consider the difficulty of taxing income earned from interactive gambling.

3.2 APPLICATION OF THE RESIDENCE PRINCIPLE TO INTERACTIVE GAMBLING

South Africa employs the residence principle of taxation as its main connecting factor. Consequently a South African resident's world-wide income, including income earned offshore, is taxable in South Africa, subject to certain exceptions (section 1 of the Income Tax Act). The definition of 'resident' in section 1 of the Income Tax Act distinguishes between natural persons and persons other than natural persons, for instance companies and trusts.

A natural person is considered resident in South Africa in terms of section 1 of the Income Tax Act when the person is 'ordinarily resident' in South Africa or a person meets the requirements of the 'physical presence test'.

The phrase 'ordinarily resident' is not defined in the Income Tax Act and one has to rely on case law to determine its meaning. An individual is considered to be ordinarily resident in South Africa if South Africa is his or her habitual and normal country of residence, in the sense of his or her living in South Africa with some degree of continuity (*Levene v IRC*, 1928 AC 217 (13 TC 486)). In *H v COT*, 1960 (2) SA 695 SR (23 SATC 292) it was held

that the taxpayer's real home was in Somerset West because this was where he had a permanent place of abode where his belongings were stored. In *Cohen v CIR*, 1964 AD 174 (13 SATC 362) the court proposed, in an *obiter dictum*, that a person's ordinary residence "would be the country to which he would naturally and as a matter of course return from his wanderings". This would be the country a taxpayer might call his "usual or principal residence and ... his real home".

A natural person who is not ordinarily resident in South Africa will be considered a resident in terms of section 1 of the Income Tax Act if he or she is physically present in South Africa for more than 91 days in aggregate during the year of assessment, as well as for periods exceeding 91 days in aggregate during each of the three preceding years, and is also physically present for a period exceeding 549 days in total during the preceding three years.

It is considered impossible to acquire a 'real home' in cyberspace or to 'live' in cyberspace in the sense of performing the normal functions of a human being such as eating, sleeping, or keeping assets (Oguttu & Van der Merwe, 2005:308). An individual's cyberspace activities are undertaken in front of a real computer, from a real chair, all connected to the physical location where the taxpayer 'lives' in real life. A cyberspace 'presence' should have no effect on a taxpayer's ordinary residence in a given jurisdiction, which is based upon the place where he or she lives and has a real home. Ordinary residence requires a degree of permanence. A taxpayer cannot permanently reside in cyberspace even if he or she can lead some facets of his or her life there (Oguttu & Van der Merwe, 2005:308).

This would suggest that even though a South African resident may gamble online on a website that is based in a foreign jurisdiction, the resident would still be considered a South African resident for purposes of the South African Income Tax Act.

3.3 INCOME TAX DEFINITION AND THE APPLICATION THEREOF – INCOME TAX

In terms of section 5(1) of the Income Tax Act, income tax is paid on the taxable income received by a person or accrued to a person during the year of assessment. Taxable income is defined in section 1 of the Income Tax Act as the amount remaining after the

deduction of any allowable expenditure and any set-offs against the income of the taxpayer. Section 1 of the Income Tax Act furthermore defines the term ‘income’ as:

“...the amount remaining of the gross income of any person for the year or period of assessment after deducting there from any amounts exempt from normal tax under Part I of Chapter II.”

From the above definition of income it is evident that the definition of gross income is critical in terms of the calculation of taxable income of a taxpayer. Section 1 of the Income Tax Act defines ‘gross income’ as:

“in relation to any year of assessment, means,
(i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident...
...during such year or period of assessment, excluding receipts or accruals of a capital nature...”

According to the above gross income definition, it is important to determine whether or not money earned from interactive gambling falls within the definition to decide whether it should be taxed or not.

This study will focus specifically on South African residents and will therefore not investigate the application of the definition to a person other than a resident individual of South Africa.

The various elements of the definition of gross income will be investigated namely:

- *“...the total amount, in cash or otherwise...”*;
- *“...received by or accrued to...”*; and
- *“...excluding receipts or accruals of a capital nature...”*.

- ***“...the total amount, in cash or otherwise...”***

According to the South African tax legislation, there needs to be an amount received or accrued for gross income to be recognised (Stiglingh, Koekemoer, van Schalkwyk, Wilcocks, de Swart & Jordaan, 2009:14). In *WH Lategan v CIR*, 1926 CPD 203 (2 SATC

16), it was determined that even without the words ‘whether in cash or otherwise’, the definition of the ‘gross income’ would include, by virtue of the term ‘amount’, not only money, but also the value of every form of property earned by the taxpayer, whether corporeal or incorporeal, which has a monetary value. This principle was confirmed in *CIR v Delfos*, 1933 AD 242 (6 SATC 92), when Judge Wessels said that “[t]he tax is to be assessed on all receipts or accruals having a monetary value. If it is something which is not money’s worth or cannot be turned into money, it is not to be regarded as income.”

The principle is that, should the taxpayer receive an amount otherwise than in cash, the market value of such an asset, on the date of the receipt or accrual, should be included in the taxpayer’s gross income. The asset, whether corporeal or incorporeal, must however have an ascertainable monetary value (Stiglingh *et al.*, 2009:14). The fact that it may be difficult to determine the monetary value of an asset is immaterial (Pienaar, 2008:20).

The determination of the value of an amount when it is otherwise than in cash should be an objective determination (*Ochberg v CIR*, 1931 AD 251 (5 SATC 93); *Butcher Bros (Pty) Ltd*, 1945 AD 301 (13 SATC 21)). The onus of establishing an amount however rests upon the Commissioner to determine the ascertainable monetary value of an asset (*CIR v Butcher Bros (Pty) Ltd*). Once the Commissioner has determined the amount, the onus is back on the taxpayer to prove a different value (Pienaar, 2008:21).

In *ITC 932* (24 SATC 341) and in *Lace Proprietary Mines Ltd v CIR*, 1938 AD 267 (9 SATC 394) it was confirmed that the value of the asset obtained to be included in gross income is normally the market value at which the asset was initially obtained.

Some interactive gambling websites such as Silver Sands Casino (www.silversandscasino.com) will allow players to play for free with virtual chips. All money won while playing for free is added to the virtual chips balance but cannot be cashed out as it is for recreational purposes only. These free virtual chips have no monetary value and will therefore not be deemed to be an amount earned by the taxpayer (www.silversandscasino.com).

Most interactive gambling websites do, however, require a player to deposit an amount of money into a virtual gambling account before bets or wagers can be placed. The amount deposited will be reflected on the website in the currency that the website operates in. Some interactive gambling websites allow for multiple currencies and will reflect a player's balance in the currency that the player opted for when signing up with the website. Interactive gambling websites can also convert the money deposited into virtual chips to make the online gambling experience seem more authentic to the player and to have a single operating currency on the site.

The value of bets placed, and the value of money won, is usually easily determined as it will be the monetary face value of the bet placed or the winnings received from a successful bet or wager. These winnings will be deemed to be an amount earned by the taxpayer. In the event that the deposit in an online betting account is denominated in a foreign currency, the principles of section 24I of the South African Income Tax Act, dealing with 'gains or losses on foreign exchange transactions' will need to be applied. A discussion on section 24I is however beyond the scope of this study.

- **“...received by or accrued to...”**

The definition of 'gross income' makes it clear that the definition applies to both receipts and accruals. If an amount has not been received by a person or an amount has not accrued to a person there can be no amount included in that person's gross income (*SARS v Cape Consumers (Pty) Ltd*, 1999 (4) SA 1213 (61 SATC 91)). The terms 'received by' or 'accrued to' have not been defined in the Income Tax Act and relevant case law needs to be examined to determine the exact meaning of these words.

In *Geldenhuis v CIR*, 1947 3 SA 256 (C) (14 SATC 419) the court determined that the words 'received by' must mean received by the taxpayer for his or her own benefit. It is therefore clear that a person cannot be subject to tax on an amount received on behalf of another person (Stiglingh *et al.*, 2009:16).

In *Pyott Ltd v CIR*, 1944 AD 128 at 134 (13 SATC 121) and *Greases (SA) Ltd v CIR*, 1951 (3) SA 518 (A) (17 SATC 358) it was held that if a taxpayer receives an amount and was

entitled to that amount it is regarded as physical receipt of that amount and constitutes a 'receipt for his own benefit'. The intention of the taxpayer does not play any role in the matter (Stiglingh *et al.*, 2009:16). The courts usually follow an objective approach to determine receipt of an amount (*CIR v Genn & Co (Pty) Ltd*, 1955 (3) SA 293 (A) (20 SATC 113); *Brookes Lemos Ltd v CIR*, 1947 (2) SA 976 (A) (14 SATC 295)).

The principle of the taxpayer's intention has come under consideration in dealing with illegal receipts. The intention of the taxpayer in such cases is of particular importance in view of the fact that the taxpayer was not entitled to the income. There have been conflicting judgements with regards to illegal receipts. Certain judgements considered the intention of the taxpayer to receive an amount for his or her own benefit, while other judgements did not take the intention of the taxpayer into account and followed an objective approach (such as the approach followed in *CIR v Genn & Co* and *Brookes Lemos Ltd v CIR*).

In *CIR v Delagoa Bay Cigarette Co*, 1918 TPD 391 (32 SATC 47), the court assumed a point of view that the "source of income [whether legal or illegal] is immaterial." In *COT v G*, 1981 (4) SA 167 (ZA) (43 SATC 159), the Appellate Division of the High Court of Zimbabwe held that the definition of 'received' in a provision such as the definition of 'gross income' cannot extend "to cover a unilateral taking such as theft, which in any event confers no right upon the taker to the things taken."

In South African cases the courts have followed a wider approach by paying regard to the unilateral intention of a taxpayer. Proceeds derived from illegal acts are not deemed to have 'accrued' to the taxpayer, but are deemed to have been 'received' by the taxpayer and implies receipt for the taxpayers own benefit (*ITC 1545* (54 SATC 464)). In *ITC 1624* (59 SATC 373) the courts confirmed that the unilateral intention of a taxpayer is conclusive and amounts received by way of illegal actions should be included in gross income (Stiglingh *et al.*, 2009:17).

In contrast, in *ITC 1792* (67 SATC 236), the courts once again followed an objective approach, not giving any consideration to the intention of the taxpayer. The court concluded that amounts obtained illegally did not belong to the taxpayer and were

therefore not 'received by' the taxpayer. The taxpayer had an obligation to repay the amounts obtained illegally.

In *ITC 1789* (67 SATC 205), the court held that illegal proceeds received by a taxpayer are indeed for the taxpayers own benefit and should be included in gross income. This position was supported by *MP Finance Group CC v CSARS*, 2007 (3) SA 521 (SCA) (69 SATC 141) in which the court concluded that the intention of the taxpayer was to receive amounts for his own benefit.

The current legal position in South Africa appears to be that any amounts obtained illegally will be included in gross income as the intention of the taxpayer is to receive the amounts for his or her own benefit (Stiglingh *et al.*, 2009:17). The courts have however come under criticism for applying a subjective approach to illegal receipts (Stiglingh *et al.*, 2009:18).

With regards to 'accrued to', the courts have tested the principle but finally decided that the most appropriate interpretation would be that income has accrued to a taxpayer when they become entitled to claim payment (Stiglingh *et al.*, 2009:18). This position was originally held in *WH Lategan v CIR* and was later confirmed in *CIR v People's Stores (Walvis Bay) (Pty) Ltd*, 1990 (2) SA 353 A (52 SATC 9).

It is important to note that a taxpayer can only be taxed either on receipt or accrual of a transaction (Stiglingh *et al.*, 2009:20). The commissioner does not have the right to decide on whether to tax the taxpayer on receipt or to tax the taxpayer on accrual and has to include amounts received or accrued to the taxpayer in gross income at the earlier of receipt or accrual (*CIR v Delfos*, 1933 AD 242 (6 SATC 92) and *SIR v Silverglen Investments (Pty) Ltd*, 1969 (1) SA 365 (A) (13 SATC 199)).

In terms of section 9A of the Income Tax Act, amounts that accrue to a South African taxpayer from a foreign country are not included in gross income if the foreign country imposes restrictions which prevent the amounts from being transferred to South Africa. Such amounts are deemed to have accrued to the taxpayer in the year which such restrictions are lifted and the taxpayer can transfer the amounts to South Africa (Stiglingh *et al.*, 2009:22).

As discussed in Chapter 2.3, it is accepted that interactive gambling in South Africa is currently considered illegal. If an interactive gambler places a successful bet or a wager and immediately receives the winnings from the interactive gambling website the amount received will be deemed to have been ‘received by’ the taxpayer for his own benefit irrespective of the legality thereof.

The application of ‘received by’ or ‘accrued to’ becomes more difficult if the winnings are left in an online betting account. Although the money in the betting account technically belongs to the player, the money needs to be cashed out of the account before it is available to the player for his own benefit. In most instances winnings or withdrawals made are not instantaneous. Many casinos attempt to return money to a player within 48 to 72 hours although some less reputable casinos can take several weeks to return a player's money (Online-Casinos.com, Not Dated).

A taxpayer that has allowed winnings to collect in an online betting account may argue that the proceeds derived from illegal interactive betting are not deemed to have ‘accrued’ to the taxpayer based on the fact that the cash is not available to the taxpayer for his own benefit as was the position in *ITC 1545* (54 SATC 464) and in *ITC 1624* (59 SATC 373). The Receiver may however argue that the winnings have accrued to a taxpayer when the taxpayer becomes entitled to claim payment. This was the position in *WH Lategan v CIR* and was later confirmed in *CIR v People's Stores (Walvis Bay) (Pty) Ltd*. As there is no case law that currently exists related to the issue of illegal interactive gambling winnings, there is a need to clarify the position with regard to ‘received by’ or ‘accrued to’ related to such winnings.

- **“...excluding receipts or accruals of a capital nature...”**

Nachito (2010:5) is of the opinion that gambling activities are generally games of chance and it is possible that one could be a consistent partaker in such activities or, in some instances, a person may try their luck in a random manner.

Only a portion of a taxpayer's capital gains is included in taxable income. Although capital profits are, in general, no longer free of taxation, they are effectively taxed at a lower rate, which means that the difference between 'capital' and 'income' is still relevant (Stiglingh *et al.*, 2009:26).

The Income Tax Act does not define the term 'capital' and the conflicting court decisions on the subject indicates that no single infallible test to distinguish between 'capital' and 'income' exists (Stiglingh *et al.*, 2009:26).

All receipts and accruals must be categorised as being either of a capital or of an income nature. In *Pyott Ltd v CIR*, 1945 AD 128 at 135 (13 SATC 121) Davis stated that an amount cannot be non-capital and non-income. It is important to note that in terms of section 82 of the Income Tax Act the burden to prove that an amount is income or capital in nature rests upon the taxpayer, and that the inquiry into whether or not an amount is income or capital in nature is a question of fact which has to be decided on the merits of each case (Stiglingh *et al.*, 2009:26).

The most important test used by the courts in deciding whether a receipt is income or capital in nature is the intention of the taxpayer. The intention of the taxpayer must be investigated at the time of acquisition of an asset, during the period the asset was held and at the time of disposal of an asset. The difficulty in determining the intention of a taxpayer is that it is subjective and that each person's intention is his or her own personal plan or agenda developed through and with his or her own thoughts and reasoning processes (Stiglingh *et al.*, 2009:28).

When determining intention the courts give consideration to some of the following factors (Stiglingh *et al.*, 2009:28):

- the conduct of the taxpayer in relation to the transaction;
- the nature of the taxpayer's occupation or business;
- the frequency of the activities undertaken;
- the continuity of activities;

- the circumstances of the realisation;
- the accounting treatment of the proceeds, for example, showing the proceeds as income in the taxpayer's financial statements;
- the involvement in a scheme of profit making;
- the documentary evidence; and
- the history of the taxpayer.

The above list is not exhaustive and many other factors may also be considered. If the taxpayer has mixed intentions, effect will be given to the taxpayer's main or dominant intention (*COT v Levy*, 1952 (2) SA 413 (A) (18 SATC 127)). *Overseas Trust Corporation v CIR*, 1926 AD 444 (2 SATC 71) determined that if a taxpayer has two alternative intentions with regards to an asset, the proceeds of the disposal of the asset will be income in nature.

The intention of a taxpayer may also change over time. The courts normally consider the taxpayer's history and activities in determining if there has been a change in intention (*Stiglingh et al.*, 2009:29). This principle has been seen in several cases where the court held that, due to the conduct of a taxpayer, the intention had either changed from capital to income (*CIR v Scott*, 1928 AD 252 (3 SATC 253) and *CIR v Leydenberg Platinum Ltd*, 1929 AD 137 (4 SATC 8)) or from income to capital (*CIR v Richmond Estates (Pty) Ltd*, 1956 (1) SA 602 (A) (20 SATC 355)).

The frequency of a particular transaction may provide a useful guide in distinguishing between capital and income. If the same type of transaction is concluded continuously, it would be obvious that there is a scheme for profit making and the proceeds would then be income in nature and subject to normal income tax (*Stiglingh et al.*, 2009:32). It is nevertheless important to note that an isolated once off transaction is not necessarily free from normal tax. In *Stephan v CIR*, 1919 WLD 1 (32 SATC 54) a single once off transaction was deemed to be income in nature due to the intention of the taxpayer.

In *Morrison v CIR*, 1950 (2) SA 449 (A) (16 SATC 377) it was held that if gambling transactions are systematically undertaken, to the extent that they become a business or a

scheme of profit-making, the proceeds are income in nature and therefore part of the gross income. If, however, the gambling activities are undertaken as a means of entertainment or hobby, the proceeds are capital in nature.

It is not the practise of SARS to tax ordinary gamblers or punters on the proceeds of betting when they engage in betting as a means of entertainment and distraction (Stiglingh *et al.*, 2009:35). Although this is the case, it will be difficult for a professional gambler or punter to distinguish regular winnings from other winnings obtained by means of entertainment and distraction.

SARS considers systematic and business-like gambling to be in a scheme of profit making and therefore seek to tax the winnings. Barnes and Bezuidenhout (2010:7) ask the question of how someone would become a systematic gambler in the eyes of the Receiver. Lodewyckx and Surujlal (2009:99) refer to gambling as a recreational activity where consumers engage in it for fun. It is currently a very subjective issue and SARS needs to provide more clarity on exactly what they consider sporadic gambling and what is considered to be gambling in a scheme of profit making (Barnes & Bezuidenhout, 2010:7). Predefined monetary levels of gambling may need to be defined to make the distinction between capital and income easier.

3.4 INCOME TAX DEFINITION AND THE APPLICATION THEREOF – CAPITAL GAINS TAX

There is no separate capitals gains tax (CGT) act in South Africa and CGT has been incorporated into the Income Tax Act.

Taxable capital gains are determined under the Eighth Schedule to the South African Income Tax Act. Section 26A for the Income Tax Act forms the link between the Act and the Eighth Schedule. Section 26A states the following:

“[t]here shall be included in the taxable income of a person for a year of assessment the taxable capital gain of that person for that year of assessment, as determined in terms of the Eighth Schedule.”

Section 2(1) of the Eighth Schedule requires residents to pay tax on the capital gains resulting from the disposal of assets situated anywhere in the world after 1 October 2001, the date CGT was introduced (Stiglingh *et al.*, 2009:772).

In order to calculate a capital gain or capital loss, four requirements have to be met (Stiglingh *et al.*, 2009:772):

- there has to be an asset;
- there must be a disposal or deemed disposal of the asset (the event that triggers CGT);
- the base cost of the asset must be determined; and
- the proceeds on the disposal of the asset must be determined.

Section 1 of the Eighth Schedule defines an 'asset' as *"property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any currency, but including any coin made mainly from gold or platinum..."*

The definition of an asset is wide enough to include virtually any asset (Stiglingh *et al.*, 2009:776). Any amount that has already been taken into account for income tax purposes will however be excluded from proceeds (paragraph 35(3)(a) of the Eighth Schedule) and from the base cost (paragraph 20(3)(a) of the Eighth Schedule).

Money that is wagered on gambling or on betting gives the gambler or the punter the right to a specified amount of winnings based on a certain outcome of the game. The money wagered or bet is therefore not considered currency but rather an asset as it has the potential to increase in value. A bet placed by a gambler will therefore fall within the definition of an asset for the purposes of determining a capital gain.

For a transaction to be subject to CGT it must qualify as a disposal or as a deemed disposal. If a disposal or deemed disposal has not occurred CGT is not levied on the transaction (Stiglingh *et al.*, 2009:776).

A bet is placed on an outcome of a game or event, the outcome of which will not be known until a point in the future. Once the outcome of the game is determined, after the game

has been played or the bet is complete, the gambler or punter immediately knows whether the bet placed was a winning or losing bet. The moment that the outcome of the game or bet is determined it automatically triggers a disposal for CGT purposes.

The base cost of an asset is determined with reference to the market value of the asset on 1 October 2001 ('the valuation date'), or for assets acquired after the valuation date, the market value on the date the asset was acquired (Part V of the Eighth Schedule).

As discussed in Chapter 3.3, most bets or wagers are made for easily determinable amounts of money. Even if the money is converted into virtual chips or online currency, these chips or currency would usually still have an easily determinable value. The base cost of a bet will therefore be the amount that is wagered or placed on the outcome of a specific game or event.

Paragraph 35(1) of the Eighth Schedule defines 'proceeds' as equal to the total amount received by, or accrued to, a person in a particular year of assessment in respect of that disposal. Refer to Chapter 3.3 for a discussion on 'amount', 'received by' and 'accrual'. The words 'in respect of' make it clear that the receipt or accrual must be casually connected to the disposal to qualify as part of the proceeds from that disposal (Stiglingh *et al.*, 2009:812).

Once again, as discussed above, the proceeds received from a bet or a wager are easily determinable as most bets are made for cash with the knowledge of what could be won if a specific outcome of a game or event occurs. If the event or outcome is favourable the money is usually given to the gambler or punter immediately, or credited to the gambler or punter's account. The face value of the proceeds earned on a bet or wager will be taken into account for purposes of determining CGT.

Paragraph 60 of the Eighth Schedule specifically deals with gambling, games and competitions and states that a natural person may disregard a capital gain or loss determined on a disposal relating to any form of gambling, game or competition as long as the particular form of gambling, game or competition is authorised by and conducted under the laws of South Africa (Stiglingh *et al.*, 2009:825).

The following gambling, games and competitions will be subject to capital gains tax in terms of paragraph 60 of the Eighth Schedule:

- foreign winnings by natural persons;
- illegal gambling, games and competitions in South Africa; and
- capital gains by companies, trusts and other non-natural persons from any gambling, games or competitions whether local or foreign and whether legal or illegal.

Based on the above discussion, all income earned by natural persons from interactive gambling should be taken into account when determining capital gains except for gains already subject to income tax and except for gains made from gambling, games or competitions authorised by and conducted under the laws of South Africa.

Interactive gambling proceeds received from websites in a foreign jurisdiction should therefore be subject to capital gains tax in South Africa. Taxpayers could argue though, that due to the fact that the National Gambling Board considers interactive gambling to occur where the gambler is physically situated and not where the gambling server is situated (Mawson, 2010), that technically no interactive gambling in South Africa on a foreign website can be considered foreign and therefore all winnings would be exempt from capital gains if it were legal.

Due to the fact that the current legal position regarding interactive gambling in South Africa is unclear, income received from interactive gambling on websites situated in South Africa could also be regarded as illegal gambling and could therefore be subject to capital gains tax. SARS needs to clarify the position with regards to CGT on income earned from interactive gambling from both local and foreign websites.

3.5 DISTINGUISHING BETWEEN TAX AVOIDANCE AND TAX EVASION

Tax avoidance refers to the way a taxpayer arranges his affairs in a perfectly legal manner, with the result that he reduces his taxable income (Jordaan, Koekemoer, Stighlingh, van Schalkwyk, Wassermann & Wilcocks, 2008:515). Tax evasion, on the

other hand, refers to illegal activities deliberately undertaken by a taxpayer to free himself from a tax burden; an example is omitting income received from a tax return (Jordaan, *et al.*, 2008:515).

There is a fine line between tax evasion and tax avoidance (Du Plessis, 2008:18). Although tax avoidance is legal, due to the difficulty in determining the difference between tax avoidance and tax evasion, SARS has various anti-avoidance rules in place within the Income Tax Act. The general anti-avoidance rules previously contained in section 103(1) was replaced by sections 80A to 80L which are applicable to impermissible tax avoidance agreements entered into on or after 2 November 2006. This study will not discuss the new anti-avoidance rules in detail but it is important to note that the new rules give SARS the authority to tax any avoidance arrangement that has achieving a tax benefit as its primary goal.

Interactive gamblers who purposely gamble in foreign jurisdictions that do not allow that money be repatriated to South Africa, could be taxed in terms of the new anti-avoidance rules. Interactive gamblers who leave substantial amounts of winnings in online gambling accounts without declaring such winnings to SARS are committing a crime and could be criminally charged with tax evasion.

3.6 FUTURE DEVELOPMENTS FOR TAXATION OF INTERACTIVE GAMBLING INCOME

Minister Pravin Gordhan (2010:14) highlighted in his first budget speech that the practice of exempting fortuitous winnings in the hands of gamblers from personal tax would be reviewed. The reason given for this change was to limit the opportunity for monetary abuses. Of these abuses, unlicensed interactive gambling was specifically mentioned. It is not clear how taxing the gains will assist in reducing abuse, but it is obviously an easy way to widen the tax net (Barnes & Bezuidenhout, 2010:7).

Barnes and Bezuidenhout (2010:7) comment that in a digital age where interactive gambling sites are widely advertised and can be accessed by anyone at any time, it will be a huge challenge for SARS to monitor such interactive gambling activities. Poker lovers

no longer have to drive to their nearest casino, but can gamble in their homes or even during work hours for as long as they please.

SARS is considering amending the Income Tax Act so that all winnings from gambling activities are included in gross income (Gordhan, 2010). This can be achieved quite easily by including a specific inclusion in the definition of gross income.

Before changing the gross income definition to include winnings from gambling activities, SARS will need to determine the method of taxation. By merely adding winnings to taxable income, taxpayers who win a substantial amount on a once-off basis will be pushed into a higher tax bracket, resulting in a higher tax rate on all income earned for the year (Barnes & Bezuidenhout, 2010:6).

It will be necessary to have a clear indication as to what SARS wishes to tax. Currently players can play the national lottery on mobile phones, they can enter competitions by sending text messages, they can bet on horses and sporting events via the internet and they can play in online casinos to mention a few forms of interactive gambling (Barnes & Bezuidenhout, 2010:7). It will be very important to make it clear as to what is seen as taxable winnings from gambling. Without a clear definition, a person could for example find themselves taxed on the car they win by texting an answer to a radio station. SARS will also have to indicate whether they will allow losses, which are incurred while gambling, as a deduction against taxable income.

From the above review of the relevant legislation governing interactive gambling, there is evidence that SARS may attempt to tax all proceeds received from interactive gambling. It is important to consider what difficulties may arise in the attempt to tax such proceeds.

3.7 DIFFICULTIES EXPERIENCED IN TAXING INCOME EARNED FROM INTERACTIVE GAMBLING

The challenges that interactive gambling poses to South Africa's jurisdiction to tax are linked to the enforcement problems resulting from the use of new technologies. Oguttu

and Van der Merwe (2005:320) note that the ability to collect taxes is based on the following:

- the identification and location of taxpayers;
- the identification and verification of taxable transactions;
- the ability to establish a link between taxpayers and their taxable transactions; and
- the ability to enforce payment.

3.7.1 Identification and location of taxpayers

The difficulties experienced in taxing interactive gambling proceeds appear to be closely related to the gaps in the legislation governing interactive gambling in South Africa. The advent of electronic commerce has also contributed to the difficulties experienced in identifying a taxable presence in a particular country (SARS, 2000:5-6). The identification of taxpayers, locally or globally, has been made increasingly difficult due the use of the internet.

Collins (2009) commented that the difficulty with regulating the interactive gambling industry in South Africa is that interactive gambling does not have borders. Currently there is no consistency in the regulations of interactive gambling, despite the international nature of the internet. Before internet gambling, it was relatively easy to apprehend offenders and to enforce gambling legislation.

Barnes & Bezuidenhout (2010:7) state that it will be difficult for SARS to track an individual's winnings as small regular winnings can easily be assimilated in the day to day expenses of an individual. Identification of possible taxpayers in South Africa is driven mainly through the identification of taxable transactions (Oguttu & Van der Merwe, 2005:320).

3.7.2 Identification and verification of taxable transactions

Interactive gambling activities not only obscure the identity and location of the players and providers of such services who participate in internet-based transactions, but often make

these aspects irrelevant. Anonymity is a unique feature central to all e-commerce transactions including interactive gambling. An internet address (domain name) only shows who is responsible for maintaining that address and provides no link to the computer, its user, or even the location of the computer. The use of electronic money and digital cash enhances anonymity and leads to virtually undetectable transactions (Oguttu & Van der Merwe, 2005:320).

Global computer-based communications cut across territorial borders, creating a new realm of human activity and undermine the feasibility and legitimacy of laws based on geographical boundaries. The internet ignores international boundaries resulting in physical location having little meaning in the networked world (Cox, 2002:244-245). It is therefore becoming increasingly difficult to establish international norms for identifying the source of taxpayers' income (SARS, 2000:5-6).

In an attempt to identify and verify taxable transactions, SARS could target the providers of interactive gambling websites to obtain information about the winnings paid out to punters or gamblers. Dishonest interactive gambling operators can however easily alter, move or entirely remove their websites in minutes (Snail, 2007a:38), discarding all history of gambling transactions and player lists.

3.7.3 Establishing a link between taxpayers and their taxable transactions

In an inherently global market without borders it is difficult to ensure that national legislation is respected and enforced (Schriever, 2004:103). Because of contrasting legal philosophies and socio-economic factors, the different interactive gambling legislation which exists in different jurisdictions cannot be harmonized into a single piece of international e-gambling legislation. It will always be challenging to institute control measures that could be applied universally (Snail, 2007b:116).

It is feared that e-commerce may change the distribution of taxable activities, alter the balance of taxing authorities and result in the erosion of countries' tax bases (Hickey, Mathew & Rose, 2000:261). E-commerce creates complications in the identification and location of taxpayers, the identification and verification of taxable transactions and the

ability to establish a link between taxpayers and their taxable transactions, thus creating opportunities for tax arbitrage (SARS, 2000:5-6).

Another concern is that the interactive gambling transaction will be entered into with the intention that the transaction goes undetected. Due to its anonymity, remote access and encryption of data, interactive gambling websites can provide a safe and easy vehicle through which to launder money. Money can be easily laundered by depositing money into an online gambling account and then cashing out the funds into a different bank account, making tracing of such money difficult. (Snail, 2007a:38.)

3.7.4 Enforcing payment

The practical implications of collecting taxes from interactive gamblers need to be considered. The easiest system may be a self-assessment system of tax (Ntombikayise, 2010:8), but this may prove unsuccessful as people have, and continue to look for, ways to avoid taxes (Gordan, 2002:20).

Taxpayers often try to avoid a country's jurisdiction to tax by diverting income to low-tax jurisdictions (tax havens) where it will be subject to no or minimal taxation (Oguttu & Van der Merwe, 2005:305). This may be achieved by exploiting the differences between countries' tax rates, legal concepts, standards of administration, reporting and enforcement, governments' attitudes towards the liberty and privacy of taxpayers, and the confidentiality of business and financial transactions (Oguttu & Van der Merwe, 2005:305).

Post and Johnson (1996:2) note that the regulation of cyberspace must be different from the regulation of real space because cyberspace does not have territorial boundaries, but exists simultaneously in multiple jurisdictions. The current methods of amending or "patching" the old legislation to deal with the new electronic developments should be changed, and new international principles adopted that take these developments into consideration (American Bar Association, 2006:658).

Currently SARS taxes interactive gamblers on income declared by them at the taxpayer's effective rate. Income not declared will still be subject to gambling tax levied by and

collected by provincial licensing authorities. The current total national tax collected as a percentage of the money paid out or returned to players is however currently approximately less than 1% of the total amount paid out (refer to Chapter 2.4).

3.8 CONCLUSION

Although interactive gambling occurs in cyberspace, the taxpayers that participate in interactive gambling cannot permanently reside in cyberspace. A South African resident may therefore gamble online on a website that is based in a foreign jurisdiction, but the resident would still be considered to be within the South African jurisdiction for purposes of the Income Tax Act.

Whether income earned from online gambling is considered to be in the scheme of making profit and subject to normal income tax, or a recreational hobby of the taxpayer and subject to capital gains tax, is a very subjective matter. The intention of the taxpayer will need to be assessed, but the intention of an individual is subjective, therefore making the assessment difficult. SARS needs to provide more clarity on exactly what they consider sporadic gambling and what is considered to be gambling in a scheme of profit making (Barnes & Bezuidenhout, 2010:7).

Income earned by a resident South African individual should be subject to income tax if an amount of winnings is received by or accrued to the taxpayer irrespective of the legality thereof. Determining if an amount has been received by or accrued to the taxpayer for his own benefit is made difficult when such winnings are left in an online gambling account on a gambling service provider's website. There is no way of determining how easily the taxpayer could obtain such cash and the taxpayer may be able to argue that the cash has not been received for his own benefit. As there is no case law that currently exists dealing with the issue of illegal interactive gambling winnings, SARS needs to clarify the position with regards to 'received by' or 'accrued to' related to such winnings.

All income earned by natural persons from interactive gambling would be taken into account in determining capital gains except for gains already subject to normal income tax,

and except for gains made from gambling, games or competitions authorised by and conducted under the laws of South Africa.

There is significant uncertainty related to whether or not interactive gambling is considered to be legal or not in South Africa, which means that all interactive gambling winnings received could be subject to CGT. SARS needs to clarify the position with regards to CGT on income earned from interactive gambling from both foreign and local websites.

Although SARS intends to discontinue exempting the fortuitous winnings in the hands of gamblers from personal tax, it needs to consider that interactive gambling sites are widely advertised and can be accessed by anyone at any time. It will not be an easy task to monitor such interactive gambling activities. SARS also needs to consider how it plans on taxing gambling proceeds and whether or not it will allow for losses incurred while gambling to qualify as a deduction against taxable income.

The ability to collect taxes is dependent on the identification and location of taxpayers, the identification and verification of taxable transactions, the ability to establish a link between taxpayers and their taxable transactions and the ability to enforce payment. E-commerce creates difficulties in addressing any of these factors.

SARS is losing out on significant revenue due to the inability to enforce tax payments on income generated by individuals from interactive gambling. It is therefore beneficial to investigate how other countries approach regulating and taxing interactive gambling. This is addressed in the following chapter.

CHAPTER 4

CRITICAL ANALYSIS OF THE SOUTH AFRICAN APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING

4.1 INTRODUCTION

This chapter will examine the literature and legislation available to determine what practices are followed internationally with regard to the regulation and taxation of the interactive gambling industry. This chapter will also investigate what the best possible solution for South Africa may be to regulate the interactive gambling industry and to tax the income earned from interactive gambling by resident South Africa individuals.

4.2 LEGISLATIVE MODELS APPLIED TO INTERACTIVE GAMBLING

Snail (2007b:116) highlighted that there are various factors that guide a particular country when enacting legislation either for or against interactive gambling. These factors include financial interest such as applying levies and taxes and sovereignty, which encapsulates the legitimacy and enforceability of the gambling laws of the state. These various factors have led to a worldwide proliferation of interactive gambling legislation. To understand the issues relating to conflicting laws on cross-border gambling activities, it is essential to classify the different legislative models (Snail, 2007b:116). There are two criteria that will specifically be focused on, namely:

- whether interactive gambling websites are permitted to provide interactive gambling services from the specific country; and
- whether the residents of a specific country may participate in interactive gambling.

Schriever (2004:105-118) developed a scheme consisting of five distinct models which could be used when addressing the above criteria. The five models are:

- liberal (completely liberal);
- restrictive (restrictive liberal);

- liberal prohibitive;
- protectionist (protectionist prohibitive); and
- prohibitive (totally prohibitive).

A 'liberal' model allows for interactive gambling service providers to provide interactive gambling services within the country as well as to other countries. There are no limitations on interactive gambling service providers and there are also no limitations on the residents of the country. They are free to participate in local or foreign interactive gambling as no prohibition or restriction on interactive gambling exists at all. Examples of the liberal model include Canada, Vanuatu, and the United Kingdom.

A 'restrictive' model is similar to the liberal model in the sense that all residents of the country may participate in interactive gambling, but the difference is that interactive gambling service providers licensed within the country or state may not provide interactive gambling services to jurisdictions where interactive gambling is prohibited. Examples of the restrictive liberal model include Nevada and the United States Virgin Islands.

A 'liberal prohibitive' model allows for interactive gambling service providers to provide interactive gambling services to other countries, but not within their own country. Residents of the country are also prohibited from participating in local or foreign interactive gambling. The model is usually found in countries that are hoping to make a financial gain out of allowing foreign residents to play within their jurisdiction. Examples of the liberal prohibitive model include Singapore and Curacao.

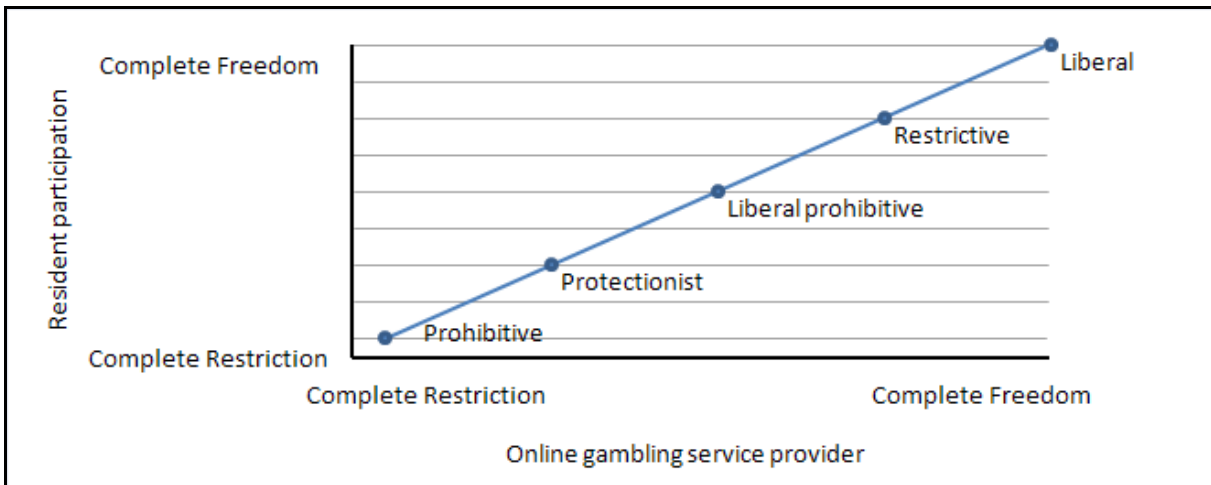
A 'protectionist' model allows for locally licensed interactive gambling service providers to provide interactive gambling services within the country but not to other countries. Residents of the country are free to participate in local interactive gambling but may not participate in foreign interactive gambling. Countries in this category attempt to have a regulated interactive gambling industry that is protected from outside intruders. Examples of the protectionist model are: Australia, Germany, Austria and Swaziland.

A 'prohibitive' model does not allow any interactive gambling service providers to operate within the borders of the country and does not allow the residents of the country to

participate in any form of interactive gambling. In other words, all practices are expressly prohibited. Examples of the prohibitive model are: United States of America, France, most Arab nations and South Africa.

The 5 models can be graphically presented as follows:

Figure 3 Five models used to categorise interactive gambling legislation



Source: Schriever (2004:105-122)

Various approaches adopted by other countries to regulate their interactive gambling industry will be examined below and will be classified using the above five models. The taxation regulations implemented in these countries to tax income earned from interactive gambling will also be investigated.

4.3 THE APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING IN CANADA

The interpretation of Canadian federal law allows individual provinces within Canada to set their own regulations with regards to internet gambling as long as participation in such internet gambling is restricted to residents of that province (Jepson, 2000:8). Provincial government-owned gambling operators were established in Atlantic provinces such as the Atlantic Lottery Corporation and the British Columbia Lottery Corporation in 2004. These companies provide online sports betting, online interactive lotteries, and the online sale of land-based lottery tickets to residents of their specific provinces. Horse-racing is however regulated by the Canadian Pari-Mutuel Agency under the national federal Department of

Agriculture. The Department of Agriculture permits horse-racing bets to be placed by either telephone or any other telecommunication device, nationally (Williams & Wood, 2007:11).

In January 2004, Woodbine Entertainment, a Toronto based horse-racing track operator, began accepting online bets from across Canada. The fact that there is conflicting legislation on a national and provincial level has made it unclear as to whether or not Canadians are allowed to place bets with online sites outside of their province. To date, no Canadian resident has been prosecuted for such activity (Williams & Wood, 2007:11).

Various Aboriginal groups within Canada have taken a position that they are sovereign nations that are able to enact their own gambling legislation. The most notable of these regions is the Kahnawake First Nation in Quebec (Williams & Wood, 2007:11). The Kahnawake Gaming Commission was created in 1996 and has been a major host of online sites since 1999. Kahnawake is currently ranked the eighth most popular interactive gambling jurisdiction (see Chapter 2.4) and is considered an established gambling provider. This is attributed to their low annual gaming fee and the fact that there are no corporate or gambling taxes. Kahnawake is also renowned for their website hosting and bandwidth capacities (Williams & Wood, 2007:11). Williams and Wood (2007:11) note that the Quebec government has indicated that they consider the Kahnawake interactive gambling operation illegal, and several investigations have been initiated by both the provincial and federal governments as well as by the provincial police. There has, however, been no prosecution of these operations to date.

The Alexander First Nation in Alberta in November 2006 created the Alexander Gaming Commission to provide leadership in evolving, and enforcing comprehensive, socially responsible internet gaming regulations (Gaming News, 2006). In 1996, the Six Nations of the Grand River Territory near Brantford, Ontario, established a gaming commission to guide licensing of internet gambling sites. From 2003 to October 2006 at least three interactive gambling sites, including Absolute Poker, one of the world's largest interactive poker sites, operated from servers in Six Nations (Buist & Walters, 2006). Media attention, and the question of the legality of interactive gambling in Six Nations, forced these sites to

move the registration of their operations to the Kahnawake territory (Buist & Walters, 2006).

The Canadian approach to interactive gambling is a decentralised approach with each province able to determine their own interactive gambling regulations. The provinces or areas within Canada, such as the Kahnawake territory, that do allow and offer interactive gambling appear to have taken a liberal approach by allowing websites within their jurisdiction to offer services locally and internationally and by allowing residents to participate locally and internationally.

Kahnawake does not impose corporate tax but collects a sales tax, or value added tax (VAT), from companies of 7,875% on net gambling revenue (TaxTips.ca, Not dated). Individuals within Canada pay individual income tax but do not have to declare winnings from betting or gambling for simple recreation or enjoyment (Canada Revenue Agency, 2003:4).

4.4 THE APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING IN AUSTRALIA

The development of the interactive gambling industry in Australia has been interesting. It was one of the first countries to allow interactive gambling, regulated per state (or province), from as early as 1998 (Snail, 2007b:120). The Queensland Government and the Northern Territory Government were pioneers in the legalisation of interactive gambling in Australia. Influenced by the Commonwealth, Australia eventually passed the Interactive Gaming Act 84 of 2001. This Act prohibited Australian-based interactive gambling operators from providing internet gambling services to Australian residents. Australian licensed interactive gambling operators were, however, allowed to provide interactive gambling services to players outside the borders of Australia (Schriever, 2004:122).

The Northern Territory Government Gaming Control Act made interactive gambling legal to all its residents within the state and illegal to countries or states in which interactive gambling is considered illegal (Snail, 2007b:120). The State of Queensland introduced the

Interactive (Player Protection) Act, which similarly allowed interactive gambling to all its residents within the state and illegal to countries in which interactive gambling is illegal (Snail, 2007b:120).

Interactive gambling in Australia continues to be regulated at federal (national) level by the Interactive Gambling Act of 2001, but the different Australian states have the ability to formulate state-specific gambling policies and legislation (Williams & Wood, 2007:14).

Individual states and territories are allowed by the federal legislation to offer online sports and race books as well as poker rooms to both local residents and to foreign players. Certain types of online lotteries, such as scratch tickets and instant lotteries, are also permitted (Casino Trading Post, 2009). Interesting to note is the fact that the Interactive Gambling Act does not allow Australian residents to gamble at the government licensed interactive casino, Lasseters. Lasseters is also prohibited from making interactive gambling services available to residents from countries that are not allowed to participate in interactive gambling (Williams & Wood, 2007:14).

Australia has applied a combination of the restrictive, liberal prohibitive and protectionist models to their interactive gambling industry regulation. Residents may participate in a limited number of online games provided for locally, but may not participate in interactive gambling originating from an international jurisdiction. Local licensed interactive gambling service providers may offer interactive gambling activities to foreign countries as long as interactive gambling is permitted within that country.

The Australian Taxation Office (Not dated) applies a Goods and Services tax, similar to VAT, on all net gambling revenue generated by interactive service providers at a rate of 11%. Winnings derived from gambling are not taxed as income in Australia if the winner does not make a living from gambling (Kreiser & Jowitt, 1993:75).

4.5 THE APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING IN THE UNITED STATES (US)

In the US, regulatory authority lies with the jurisdiction of each individual state. This has resulted in various regulatory models being applied within the country (Snail, 2007b:120). US federal legislation, through the Live Wire Act, made it a punishable offence to place or facilitate a wager or a bet via the transmission of a wire communication (Snail, 2007b:120). Interestingly though, the Indian Gaming Regulatory Act of 1988 allows interactive gambling to take place in the Native American Tribal Lands within that specific territory (or state) or to people outside its jurisdiction where interactive gambling is permitted (Snail, 2007b:121). Other states which specifically allow interactive gambling include California, South Dakota, and Nevada (American Gaming Association, Not dated).

In October 2006 the federal Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) came into effect. This act made it illegal for all financial transaction providers, such as banks and major credit card companies, to make fund transfers to online sites that take bets or wagers on outcomes of a contest, sports event or a game subject to chance. It is also illegal for internet gambling providers to accept money transfers from US interactive gamblers irrespective of whether they are based within or outside the US (Williams & Wood, 2007:10).

People have contended that non-US based companies are not subject to US law. Kramer (2001:551) however noted that there has been successful prosecution of non-US based sites under the Federal Wire Act of 1961 due to the fact that internet gambling occurs in both the jurisdictions where the bet is placed and where it is received. As a consequence, approximately 25% of interactive gambling sites have stopped taking bets from US citizens and 50% of all interactive gambling sites do not accept wagers from US residents (Williams & Wood, 2007:10).

It is important to note that UIGEA is not directed at individual bettors and does not disallow online betting explicitly. There have only been rare cases of prosecution of US citizens for placing an internet bet (Rose & Owens in Williams & Wood, 2007:11). The primary focus of UIGEA is to target financial institutions as they are the medium through which money is

transferred into and out of betting websites. They are therefore regarded as fundamental elements in online betting.

Evidence suggests that to place bets, many US players are circumventing the UIGEA by depositing money into non-US financial transaction intermediaries, such as off shore bank accounts (American Gaming Association, 2006:5). Many interactive gambling sites also ensure that the transaction is not indicated as gambling related on credit card or banking statements (Williams & Wood, 2007:11). The UIGEA exempts the online sale of lottery tickets within a specific state, horse race betting between different states, and other types of within-state interactive gambling as long as the individual state does not prohibit it (Williams & Wood, 2007:11).

A recent addition to interactive gambling is called 'skill gaming'. Skill games consist of word games, puzzle games, strategy games, sports games, card games (such as solitaire), arcade games, trivia games and video games. There has been an increase in the number of online skill game websites that require players to pay an entry fee and with the winner of a tournament taking the prize money or the pot. It is unclear whether the UIGEA legislation applies to skill games (Williams & Wood, 2007:11).

The US has applied what appears to be mainly a prohibitive model with a restrictive model being applied within various states that do not prohibit interactive gambling. Residents of the US may only participate in interactive gambling offered within the state that they are resident in and if that state permits interactive gambling. In each state, licensed interactive gambling service providers may only offer interactive gambling activities to residents of that state. All other forms of interactive gambling are prohibited locally and internationally (Williams & Wood, 2007:10).

Various states within the US have their own tax laws and legislation and different areas within a state may also impose additional taxes (Nevada Department of Taxation, 2009a). A state such as Nevada does not have any personal income tax or corporate income tax (Nevada Department of Taxation, 2009b) but imposes a sales tax of between 6,85% and 8,1% on net gambling revenue (Nevada Department of Taxation, 2009a).

A recent amendment to US legislation will allow US residents to place online wagers with companies that the US Treasury Department has licensed. To date, no such licenses have been issued. There is a proposal that will require internet gambling operators to pay a 2% tax to the federal government and a 6% tax to the individual state on betting deposits. The federal treasury will also collect taxes on gaming company profits, and bettors will pay taxes on winnings (Dodge, 2010; Havel, 2010).

4.6 THE APPROACH TO REGULATING AND TAXING INTERACTIVE GAMBLING IN THE UNITED KINGDOM (UK)

In the UK, the Gambling Act of 2005 c19, which took effect in September 2007, states that interactive sports betting, horse race betting, betting exchanges, and games of skill can legally operate in the UK and be played by UK residents (Gambling Commission, 2009b:1). The Gambling Commission (2009b:1) does however require local based interactive gambling service providers to be licensed in the UK. A liberal approach has been taken by the United Kingdom authorities. The United Kingdom has noted that it will be far too costly to try and police the interactive gambling industry (Snail, 2007b:120). Lotteries may not be conducted online, but the purchase of traditional lottery tickets may be facilitated by the internet and email technologies provided there remains some action by a human operator (Williams & Wood, 2007:13).

UK citizens may participate in local or foreign interactive gambling without breaking any British laws (Williams & Wood, 2007:13). Income generated from betting winnings is considered tax free in the UK (HM Revenue & Customs, Not dated a). The winnings from betting are also not subject to CGT (HM Revenue & Customs, Not dated b). Interactive Gambling service providers are subject to a 15% tax on their net gambling revenues (Bowers, 2010).

4.7 A BRIEF SUMMARY OF THE APPROACH TO REGULATING INTERACTIVE GAMBLING IN VARIOUS OTHER COUNTRIES

4.7.1 Austria

Austria has applied a modified protectionist model to their interactive gambling industry. Residents of Austria may participate in interactive gambling from locally licensed and foreign licensed companies (Online Casino City, Not dated b). Locally interactive gambling providers may only offer interactive gambling to residents of Austria (Online Casino City, Not dated b). The interactive gambling industry is considered an extension of the land based industry and is monopolised in the sense that the state holds the majority share of most Austrian licensed interactive gambling providers (Schriever 2004:111). It is interesting to note that Austrian law specifically excludes people who do not have a bank account from participating in interactive gambling (Schriever 2004:111).

4.7.2 Finland

Finland's Act on Gaming of 2002 makes provision for three types of gambling licences issued in the country to state owned companies (Online Casino City, Not dated c). The first licence allows the holder to operate a sport betting and lottery business and allows the holder to make these games available online. The second licence permits the holder to operate a horse race wagering business and also allows the holder to make these services available online. The third licence allows the holder to operate a casino business but does not allow the casino to take bets online or to make online casino games available. Reviewed Casinos (2010) reported on a recent amendment to the legislation which saw the government of Finland launch an online poker room and ban the advertising of foreign based online casinos and poker rooms. The residents of the country may legally only participate on locally licensed interactive gambling sites (Rollins, Not dated). Finland has applied a protectionist model, similar to Austria, to their interactive gambling industry.

4.7.3 France

Until recently, only France's monopolistic gambling provider, the Française des Jeux, was allowed to provide interactive gambling services (Williams & Wood, 2007:13). Residents were also only allowed to participate in interactive gambling offered by Française des Jeux. France has passed new laws which will allow foreign interactive gambling service providers to enter the French market, but only if they have obtained a French online betting licence. Important to note is that a company does not have to be a French registered company to apply for one of these licences. Residents of the country will also now be allowed to participate in interactive gambling provided it is offered by a company licensed in France (Reuters, 2010). The recent amendment to their interactive gambling regulations classifies the French model as liberal.

4.7.4 Germany

Germany has adopted the protectionist restrictive approach to interactive gambling. Each federal state ('Bundesland') in Germany is authorised to regulate gambling in its own territory. Interactive gambling in a federal state that does not permit interactive gambling or does not have legislation making provision for interactive gambling is considered a criminal offence (Schriever, 2004:110). Currently, Germany only licenses state owned betting operators. Legislation in Germany also forces internet service providers to block illegal betting websites and banks to stop money transfers to illegal betting sites (Online Casino City, Not dated d). Online Casino City (Not dated d) notes that advertisements for interactive gambling on the internet and television are prohibited in Germany. Residents of Germany may only participate in interactive gambling offered by locally licensed companies (Schriever, 2004:110).

4.7.5 Hong Kong

The Gambling Amendment Ordinance passed in 2002 by the Hong Kong Legislative Council only allows the Hong Kong Jockey Club, the legal gambling monopoly, to offer online lottery play, sports betting and horse race betting to Hong Kong and non-Hong Kong residents. The Ordinance also prohibits Hong Kong residents from participating in

these games with operators outside of Hong Kong (Williams & Wood, 2007:14). Internet casino gaming is not permitted (Online Casino City, Not dated e), classifying the industry in Hong Kong as the protectionist model.

4.7.6 Ireland

Ireland currently applies a liberal model to the interactive gambling industry, and Ireland's bookmakers operate internet-based services under the terms of their bookmaking licences. Currently, sports betting, horse race betting, betting exchanges, poker, and skill games are offered online (Williams & Wood, 2007:13). Residents may also participate in local and foreign interactive gambling (Williams & Wood, 2007:13).

4.7.7 The Isle of Man

As with most tax havens, the Isle of Man follows a liberal prohibitive model with regard to their interactive gambling industry. The Isle of Man Online Gambling Regulation Act 2001 does not allow interactive gambling services to anyone within a territory or to a country that prohibits interactive gambling (Snail, 2007b:121). The legislation also specifically prohibits the acceptance of bets or stakes from any person in a country or territory in which it is illegal (Snail, 2007b:121). The country has taken the approach that it would like to benefit from the revenue that may be generated by companies based within the taxable jurisdiction, but would like to protect all residents of the country from possible negative impacts of interactive gambling.

4.7.8 New Zealand

New Zealand follows a hybrid liberal, prohibitive model with regard to the interactive gambling industry. Williams and Wood (2007:14) note that the New Zealand government has granted exclusive operating rights for online horse race wagers to the Racing Board, formerly known as the Totalisator Agency Board (TAB), and online lotteries to the Lotteries Commission. It is illegal to manage, organize or promote any other source of interactive gambling in New Zealand. New Zealand residents are not prohibited from wagering with offshore providers (Williams & Wood, 2007:14).

4.8 REGULATING AND TAXING INTERACTIVE GAMBLING IN SOUTH AFRICAN

Currently, there is inconsistency in the regulation of interactive gambling globally, despite the international nature of the internet (Collins, 2009). Every country determines their own tolerance to interactive gambling and, based on this, regulates the interactive gambling industry within their jurisdiction. The two most popular regulatory models have been found to be the restrictive model and the protectionist model. The restrictive model allows all residents of that country to participate in interactive gambling, but interactive gambling service providers licensed within that country may not provide interactive gambling services to jurisdictions where interactive gambling is prohibited. The protectionist model allows for locally licensed interactive gambling service providers to render interactive gambling services within that country but not to other countries or jurisdictions. Residents of the protectionist country are free to participate in local interactive gambling but may not participate in foreign interactive gambling.

The approach to completely ban interactive gambling, or the prohibitive model, does not appear to be effective in regulating the interactive gambling market. Countries that have previously applied this model, such as France and the US, are reconsidering their interactive gambling laws and regulations and tend to be moving towards either a protectionist, or more liberal model.

The best solution for South Africa is quite possibly a protectionist model. The National Gambling Amendment Act appears to recognise this as the most suitable approach when describing the intentions of the amendment act, as it states in the preamble:

“...to provide for the regulation of interactive gambling so as to protect society against the stimulation of the demand for gambling; to provide for the registration of players and opening of player accounts; the conditions applicable to interactive gambling licenses; protection of minors...; to ensure that the gambling industry complies with the Financial Intelligence Centre Act; to prevent gambling from being associated with crime, money laundering or financing of terrorist and related activities...”

Unfortunately, due to the fact that no interactive gambling service provider licences have yet been issued and that the Interactive Gambling Regulations Bill has not been enacted, the model that is currently being applied in South Africa takes on a prohibitive form.

The benefit of a protectionist model is that it guards the residents of a country by having a regulated interactive gambling industry that is shielded from outside intruders. A protectionist model allows for the effective tracking of players through registration, and protects society from various social dilemmas such as under-aged gambling and gambling addiction. E-commerce and interactive gambling create difficulties for SARS such as the identification and location of taxpayers, the identification and verification of taxable transactions and the ability to establish a link between taxpayers and their taxable transactions. A protectionist model can overcome these issues through enforcing regular reporting from locally licensed interactive gambling service providers, which will be beneficial to SARS.

The key to regulating the industry will be to persuade interactive gambling service providers to abide by regulations imposed at a national level. In order to convince providers of interactive gambling services to subscribe to such a protectionist model it is necessary to provide operators with incentives (Collins 2007:5). Collins (2007:5) is of the opinion that the strongest incentive will be the right to advertise, which could be restricted by government. The National Gambling Board could restrict advertising rights to companies that have their headquarters located in South Africa for regulatory and taxation purposes. A regulated industry is expected to increase consumer confidence, especially amongst South Africans (Collins, 2007:5). Existing South African land-based gambling companies will be in the best position to host interactive gambling websites as most of these companies are already regulated at a provincial and national level by government legislation.

Collins (2009) noted that technologies and systems that can be used to tame technology should be developed and utilised. These could include player tracking, loss-limiting, e-consumer education and e-counselling.

If interactive gambling licences are issued to South African land-based casinos, it will not be possible to protect these land-based gambling operators from cheaper competition from the internet (Collins, 2007:5). Existing offshore jurisdictions will have a strong competitive advantage because of their longer established presence as an internet gambling host, fewer regulations, less stringent enforcement of regulations, and having lower fees and taxes (Williams & Wood, 2007:30). Competition from foreign jurisdictions is likely to be more damaging if it comes from unregulated sites abroad rather than from well-regulated South African sites (Collins, 2007:5). Granting interactive licences to existing South African land-based gambling companies may be the best solution because established land-based casinos:

- are experienced in gambling regulations and already have the necessary infrastructures in place to comply with such regulations;
- would possess better player protection and would promote responsible gambling (Williams & Wood, 2007:30);
- will enjoy distinct advantages in respect of marketing and reputation (Collins, 2007:5);
- are expected to be able to provide better bandwidth and hosting capabilities and a larger pool of skilled workers (Williams & Wood, 2007:30); and
- can be monitored and regulated more easily due to their permanent physical locations.

If the South African government deem that the most appropriate regulatory model to be applied to the South African interactive gambling industry is a prohibitive model, the best way to enforce such a model would be to impose similar restrictions as contained in the UIGEA in the US. Such restrictions would need to make it illegal for all financial transaction providers, such as banks and major credit card companies, to make fund transfers to online sites that accept bets or wagers on outcomes of a contest, sports event or a game subject to chance. The primary focus of such restrictions though, will be to target financial institutions, which are regarded as the fundamental elements in online betting, as they are the medium for money exchange between interactive gamblers and online gambling service providers.

A well regulated interactive gambling industry in South Africa would assist SARS in effectively taxing resident South African individuals who earn income from interactive gambling. Indirect tax imposed on gambling service providers in South Africa by provincial licensing authorities is approximately 9,7% of the total gross gambling revenue generated by gambling service providers, but is currently less than 1% of the total amount paid out to players (National Gambling Board, 2010a).

The international approach to taxing interactive gambling income earned by residents of that country appears to be an indirect taxation approach. Most countries that permit interactive gambling impose a sales tax, such as VAT, or an indirect gambling tax on the net gambling proceeds earned by interactive gambling service providers. This is similar to the position in South Africa as imposed by the National Gambling Act on land-based gambling institutions where indirect taxes are not imposed on individual players or bettors but rather on the gambling service providers.

In South Africa the National Treasury released the 'Draft Interactive Gambling Tax Bill' (2008) which proposed a 6% indirect tax be imposed on the net gambling proceeds earned by interactive gambling service providers licensed in South Africa. This Bill has not been enacted, but does indicate that South Africa intends on imposing a similar indirect tax on interactive gambling service providers as is currently being done internationally. Again this would be a tax imposed on interactive gambling service providers and not on individual players.

The US recently proposed to tax interactive gamblers on deposits made by them into online gambling accounts at a rate of 8%. The problem with this is that it may drive interactive gamblers to rather gamble on offshore sites where there are lower fees and taxes (Williams & Wood, 2007:30) and it may also drive interactive gambling service providers to host their websites from an offshore location instead, where there are fewer regulations and less stringent enforcement of regulations (Williams & Wood, 2007:30). These dilemmas directly contradict what is to be achieved by a protectionist system and therefore it does not appear to be an appropriate model or method of taxation.

A major issue of taxing gambling proceeds is that gambling does not necessarily generate wealth, but could rather be considered a process of redistributing wealth. For each player that has won money, another player has lost at least as much as that which has been won. If SARS imposes an additional tax on interactive gamblers such as indirect tax on deposits by players, or a withholding tax on winnings of players, it will need to consider what relief is to be given to players that have incurred losses.

The most appropriate method of taxing resident South African individuals may be to effectively collect normal income tax and CGT from gamblers on income generated from interactive gambling. SARS could introduce reporting obligations on gambling enterprises such as those which are already in place for employers and financial institutions (Barnes & Bezuidenhout, 2010:7). These reporting obligations could be tailored so that interactive gambling service providers are required to report personal information of players that have won money to ensure that such money is declared and taxed appropriately. The enforcement of these reporting regulations will be made easier if they are implemented in already established land-based gambling operators as these operators already abide by gambling legislation and have monitoring structures in place. They would also not be able to easily alter, move or entirely remove their websites resulting in all history of gambling transactions and player lists being discarded.

The National Gambling Board, SARS and the government should consider setting up and implementing international agreements so that various countries can come together and reach consensus on appropriate and effective ways of regulating the interactive gambling industry (Collins, 2009). These agreements could include provisions requiring cross border sharing of information and reporting obligations on interactive gambling service providers which would make the regulation of the industry less troublesome.

4.9 CONCLUSION

The best interactive gambling regulatory model to be applied in South Africa is a protectionist model. The benefit of a protectionist model is that it guards the residents of a country by having a regulated interactive gambling industry that is shielded from outside intruders.

E-commerce and interactive gambling create difficulties for SARS such as the identification and location of taxpayers, the identification and verification of taxable transactions and the ability to establish a link between taxpayers and their taxable transactions. A protectionist model can overcome these issues through enforcing regular reporting from locally licensed interactive gambling service providers, which will be beneficial to SARS.

The current prohibitive approach followed in South Africa with regards to regulating the gambling industry does not appear to be effective. Countries that have previously applied this model, such as France and the US, are reconsidering their interactive gambling laws and regulations and tend to be moving towards either a protectionist, or more liberal model.

Existing South African land-based gambling companies will be in the best position to host interactive gambling websites as most of these companies are already regulated at a provincial and national level by government legislation.

CHAPTER 5

CONCLUSION

5.1 INTRODUCTION

This Chapter indicates how the purpose statement and research objectives were addressed and highlights the conclusion of the study. This Chapter also gives suggestions for possible future research.

5.2 PURPOSE STATEMENT AND OBJECTIVES

The purpose of this study was to critically analyse whether income earned from interactive gambling by resident South African individuals should be taxed by SARS. This analysis was performed in Chapter 3. This study also investigated which laws currently regulate the interactive gambling industry within South Africa in Chapter 2. Chapter 4 investigated how the regulation and taxation of interactive gambling in South Africa compares to that of other developing and developed countries.

The following specific objectives guided this study:

- to determine whether interactive gambling is considered legal within South Africa. This was discussed in Chapter 2;
- to establish the value of income earned by individuals participating in interactive gambling in South Africa. This was discussed in Chapter 2;
- to determine whether resident South African individuals should be taxed on income received from interactive gambling activities. This was discussed in Chapter 3; and
- to critically analyse SARS's policies and practices relating to taxation of income earned from interactive gambling in relation to other developing and developed countries including Canada, Australia, the United States, the United Kingdom, Austria, Finland, France, Germany, Hong Kong, Ireland, the Isle of Man and New Zealand. This was discussed in Chapter 4.

5.3 SUGGESTIONS FOR FURTHER RESEARCH

Other researchers may extend the findings of this research to determine how other countries distinguish between gambling proceeds of an income nature and gambling proceeds of a capital nature.

5.4 CONCLUSION

Online or interactive gambling is now recognised in South Africa but insight into the regulation of the interactive gaming industry in South Africa is not provided. Although the best solution for South African interactive gambling regulation appears to be a protectionist model, no interactive service provider licences have been issued and the Interactive Gambling Regulations Bill has not been enacted. This therefore means that interactive gambling regulation in South Africa is at present considered to be functioning within a prohibitive model. Additionally, betting exchanges are not recognised as a form of interactive gambling.

South Africa would benefit economically from interactive gambling if it were to effectively regulate the industry. The most optimal entities for hosting regulated interactive gambling websites, and granting interactive licences to, are most likely the already existing South African land-based gambling companies. These companies are already regulated at a provincial and national level and already have monitoring structures in place.

The total income earned from interactive gambling by South African residents is conservatively estimated to be between R4 billion and R10 billion per year. A well regulated interactive gambling industry in South Africa would assist SARS in effectively taxing resident South African individuals who earn income from interactive gambling.

When income is earned from interactive gambling in a scheme of profit-making by a resident South African individual, the income should be subject to normal income tax if an amount of winnings is received by or accrued to the taxpayer. The legality surrounding the means by which an amount is received by the taxpayer does not affect the fact that it should be subject to income tax. Determining if an amount has accrued to the taxpayer for

his own benefit is made difficult when such winnings are retained in an online gambling account on a gambling service provider's website. There is no case law that currently exists which relates to the issue of illegal interactive gambling winnings. It is necessary for SARS to clarify their position with regards to 'received by' or 'accrued to' in respect of such winnings.

As the current legal position regarding interactive gambling in South Africa is unclear, income received from interactive gambling on local and foreign websites is deemed to be illegal and could be subject to CGT and further legal scrutiny. SARS needs to clarify their position regarding CGT on income earned from interactive gambling on both local and foreign websites. SARS should consider imposing monetary thresholds which could be used to determine if amounts received from interactive gambling should be taxed or not.

SARS could impose an additional tax on interactive gamblers such as an indirect tax on deposits by players, or a withholding tax on the winnings of players. If SARS does this it will need to consider what relief is to be given to players who have incurred losses while generating gambling income.

The best method of taxing resident South African individuals will be to effectively collect normal income tax and CGT on income generated from gambling. SARS could introduce reporting obligations on gambling enterprises such as those which are already in place for employers and financial institutions (Barnes & Bezuidenhout, 2010:7). These reporting obligations could be tailored to obtain personal winning information on players so as to ensure that money is declared and taxed appropriately. The enforcement of these reporting regulations will be simpler if they are required from current land-based gambling operators.

The National Gambling Board, SARS and the government should initiate the implementation of international agreements so that countries can come together to agree on appropriate and effective ways of regulating the interactive gambling industry (Collins, 2009). With all the above in place, South Africa has the opportunity to not only enjoy the industry but also to benefit from the interactive gambling industry.

LIST OF REFERENCES

American Bar Association. 2006. Report of the task force on international tax reform. *The Tax Lawyer*, 59(3):658.

American Gaming Association. 2006. An analysis of internet gambling and its policy implications. *AGA 10th Anniversary White Paper Series*. [Online] Available from: http://www.americangaming.org/assets/files/studies/wpaper_internet_0531.pdf [Accessed: 2010-08-22].

American Gaming Association. Not dated. *Industry information fact sheets: internet gambling*. [Online] Available from: http://www.americangaming.org/Industry/factsheets/issues_detail.cfv?id=17 [Accessed: 2010-08-22].

Australian Taxation Office. Not dated. *GST and gambling*. [Online] available from: <http://www.ato.gov.au/businesses/content.asp?doc=/content/11991.htm> [Accessed 2010-08-22].

Barnes, C. & Bezuidenhout, S. 2010. SARS to be the ultimate winner in the gambling industry. *Taxtalk*, 23:6-7. [Online] Available from Sabinet: http://0-search.sabinet.co.za/innopac.up.ac.za/WebZ/images/ejour/taxtalk/taxtalk_n23_a5.pdf?sessionid=01-51979-1582189350&format=F [Downloaded: 2010-08-01].

Baumann, J. 2010. Online gambling raises the ante for casinos. *Business Day*, 12 August 2010. [Online] Available from: <http://www.businessday.co.za/Articles/Content.aspx?id=117696> [Accessed 2010-08-14].

Bowers, S. 2010. Online betting faces regulation overhaul. *Guardian*, 7 January 2010. [Online] Available from: <http://www.guardian.co.uk/uk/2010/jan/07/online-betting-regulation-overhaul> [Accessed: 2010-08-24].

Bowsher, E. 2006. *The online gaming party continues*. [Online] Available from: <http://www.fool.co.uk/news/Comment/2006/c060127b.htm> [Accessed: 2010-08-16].

Buist, S. & Walters, J. 2006. Online gaming divides Six Nations. *Hamilton Spectator*, 2 October 2006. [Online] Available from: <http://www.thespec.com/news/article/7836--online-gaming-divides-six-nations> [Accessed 2010-08-21].

Canada Revenue Agency. 2003. Income Tax Act - scholarships, fellowships, bursaries, prizes, research grants and financial assistance. [Online] Available from: <http://www.cra-arc.gc.ca/E/pub/tp/it75r4/it75r4-e.pdf> [Accessed 2010-08-22].

Casino Trading Post. 2009. *The legalities surrounding online gambling in Australia*. [Online] Available from: http://www.casinotradingpost.com/blog/read_2548/the-legalities-surrounding-online-gambling-in-australia.html [Accessed 2010-08-22].

Collins, P. 2007. *Submission on "remote" gambling to the parliamentary portfolio committee responsible for gambling legislation*. [Online] Available from: <http://www.responsiblegambling.co.za/media/user/documents/Remote%20Gambling%20for%20SA%20Portfolio%20Committee%20August%202007.pdf> [Accessed: 2010-08-03].

Collins, P. 2009. *Regulating the world of remote gambling*. [Online] Available from: <http://www.responsiblegambling.co.za/content.asp?id=23&pr=116> [Accessed: 2010-08-03].

Cox, N. 2002. The regulation of cyberspace and the loss of national sovereignty. *Information & Communication Technology Law*, 11(3):244-245.

Cryptologic Casinos. Not dated. *A guide to Cryptologic software powered casinos*. [Online] Available from: <http://www.cryptologic-casinos.info/> [Accessed: 2010-08-15].

Dodge, C. 2010. House panel passes measure to legalize some internet gambling. *Bloomberg*, 2010-07-29. [Online] Available from: <http://www.bloomberg.com/news/2010-07-28/house-panel-passes-frank-backed-measure-to-legalize-some-internet-gambling.html> [Accessed: 2010-08-22].

Du Plessis, L. 2008. Tax haven or hell. *Accountancy SA*, September:18. [Online] Available from :
<http://www.accountancysa.org.za/resources/ShowItemArticle.asp?ArticleId=1542&issue=1057> [Accessed 2009-06-14].

Encata. 2009. *Definition of "land-based"*. [Online] Available from:
<http://www.accountancysa.org.za/resources/ShowItemArticle.asp?ArticleId=1542&issue=1057> [Accessed 2010-10-17].

Freemantle, M. 2010. The three kings. *GQ Magazine*, June:104-107.

Gambling Commission [United Kingdom]. 2009a. *Industry statistics 2008/09*. [Online] Available from:
<http://www.gamblingcommission.gov.uk/pdf/Gambling%20Industry%20Statistics%202008%202009%20-%20update%20-%20October%202009.pdf> [Downloaded: 2010-08-16].

Gambling Commission [United Kingdom]. 2009b. *Remote Gambling*. [Online] Available from:
<http://www.gamblingcommission.gov.uk/pdf/Sector%20specific%20summary%20remote%20-%20January%202009.pdf> [Downloaded: 2010-08-16].

Gaming News. 2006. *Alberta tribal commission offers online licenses*. [Online] Available from:
<http://www.casinocitytimes.com/news/article.cfm?contentID=162294> [Accessed 2010-08-22].

Gcabo, R. & Robinson, Z. 2007. Tax compliance and behavioural response in South Africa: an alternative investigation. *South African Journal of Economic and Management Sciences*, 10(3):357-370.

Gordan, R.A. 2002. *Tax havens and their use by United States taxpayers – an overview*. United States: Landmark.

Gordhan, P. 2010. *Budget speech 2010*. 17 February. Pretoria: National Treasury South Africa. [Online] Available from: <http://www.treasury.gov.za/documents/national%20budget/2010/speech/speech2010.pdf> [Accessed 2010-08-20].

Havel, R. 2010. *Barney Frank's H.R. 2267 passes committee*. [Online] Available from: <http://www.tightpoker.com/news/barney-franks-hr-2267-passes-committee-2103/> [Accessed: 2010-08-23].

Hickey, J.B., Mathew, R. & Rose, C. 2000. *E-commerce: law, business and tax planning*. Jordans.

HM Revenue & Customs. Not dated a. *BIM22017 - Trade: exceptions & alternatives: betting and gambling: the professional gambler*. [Online] Available from: <http://www.hmrc.gov.uk/manuals/bimmanual/BIM22017.htm> [Accessed: 2010-08-24].

HM Revenue & Customs. Not dated b. *Is your asset liable to Capital Gains Tax*. [Online] Available from: <http://www.hmrc.gov.uk/cgt/intro/when-to-pay.htm> [Accessed: 2010-08-24].

Institute for Telecommunication Science. Not dated. *Definition of ecommerce*. [Online] Available from: http://www.its.blrdoc.gov/projects/devglossary/_e-commerce.html [Accessed: 2010-08-01].

Jepson, V. 2000. Internet gambling and the Canadian conundrum. *Review Of Current Law And Law Reform*, 6(6):1-9. [Online] Available from: <http://appeal.law.uvic.ca/vol6/pdf/jepson.pdf> [Accessed 2010-08-22].

Jordaan, K., Koekemoer, A., Stighlingh, M., van Schalkwyk, L., Wassermann, M., Wilcocks, J. 2008. *Silke: South African Income Tax*. Durban: LexisNexis.

Kramer, K.B. 2001. The Jay Cohen affair: lessons in the legality of internet betting. *Gaming Law Review*, 5:551-553.

Kreiser, L & Jowitt, E. 1993. The taxation of gambling winnings in Australia and the United States: a comparative study. *The International Tax Journal*, 19:75.

Lodewyckx, E. & Surujlal, J. 2009. An analysis of sport gambling behaviour among university students. *African Journal for Physical, Health Education, Recreation and Dance (AJPHERD)*, September 2009:98-112. [Online] Available from Sabinet: http://0-search.sabinet.co.za/innopac.up.ac.za/WebZ/images/ejour/ajpherd/ajpherd_supp_2009_a8.pdf?sessionid=01-51861-1865050999&format=F [Downloaded 2010-08-21].

Mahlong, A. 2010. *Interactive gambling legislation lags*. [Online] Available from: http://www.itweb.co.za/index.php?option=com_content&view=article&id=29017:interactive-gambling-legislation-lags&catid=147:internet&Itemid=68 [Accessed: 2010-08-15].

Mawson, N. 2010. Court pulls plug on online gambling. *Itweb Business*, 25 August 2010. [Online] Available from: http://www.itweb.co.za/index.php?option=com_content&view=article&id=36182:court-pulls-plug-on-online-gambling&catid=69&Itemid=58 [Accessed: 2010-09-05].

Nachito, L. 2010. Capital gains on gambling winnings. *Taxtalk*, 23:5. [Online] Available from Sabinet: http://0-search.sabinet.co.za/innopac.up.ac.za/WebZ/images/ejour/taxtalk/taxtalk_n23_a4.pdf?sessionid=01-51842-1928147301&format=F [Downloaded: 2010-08-01].

National Gambling Board. 2010a. *National gambling statistics [financial year ending 31 March 2010]*. [Online] Available from: <http://www.ngb.org.za/home.asp?pid=138> [Downloaded 2010-08-21].

National Gambling Board. 2010b. *Northern High Court declares interactive gambling illegal to operate in South Africa*. Press Statement From The National Gambling Board. South Africa. [Online] Available from: <http://www.ngb.org.za/home.asp?pid=28> [Downloaded 2010-09-22].

Nevada Department of Taxation. 2009a. *County map of Nevada*. [Online] Available from: http://tax.state.nv.us/documents/Sales_Tax_Map.pdf [Accessed: 2010-08-22].

Nevada Department of Taxation. 2009b. *Taxpayer information packet*. [Online] Available from: <http://tax.state.nv.us/documents/Taxpayer%20Information%20Packet.pdf> [Accessed: 2010-08-22].

Ntombikayise, B. 2010. Tata ma chance? SARS to tata ma millions!: gambling tax. *Tax Breaks Newsletter*, 292:8. [Online] Available from Sabinet: http://0-search.sabinet.co.za.innopac.up.ac.za/WebZ/images/ejour/montb/montb_n292_a6.pdf?sessionid=01-51861-1865050999&format=F [Downloaded: 2010-08-01].

Oguttu, A.W. & Van der Merwe, B. 2005. Electronic commerce: challenging the income tax base. *SA Mercantile Law Journal*, 17(3):305. [Online] Available from Sabinet: http://0-search.sabinet.co.za.innopac.up.ac.za/WebZ/images/ejour/ju_samlj/ju_samlj_v17_n3_a4.pdf?sessionid=01-34015-1883333581&format=F [Downloaded: 2010-08-01].

Oguttu, A.W. 2006. Transfer pricing and tax avoidance: is the arm's length principle relevant in the e-commerce era. *SA Mercantile Law Journal*, 18(2):156. [Online] Available from Sabinet: http://0-search.sabinet.co.za.innopac.up.ac.za/WebZ/images/ejour/ju_samlj/ju_samlj_v18_n2_a3.pdf?sessionid=01-34015-1883333581&format=F [Downloaded: 2010-08-01].

Online Casino City. Not dated a. *Jurisdictions*. [Online] Available from: <http://online.casinocity.com/jurisdictions/index.cfm?Id=&start=1&sortlist=rank&numperpage=25> [Accessed: 2010-08-16].

Online Casino City. Not dated b. *Austria*. [Online] Available from: <http://online.casinocity.com/jurisdictions/austria/> [Accessed: 2010-08-16].

Online Casino City. Not dated c. *Finland*. [Online] Available from: <http://online.casinocity.com/jurisdictions/finland/> [Accessed: 2010-08-16].

Online Casino City. Not dated d. *Germany*. [Online] Available from: <http://online.casinocity.com/jurisdictions/germany/> [Accessed: 2010-08-16].

Online Casino City. Not dated e. *Hong Kong*. [Online] Available from: <http://online.casinocity.com/jurisdictions/hong-kong/> [Accessed: 2010-08-16].

Online-Casinos.com. Not Dated. *Why gamble online at all?* [Online] Available from: <http://www.online-casinos.com/beginnersguide/faq8.asp> [Accessed: 2010-08-21].

Onlinegambling.com. Not dated. *The history of online gambling*. [Online] Available from: <http://www.onlinegambling.com/online-gambling-history.htm> [Accessed: 2010-08-15].

Post, D.G. & Johnson, D.R. 1996. Law and borders - the rise of law in cyberspace. *Stanford Law Review*, 48(1376):2.

Pienaar, S. J. 2008. *South African income tax implications of income earned in virtual worlds*. Unpublished Masters dissertation. University of Pretoria. [Online] Available from UPeTD: <http://upetd.up.ac.za/thesis/available/etd-0615t-163330/unrestricted/dissertation.pdf> [Downloaded: 2010-08-20].

Puttergill, A. 2009. The future of gaming in South Africa. *CASA Newsletter*, 14:6-8. [Online] Available from: http://www.casasa.org.za/CASA_Newsletter_Issue_14.pdf [Downloaded: 2010-08-15].

Rahamim, W. & Mthiyane, T. 2008. Regulation of interactive gambling in South Africa. *TAXtalk*, 12(Aug):14-15. [Online] Available from Sabinet: http://0-search.sabinet.co.za.innopac.up.ac.za/WebZ/images/ejour/taxtalk/taxtalk_n12_a9.pdf?sessionid=01-51861-1865050999&format=F [Downloaded: 2010-08-02].

Reuters. 2010. *France issues 17 on-line betting licences*. Paris, 8 June. [Online] Available from: <http://in.reuters.com/article/idINIndia-49132720100608> [Accessed: 2010-08-24].

Reviewed Casinos. 2010. Media storm brewing in Finland. *Gambling News*, 16 August 2010. [Online] Available from: <http://www.reviewed-casinos.com/news/media-storm-brewing-finland.html> [Accessed: 2010-08-20].

Rodrigues, C. 2008. The gaming spider spins its web: gaming law. *Without Prejudice*, 8(9):24-25. [Online] Available from Sabinet: http://0-search.sabinet.co.za.innopac.up.ac.za/WebZ/images/ejour/jb_prej/jb_prej_v8_n9_a12.pdf?sessionid=01-51861-1865050999&format=F [Downloaded: 2010-08-01].

Rollins, R. Not dated. Finnish betting opportunities. *World Gambling Review*. [Online] Available from: <http://www.worldgamblingreview.com/gambling/finland/> [Accessed 2010-08-24].

Rule, S. & Sibanyoni, C. 2000. *The social impact of gambling in South Africa*. South Africa: Nu Dog Design.

SARS. 2000. *Discussion document: electronic commerce and South African taxation*. South Africa.

Schriever, E. 2004. Conflict and coordination between diverse regulatory environments in cross-border gambling on the internet - challenging national and international law. *Swiss Institute of Comparative Law*, p.103-122.

Snail, S.L. 2007a. On-line gambling in SA: gaming law. *Without Prejudice*, 7(8):37-39. [Online] Available from Sabinet: http://0-search.sabinet.co.za/innopac.up.ac.za/WebZ/images/ejour/jb_prej/jb_prej_v7_n8_a22.pdf?sessionid=01-51861-1865050999&format=F [Downloaded: 2010-08-02].

Snail, S.L. 2007b. Online gambling in South Africa. *Juta's Business Law*, 15(3):114-121. [Online] Available from Sabinet: http://0-search.sabinet.co.za/innopac.up.ac.za/WebZ/images/ejour/ju_jbl/ju_jbl_v15_n3_a4.pdf?sessionid=01-51861-1865050999&format=F [Downloaded: 2010-08-02].

Somach, T. 2007. Gambling gold rush. *San Francisco Chronicle*, 2007-07-02. [Online] available from: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/07/02/BUG5LQO5P11.DTL> [Accessed: 2010-08-15].

Stiglingh, M., Koekemoer, A.D., van Schalkwyk, L., Wilcocks, J.S., de Swart, R.D. & Jordaan, K. 2009. *SILKE: South African income tax 2010*. Durban: LexisNexis.

TaxTips.ca. Not dated. *Sales tax rates in Canadian Provinces and Territories*. [Online] Available from: <http://www.taxtips.ca/pst/pstrates.htm> [Accessed 2010-08-22].

Webopedia. Not Dated. *Definition of 'Cyberspace'*. [Online] Available from: <http://www.webopedia.com/TERM/C/cyberspace.html> [Accessed: 2010-09-05].

Wiehahn, N. 1995. *The complete Wiehahn report on gambling in South Africa*. Pretoria.

Williams, R.J. & Wood, R.T. 2009. Internet gambling: a comprehensive review and synthesis of the literature. *Report Prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada*. [Online] Available from: <http://www.uleth.ca/dspace/bitstream/10133/432/1/2007-InternetReview-OPGRC.pdf> [Accessed: 2010-08-05].

LEGISLATION

Income Tax Act 58 of 1962.

Interactive Gambling Tax Bill, National treasury, 2008.

National Gambling Act 7 of 2004.

National Gambling Amendment Act 10 of 2008.

Proposed Interactive Gambling Regulations Bill, Government Gazette N31956. Notice 211 of 2009.

COURT CASES

Brookes Lemos Ltd v CIR, 1947 (2) SA 976 (A) (14 SATC 295)

Butcher Bros (Pty) Ltd, 1945 AD 301 (13 SATC 21)

CIR v Delagoa Bay Cigarette Co, 1918 TPD 391 (32 SATC 47)

CIR v Delfos, 1933 AD 242 (6 SATC 92)

CIR v Genn & Co (Pty) Ltd, 1955 (3) SA 293 (A) (20 SATC 113)

CIR v Leydenberg Platinum Ltd, 1929 AD 137 (4 SATC 8)

CIR v People's Stores (Walvis Bay) (Pty) Ltd, 1990 (2) SA 353 A (52 SATC 9)

CIR v Richmond Estates (Pty) Ltd, 1956 (1) SA 602 (A) (20 SATC 355)

CIR v Scott, 1928 AD 252 (3 SATC 253)

Cohen v CIR, 1964 AD 174 (13 SATC 362)

COT v G, 1981 (4) SA 167 (ZA) (43 SATC 159)

COT v Levy, 1952 (2) SA 413 (A) (18 SATC 127)

Geldenhuys v CIR, 1947 3 SA 256 (C) (14 SATC 419)

Greases (SA) Ltd v CIR, 1951 (3) SA 518 (A) (17 SATC 358)

H v COT, 1960 (2) SA 695 SR (23 SATC 292)

ITC 932 (24 SATC 341)

ITC 1545 (54 SATC 464)

ITC 1624 (59 SATC 373)

ITC 1789 (67 SATC 205)

ITC 1792 (67 SATC 236)

Lace Proprietary Mines Ltd v CIR, 1938 AD 267 (9 SATC 394)

Levene v IRC, 1928 AC 217 (13 TC 486)

Morrison v CIR, 1950 (2) SA 449 (A) (16 SATC 377)

MP Finance Group CC v CSARS, 2007 (3) SA 521 (SCA) (69 SATC 141)

Ochberg v CIR, 1931 AD 251 (5 SATC 93)

Overseas Trust Corporation v CIR, 1926 AD 444 (2 SATC 71)

Pyott Ltd v CIR, 1944 AD 128 at 134 (13 SATC 121)

Pyott Ltd v CIR, 1945 AD 128 at 135 (13 SATC 121)

SARS v Cape Consumers (Pty) Ltd, 1999 (4) SA 1213 (61 SATC 91)

SIR v Silverglen Investments (Pty) Ltd, 1969 (1) SA 365 (A) (13 SATC 199)

Stephan v CIR, 1919 WLD 1 (32 SATC 54)

WH Lategan v CIR, 1926 CPD 203 (2 SATC 16)