

# New tax proposal may be the last nail in the gambling industry's coffin



It is barely four months after the coming into force of the 35% tax on gaming revenue and the Treasury is proposing new tax changes in the gambling industry. This is through the Tax Laws (Amendment) Bill, 2018 that the Treasury has tabled in Parliament for debate and possible approval. The new changes will require gambling companies to withhold tax on winnings paid to punters (players) at the rate of 20%.

Approval of the changes will see a return of a tax that the Government first introduced in 2014 but abandoned in 2016 due to implementation challenges that the industry faced at the time. It remains to be seen whether these challenges will have been resolved ahead of the proposed re-introduction of the tax.

If the tax on winnings is passed, Kenya will be one of the few countries to adopt a hybrid model of taxing the gambling industry. This is because Kenya will be taxing both the gambling companies and the punters at the same time. Internationally, different countries have adopted different models of taxing the gambling industry. Some countries tax gambling companies like any other trading company while others ascribe different taxes depending on the various gambling activities, that is, betting, lottery, casinos and prize competitions. For winnings of the punters, some countries tax them as ordinary income, others

attach a final withholding tax on the payments while others do not tax the winnings. In the United States for example, gambling winnings are fully taxable and a winner must disclose the winnings in their tax return. One may deduct gambling losses but only if they are itemized and supported.

However, the amount of losses one may deduct cannot be more than the amount of gambling income reported in the return. In the United Kingdom, gambling winnings are not taxable on the punters. The gambling companies are however liable to a 15% tax on their gross profits. In other European countries, tax on punters' winnings is rare.

Nevertheless, it is clear that the Kenya Government has resorted to fiscal measures to address the gambling craze that has swept across the country in recent years. The Government's aim is clear; to cure Kenyans from the social ills of gambling. The debate as to the morality of gambling as well as the social effects of the same is well documented especially from a global perspective. From a Kenyan standpoint, there have been tales of young people gambling away their school fees and parents neglecting their financial duties after losing money through betting and so on. There have also been reported cases of suicides, allegedly as a result of losing money to betting. There is now a general consensus especially among the older generation that gambling is indeed a vice that needs to be dealt with before it destroys the younger generation.

Existing tax measures do not affect the punters' winnings and as such, have limited impact on the gambling craze contrary to what the Government expected. This may be the reason why the Government is proposing the new tax on punters' winnings. With the new tax proposed to be a final withholding tax on payment of the winnings, punters will have no chance to claim any losses they suffer on lost bets. This will definitely make betting and gambling in general unattractive, potentially reducing the number of people engaged in gambling.



However, this new proposal also coincides with another proposal to reduce the tax on gaming revenue from 35% to 15%. If passed, this reduction will offer a reprieve to gambling companies. However, the hybrid model of taxing both the gambling companies and the punters, may still prove to be a stumbling block to the industry. Following the introduction of the gaming tax of 35% (proposed to reduce to 15%) in addition to the pre-existing 30% corporation tax on profits, the gambling companies relied on volumes to remain afloat.

The tax on punters' winnings is likely to bring these volumes down, eroding the revenues and profitability of the gambling companies.

While the Government has a responsibility to protect its citizens by reducing the negative social effects of vices such as gambling, the recent fiscal measures which are likely to spell doom for the industry do not augur well with the Government's plan to widen the tax base in Kenya. In 2016, the Kenya Revenue Authority's Commissioner General (CG) John Njiraini told the Parliamentary Committee reviewing the Betting, Lotteries and Gaming (Amendment) Bill, 2016 of how the industry had helped widen the tax base in Kenya. CG Njiraini explained how eight of the licensed betting companies paid a total of KES 4.7 billion in the financial years 2014/2015 and 2015/2016. The CG urged for a balance between finding solutions to the effects of gambling and ensuring that the businesses continued to operate and thrive.

I will go out on a limb and say that in spite of the negative effects of gambling, excessively taxing the industry is not the way to deal with the gambling vice. Gambling is a social problem that requires social solutions. The way other developed jurisdictions have dealt with the gambling problem, is not by over taxing the industry but rather through measures which include, forming agencies that run responsible gambling campaigns such as awareness weeks (an annual event in the UK) etc. Such campaigns focus on early intervention and prevention, consumer protection, help and counselling services for people experiencing problems with gambling, advice on risks of gambling and how to stay in control etc. Other measures have included strict marketing and advertising restrictions such as not to advertise new customer sign-up offers on TV before 9pm and so on.



Also, with the popularity of online betting, the betting companies could easily move their bases elsewhere and will still offer their services to Kenyans. With the various online payment options such as Visa Card,

MasterCard and the recent linkage of MPESA to Paypal, this move is likely to happen in the not so distant future. If this were to happen, the social negative effects that the Government hopes to eradicate through fiscal measures will continue, with the Government losing tax revenues from the gambling companies and the punters in the process.

The gambling companies reacted to the 35% tax by withdrawing sports sponsorships whose effect is still being felt in the various sports disciplines around the country. It remains to be seen whether these sponsorships will be resumed with the expected reduction of gambling volumes and the reduction of the gaming tax from 35% to 15%. It will also be interesting to see how the gambling companies react to this latest move. My bet is that the gambling businesses may change their operating model and delivery channels to continue servicing the local market, effectively bypassing the proposed taxes.

**Toddy Thairu is a Tax Manager with KPMG Kenya.**

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