

MinterEllison

MEMO

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To Joshua Preston
Chief Legal Officer – Australian Resorts
Crown Resorts Ltd

From MinterEllison

Subject Gaming Machines Food Program Initiative – GGR treatment

Date 25 October 2018

Gross Gaming Revenue

1. The *Casino (Management Agreement) Act 1993* (Vic) requires Crown Melbourne to pay casino tax on Gross Gaming Revenue.¹
2. Relevantly for the purposes of this note, Gross Gaming Revenue is defined to mean 'the total of all sums ... received in any period by the Company, from the conduct of or playing of games ... less the total of all sums paid out as winnings during that period in respect of such conduct or playing of games ...'
3. Determining the amounts to be included in this calculation is, strictly, a matter of statutory construction. For Crown Melbourne to be entitled, under the Act, to deduct sums for the purpose of the Gross Gaming Revenue calculation, those sums must have been 'paid out as winnings'.
4. Crown Melbourne has, since inception, treated a number of types of jackpots, including so called 'Bonus Jackpots', as 'sums paid out as winnings' (ie. as a deductible for the purposes of the Gross Gaming Revenue calculation). Historically, this has been done with the knowledge and approval of the VCGLR.
5. In or around 2012, Crown Melbourne instituted changes to the way it implemented and classified its Gaming Machine Food Program, with the effect that Gaming Machine Food Program costs (including specified food, hotel and car parking benefits) were, from that point on, classified as a Bonus Jackpot and a deduction for the purposes of the Gross Gaming revenue calculation.

Bonus jackpots

6. A jackpot is defined in the *Casino Control Act (Vic) 1991 (CCA)* to mean 'the combination of letters, numbers, symbols or representations required to be displayed on the reels or video screen of a gaming machine so that the winnings in accordance with the prize payout scale displayed on the machine are payable from money which accumulates as contributions are made to a special prize pool.'
7. The term 'bonus jackpot' is not defined in the CCA. However, the term is referred to in other documents prepared or sanctioned by the VCGLR.
8. The 'Technical Requirements Document' issued by the VCGLR defines a 'Bonus Jackpot' as being one where 'an EGM is instructed by an external device to pay additional bonus prizes where the amount/multiplier, bonus eligibility criteria and time period are specified by the external device.'
9. The term 'Bonus Jackpot' is also used in the [Internal Control Statement] dated 30 April 1997. This document does not include a freestanding definition of a 'Bonus Jackpot', but indicates that the term is defined in the 'Game Rules, and does not include mystery or progressive jackpots.'
10. We are instructed that, at present, Crown Melbourne has not been able to locate a copy of the referenced 'Game Rules'.

¹ The Management Agreement, set out in Schedule 1 to the Act, provides for the payment of casino tax (see cl 22.1). The Act provides that the Management Agreement takes effect as if it were part of the Act.



11. An example of a 'Bonus Jackpot' is the Welcome Back Bonus Jackpot, which we are instructed has been used by Crown Melbourne for a considerable period of time. This involves pokie credits being provided to patrons who meet certain specified criteria, and revisit the casino within a specified period.
12. The Welcome Back Bonus Jackpot is the subject of a specific approval, including specific jackpot configuration settings, provided by the VCGLR in November 2006.

Treatment of Bonus Jackpots

13. As indicated, 'Bonus Jackpots' have historically been treated as a deductible for the purpose of the Gross Gaming Revenue Calculation.
14. This has been done with the knowledge and assent of the VCGLR. The Internal Control Statement provides that 'Revenue shall equal Turnover less Game Wins less Jackpot Startouts less Variable Prize Jackpot Increments less Fixed Prize Jackpot Increments less Bonus Jackpots.'
15. Consistent with this, Crown Melbourne's monthly Gross Gaming Revenue reporting, and the calculations contained therein, make specific reference to 'Bonus Jackpots', which are included in the report as a deduction for the purpose of the calculation. The level of detail around this reporting reduced in around 2013 (with the consent of the VCGLR).
16. It is instructive to look at how Bonus Jackpots are typically accounted for as part of the Gross Gaming Revenue calculation. To use the example of the Welcome Back Bonus Jackpot, we are instructed that pokie credits issued as part of the Welcome Back program, once redeemed, are treated as a deduction to Gross Gaming Revenue. On the other hand, the turnover generated through the use of the pokie credits is recognised and treated as part of turnover for the purposes of the Gross Gaming revenue calculation.
17. By way of example, a patron meeting specified criteria obtains a \$25 pokie credit when playing at Crown Melbourne. That \$25 of credits wagered is included in turnover for the purpose of the Gross Gaming revenue calculation, but also as a deductible (as, in effect, a \$25 sum paid out to the patron). The effect on the Gross Gaming revenue calculation is that of a zero sum game.

Gaming Machines Food Program Initiative

18. We are instructed that Crown Melbourne has had in place a gaming loyalty food program (referred to below as the Gaming Machine Food Program), in a number of forms, since at least 2000.
19. In or around 2012, Crown Melbourne instituted changes to the way it implemented and classified its Gaming Machine Food Program, with the effect that Gaming Machine Food Program costs were, from that point on, classified as a 'Bonus Jackpot' and, therefore, a deduction for the purposes of the Gross Gaming Revenue calculation.
20. The VCGLR approved changes to Crown Melbourne's EMS (DACOM) in July 2012, which modified 'the existing bonus jackpot mechanism to support any additional bonus types'. The DACOM system provides the functionality for the Gaming Machine Food Program 'bonuses'. On our instructions, unlike certain other Bonus Jackpots, the external jackpot controller (IGT) is not required for or used in connection with the implementation of the Gaming Machine Food Program 'bonuses'.
21. The VCGLR:
 - (a) was not advised of this change in the treatment of Gaming Machine Food Program costs;
 - (b) has not approved the Gaming Machine Food Program as a 'Bonus Jackpot'.
22. Documents issued at the time of the introduction of these changes to the Gaming Machine Food Program speak of, among other things, the benefit to the bottom line of including these as Bonus Jackpots, and the likelihood of the VCGLR detecting this change in treatment.
23. According to the Technical Criteria, all Bonus Jackpots need to be approved. Paragraph 7.7.1 provides that 'All Bonus Jackpot parameters are to receive the approval of the Director.'

24. It is evident from the material with which we have been provided that the VCGLR has historically been very prescriptive about approvals for bonus jackpots and related bonuses. It has also been specific about the limited nature of the approvals provided.
25. The VCGLR has made certain enquiries during the course of 2018 in relation to Crown Melbourne's treatment of Bonus Jackpots, but to date the VCGLR has not raised any specific issue about the composition of Bonus Jackpots or the treatment of Gaming Machine Food Program costs as a deductible.

Observations

26. On a strict interpretation of Gross Gaming Revenue, to constitute a deductible, the amounts must be "won" by the punter or otherwise paid out as winnings. On its terms, this definition would not seem to capture credits earned simply by repeat play, which is what the Gaming Machine Food Program involves.
27. The concept of loyalty credits accruing based on level of play does not logically fit within the concept of a jackpot, either as that term is commonly understood, or as it is defined in the CCA (which is a very narrow, technical definition).
28. On the other hand, paragraph 1.03 of the ICS (sanctioned by the VCGLR) provides a helpful statement of intention in respect of the calculation of Gross Gaming Revenue. It provides that 'Crown will include as winnings to its patrons any prize paid out to its patrons on the level of play and in accordance with the rules of the game.' This appears to recognise that turnover based incentives, such as the Gaming Machine Food Program may be able to be treated as 'winnings' for the purposes of the Gross Gaming Revenue.²
29. According to the Technical Criteria, all Bonus Jackpots need to be approved. The changes to the Gaming Machine Food Program were not so approved.
30. There is an argument that, based on the Technical Criteria document, the Gaming Machine Food Program does not fall within the definition of a Bonus Jackpot. This turns on whether the EMS (ie DACOM) can be regarded as an external device for the purposes of the definition in paragraph 7.1 of the Technical Criteria.
31. Of course, if the Gaming Machine Food Program is not a Bonus Jackpot, then the case for deductibility by reference to that term, and the way such jackpots have been treated historically, weakens accordingly.
32. It is also worth noting the different economic impact of deductions applied in the context of the Gaming Machine Food Program. Deducting the food program bonuses, once redeemed, affects the Gross Gaming Revenue calculation in a different way to other bonus/jackpot type arrangements.
33. As noted above, in the case of the Welcome Back Bonus Jackpot, the effect on the calculation is that of a zero sum game (\$25 of revenue to top line, \$25 of winnings to bottom line). By contrast, in respect of the Gaming Machine Food Program, there is a different financial impact of the treatment of the deductible. It is no longer a zero sum game. The cost of the food or car parking is deducted, but there is no corresponding increase in the 'top line' for the purposes of revenue.

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² As noted above, it is unclear what 'in accordance with the rules of the game' means in this context (ie. what these rules are and their significance is for the purposes of the analysis).