

IN THE MATTER OF CROWN RESORTS LIMITED

AND IN THE MATTER OF CASINO TAX UNDER THE CASINO (MANAGEMENT AGREEMENT) ACT 1993 (VIC)

SUPPLEMENTARY MEMORANDUM OF ADVICE

To: **Arnold Bloch Liebler**

Attention: Leon Zwier and Elyse Hilton

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5 July 2021

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1. Further to our memorandum dated 5 July 2021, we are instructed on behalf of the Board of Crown Resorts Limited (**Crown**) to review and to advise urgently in relation to the application of the casino tax payable by Crown under the *Casino (Management Agreement) Act 1993 (Vic)* (**Casino Management Act**) with respect to certain prizes provided under the Jackpot Payment Program to patrons in connection with electronic gaming machines ('pokies' or **EGMs**).
2. In our previous advice, we reviewed the brief of Ernst & Young (**EY**) and opinion of counsel, Mark Robertson QC dated 19 June 2021, in relation to the aspects of various jackpot and bonus programs. We noted that we (like Mr Robertson QC) did not have detailed instructions in relation to a variety of prizes (other than pokie credits) provided under the Jackpot Payment Program.
3. We have now received the EY brief and the supplementary advice of Mr Robertson QC recording their instructions, and some further instructions from Crown employee, Peter Herring. We proceed on the assumption that those instructions, the effect of which is set out below, are accurate. Our advice in relation to these matters is set out under the headings below.

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Summary

4. The award of prizes under the Jackpot Payment Program was randomly selected during a scheduled period of gaming on specified EGMs, albeit not by reference to the outcome of any particular game. In our view, that is sufficient to characterise each of the prizes as being provided “as winnings”.
5. We agree with the conclusions of EY and Mr Robertson QC (as set out in subparagraph 12(a) below) as to the appropriate treatment for the purpose of casino tax of cash prizes provided under the Jackpot Payment Programs (which Crown deducted appropriately).
6. However, contrary to the opinions expressed by EY and Mr Robertson QC, we have formed the view on the instructions provided to us that dining vouchers and gift cards provided under the Jackpot Payment Program, while having the character of “winnings”, were not “sums paid out” and thus were not deductible in the calculation of Gross Gaming Revenue. As noted in our previous advice, if a more detailed exposure of facts tends towards a different conclusion, Crown may consider taking steps towards payment to the State of a relevant amount, subject to further assessment.

Background

7. We refer to the background set out in our advice dated 5 July 2021, and do not repeat it here.
8. We are instructed that, under the Jackpot Payments Program, prizes provided by Crown to be awarded on specified EGMs during scheduled periods of time included pokie credits (addressed in our previous advice), cash, dining vouchers and gift cards able to be used to acquire goods and services at third party suppliers (such as petrol stations or department stores). The prizes were not awarded on the outcome of a game, but were nonetheless awarded randomly to patrons participating in gaming on relevant EGMs at the time.
9. The issue for consideration in this supplementary advice is whether the prizes other than pokie credits fall within the meaning of “sums paid out as winnings”, and can therefore be appropriately deducted in the calculation of the Gross Gaming Revenue on which

casino tax is imposed under the Casino Management Act pursuant to cl 22.1(b) of the Management Agreement (which is ratified by that Act).

10. We understand that Crown's practice has been, with respect to each kind of prize, to treat:
 - (a) cash prizes as sums paid out as winnings;
 - (b) dining vouchers as sums paid out as winnings to the full face value of the voucher irrespective of whether the voucher was used by the patron to the full extent or at all; and
 - (c) gift cards as sums paid out as winnings to the extent of the cost incurred by Crown in acquiring them (which may be less than their face value).
11. We understand that the prizes under this program (including pokie credits), treated by Crown over a period of years as deductions, gave an estimated reduction in casino tax of around \$2.2 million, although we are not aware of the breakdown between each kind of prize.

EY and Mr Robertson QC's opinion

12. In summary, EY's brief and Mr Robertson QC's supplementary opinion expressed conclusions that:
 - (a) the cash prizes were properly treated as sums paid out as winnings to be deducted in the calculation of Gross Gaming Revenue (consistently with Crown's treatment);
 - (b) the value of dining rewards were sums paid out as winnings, although only to the extent redeemed by the patron, and able to be deducted in the calculation of Gross Gaming Revenue (meaning that an adjustment would be required to reflect the extent to which Crown deducted the full face value of such vouchers); and
 - (c) the costs incurred by Crown in acquiring gift cards provided to patrons as prizes were sums paid out as winnings (consistently with Crown's treatment).

Summary of conclusion

13. We agree with Mr Robertson QC's conclusion as to cash prizes being "sums paid out" and appropriately taken into account in determining Gross Gaming Revenue. However, we have formed the view on the instructions provided to us that the dining vouchers and gift cards were not "sums paid out" and not deductible in determining Gross Gaming Revenue.

Consideration

14. We refer to the reasoning set out in our previous advice in relation to the construction of Gross Gaming Revenue under the Casino Management Act, and its application to Dining Rewards in particular. In that advice, we concluded that provision of vouchers for dining were not "sums paid out" (and, where provided under the terms of the Crown Rewards as a consequence of participating in gaming without reference to the outcome of the game, were not paid out "as winnings").

Jackpot Payment Program – prizes as winnings

15. The Jackpot Payment Program involved provision of prizes to patrons participating in gaming on EGMs randomly selected during a scheduled period which was promoted in advance. Although the prizes were not awarded according to the outcome of a particular game of chance, they were awarded by chance during participation in a period of gaming. As we understand, the program was available to all patrons, not only members of the Crown Rewards loyalty scheme.
16. In our view, the random award of prizes to participants in gaming is sufficient for the prizes to have the character of "winnings" for the purpose of Gross Gaming Revenue.

Jackpot Payment Program – cash prizes

17. Where the prizes paid under the program were amounts of cash (or redeemable as cash), it is straightforward that such amounts were "sums paid out", and (on the basis that they were also 'winnings') were accountable as deductions in the calculation of Gross Gaming Revenue.

Jackpot Payment Program – dining voucher prizes

18. For essentially the same reasons as set out in our previous advice with respect to Dining Rewards under the Bonus Jackpot Program available to Crown Rewards members, we consider that the dining vouchers awarded under the Jackpot Payment Program did not constitute “sums paid out” for the purpose of Gross Gaming Revenue.
19. Similarly to the Dining Rewards, we are instructed that the dining vouchers under the Jackpot Payment Program constituted vouchers able to be used by the patron at specified venues in Crown Melbourne within a limited time. A sample in our instructions stated that the patron was entitled to food to the value of the nominated dollar amount, “redeemed for food & beverage”, and not permitting partial redemption.
20. The structure of the voucher arrangements, and the language on the sample briefed to us, are not readily compatible with a characterisation that the voucher (or its redemption upon ordering food and beverage) is payment of a sum. As explained in our previous advice, rather than the voucher being a vehicle for the set-off of a monetary obligation by Crown against a patron’s liability for dining, or for a direction by the patron for Crown to make payment on behalf of a patron to a third party dining business, it is better construed as the means by which a patron is able to obtain a discount or reduction on the cost of dining.
21. We have noted in our instructions that vouchers were not always used by patrons to the full extent of their face value, and that if a patron used a voucher for less than its face value the patron would not then retain the value of the difference in any form. The extent of any value obtained from the prize is dependent upon the steps taken by the patron. This appears to us to support a conclusion that the prize, varying in the extent of value obtained in dining, is not a sum paid out.
22. Accordingly, in our view the dining vouchers awarded under the Jackpot Payment Program do not give rise to “sums paid out” for the purpose of Gross Gaming Revenue.

Jackpot Payment Program – gift card prizes

23. For gift cards awarded as prizes, Crown purchased the cards in advance from the provider. Doubtless that involved payment of a sum by Crown to the provider, and it

raised an entitlement in the card holder to obtain goods or services from the provider to the face value of the card. And it is possible for a party (Crown) to have an arrangement with another party (a patron), to give effect to an obligation to pay that party, by making a payment on their behalf either upon them incurring a liability or in advance.

24. But under the Jackpot Payment Program there was no advance arrangement between Crown and the casino patron which gave effect to a monetary obligation to the patron being met by acquisition of a gift card for the patron. The cost of acquisition of the card was not an amount paid by Crown on behalf of, at the direction of, or even for the benefit of the particular patron.
25. In our view, a better construction of the substance of the gaming transaction under the Jackpot Payment Program is provision of a prize which was not itself a sum that was given effect to by the use of a gift card at a specified business, but a card stored with value able to be used by the patron at the third party business by prior arrangement of Crown.
26. Accordingly, the prizes constituting gift cards were not “sums paid out” for the purpose of Gross Gaming Revenue and the determination of casino tax.

Conclusion

27. For the reasons set out above, having reviewed the brief of EY and supplementary opinion of Mr Robertson QC, in our view the prizes (other than pokie credits) awarded under the Jackpot Payment Program are appropriately treated for the purpose of Gross Gaming Revenue and casino tax in the following way:
 - (a) cash prizes were sums paid out as winnings and able to be taken into account; and
 - (b) (departing from the view of EY and Mr Robertson QC) dining vouchers and gift cards did not give rise to “sums paid out”, even if characterised “as winnings”, and the value redeemed from the vouchers or costs incurred in acquiring gift cards was not appropriate to be taken into account as a reduction in the calculation of Gross Gaming Revenue.

28. On the basis of our instructions, we advise that the past treatment by Crown in relation to the dining vouchers and gift cards awarded under the Jackpot Payment Program has entailed underpayment of casino tax. Crown should take steps to redress that position. This memorandum has not addressed the quantification of underpayment. If there are reasons to consider that additional circumstances not included in our instructions may tend to a different conclusion, Crown may take steps to address the position with the State, pending resolution of any difference in position.

Dated: 5 July 2021

C M Archibald

A C Dixon