Direct Line: [redacted]
E-mail:

27 July 2021

By email

Ms Catherine Myers
Chief Executive Officer
Victorian Commission for Gambling and Liquor Regulation
Level 3, 12 Shelley Street
Richmond VIC 3121

Dear Catherine

Casino Tax

I refer to your letter of 16 July 2021, concerning casino tax, and to my response dated 22 July 2021.

You requested in your letter of 16 July 2021 that Crown Melbourne Limited (**Crown Melbourne**) pay the amount of casino tax that it considers it has underpaid, together with penalty interest. You requested that Crown Melbourne make this payment as an interim step, pending the VCGLR's finalisation of its consideration of Crown Melbourne's under-reporting of its casino tax liability.

You noted in your letter of 16 July 2021 that Crown Melbourne has obtained:

a) a memorandum of advice dated 19 June 2021 from Mark Robertson QC (the **June 2021 Advice**); and
b) a memorandum of advice dated 5 July 2021 from Chris Archibald QC and Anna Dixon (the **July 2021 Advice**),

(together, the **Counsel Opinions**).

As you are aware, the Counsel Opinions differ regarding the treatment of dining rewards provided to patrons in connection with play on Crown Melbourne's electronic gaming machines.

Since having obtained the Counsel Opinions, Crown Melbourne has obtained further opinions from the authors of the Counsel Opinions concerning the treatment of 'jackpot payments' (**Supplementary Counsel Opinions**). Copies of the Supplementary Counsel Opinions are enclosed with this letter.

I am now in a position to inform you that Crown Melbourne has resolved to make a payment to the VCGLR, consistent with the views expressed in the July 2021 Advice and the Supplementary Counsel Opinion from Chris Archibald QC and Anna Dixon, representing an underpayment of casino tax by Crown Melbourne of $37,432,268.89 over the period commencing in the 2012 financial year to date. This underpayment calculation relates to the incorrect deduction of free accommodation, car parking and dining rewards as 'bonus jackpots', as well as 'jackpot payments' (other than cash and pokie credits) provided to patrons in connection with play on Crown Melbourne's electronic gaming machines.

Accordingly, Crown Melbourne has paid to the VCGLR an amount of $61,545,414.09 via EFT today. This amount includes a penalty interest component up to and including today (27 July 2021) of $24,113,145.20.

Crown Melbourne is continuing its review of other aspects of casino tax payments and will update the VCGLR once the review is complete. This review includes a review of Matchplay, the loyalty promotion pursuant to which Crown Rewards Points are redeemed for credits for use in electronic gaming machines.

You advised in your letter of 16 July 2021 that after the Victorian Royal Commission has delivered its final report, the VCGLR intends to finalise its consideration of Crown's potential casino tax underpayments in order to form a view as to the quantum of Crown's outstanding tax liability to the State. Crown will fully cooperate with the VCGLR's review.

Finally, in your letter of 16 July 2021 you asked whether the authors of the Counsel Opinions were provided with the VCGLR's views on the definition of 'revenue', as set out in the VCGLR's letter dated 15 July 2015 (the **15 July Letter**). The views expressed by the VCGLR in the 15 July Letter appear to have been based on the views expressed by Leslie Glick QC in his opinion provided to the VCGLR on 10 July 2015 (**Glick Opinion**). While Counsel were not provided with the 15 July Letter for the purposes of providing the Counsel Opinions, they were provided with the Glick Opinion. The 15 July 2015 Letter has now also been provided to Counsel and they have been instructed to advise whether it causes them to alter any view expressed in the Counsel Opinions. We will provide you with an update once we have received Counsel's response.

Yours sincerely

[redacted]

Hon Helen Coonan
Executive Chair, Crown Resorts Limited

Copy to: Steve McCann – CEO, Crown Resorts Limted

David Martine – Secretary, Department of Treasury and Finance

Rebecca Falkingham – Secretary, Department of Justice and Community Safety

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1) Introduction

My instructors act for Crown Resorts Limited (**"Crown Resorts"**) in relation to a Victorian state gaming tax issue arising for Crown Melbourne Limited (**"Crown"**) under the *Casino (Management Agreement) Act 1993* (Vic) (**"CMA Act"**).

I provided my Opinion on this issue on 19 June 2021. My Opinion was subject to final confirmation of the relevant facts.

In relation to what is described in my Opinion as "Category 5 Bonus Jackpots", I am now instructed that there are additional ways in which prizes were provided in the Period to patrons playing the pokies/EGMs (apart from non-cash-redeemable Pokie Points that I have dealt with in my Opinion):

(a) Cash

(b) Crown food and beverage vouchers, redeemable up to a nominated dollar retail value at Crown restaurants

(c) Third party (e.g. David Jones, BP, Coles) gift cards, redeemable up to a nominated dollar retail value.

I am asked to consider whether Crown's additional treatment of these prizes under the CMA in the Period has been correct.

The conclusions I reached in my Opinion are unchanged by this additional information. This Supplementary Opinion is to be read with my Opinion and deals with the additional information about Category 5 Bonus Jackpots.

2) Summary of Supplementary Opinion

Based on the background and assumptions contained herein, I have reached the following conclusions.

The additional instructions in relation to Category 5 Bonus Rewards do not affect my analysis and conclusions in my Opinion dated 19 June 2021 in any way.

Crown's cash prizes were deductible in the calculation of Gross Gaming Revenue.

Crown's F&B coupons were not deductible in the calculation of Gross Gaming Revenue when issued. They were deductible only when they were utilised by the Reward members. Moreover, they were only deductible only to the extent that they were actually utilised. Their correct treatment is the same as the Category 8 treatment for Dining Rewards. That is, the Gross Gaming Revenue deduction ought to have corresponded with the F&B revenue.

Crown's GST position was also under-reported by incorrectly claiming of the full face value of the F&B coupons as and when issued as part of total monetary prizes within the Global GST amount in s126-10 of the GST Act. Crown is subject to GST reassessment for the past four years as discussed in my Opinion. Upon GST reassessment, Crown's State Tax Credit would need to be adjusted.

Crown correctly claimed the actual (discounted) payments for third party gift cards as deductible in the calculation of Gross Gaming Revenue as the time that each gift card was provided as winnings from the playing of the pokies.

Crown ought to have treated those payments as part of total monetary prizes within the Global GST amount in s126-10 of the GST Act.

3) Description of additional prizes under Category 5 Bonus Jackpots and Crown's treatment under the CMA

a) Cash

Crown makes cash payments to the patrons who win Jackpots.

Crown has treated the cash prizes as winnings paid out under the Gross Gaming Revenue formula.

Crown has treated the cash prizes as monetary prizes in the Global GST amount formula in s126-10 GST Act and thus part of the State Tax Credit.

b) Crown food and beverage (F&B) vouchers

Crown provides F&B vouchers to Crown Reward members as a direct part of their winnings when playing the pokies.

These vouchers, e.g., for "The Taste of Italy" Jackpots, are valid for a short period of time. They provide that the Reward Member is entitled to "a selection of food and beverages up to the value of $..." at nominated Crown restaurants. I have been provided with sample vouchers. The fine print provides:

> This voucher may only be redeemed for food & beverage at participating Crown-owned restaurants or outlets. Voucher only valid until 28 September 2017. Not redeemable for cash. Not for sale. No partial redemption.

This language is to be compared with the Dining Rewards in Category 8 referred to in my Opinion, which state that the Reward Member would receive "$ ... off any purchase ...".

The Reward Member must purchase food and beverages at a Crown-owned restaurant or outlet, and then apply the voucher as a credit against the charge. If there is any balance owing after redemption of the voucher, the Reward Member must pay the balance.

Unlike Crown's treatment of Dining Rewards in Category 8 outlined in my Opinion, Crown treats the face value of the F&B vouchers, in the month that Crown issues them to the Reward Member, and whether or not later redeemed by the Reward member, as winnings paid under the Gross Gaming Revenue formula.

If and when a food and beverage voucher is in fact redeemed for food and beverages, then the amount in fact redeemed, which would usually be the full face value of the voucher, is recognized as F&B revenue received by Crown.

For example, if the voucher has a $30 face value and only $25 is utilised at the point of redemption, $30 will be deducted as a bonus jackpot in the Gross Gaming Revenue calculation at the time of issue and $25 is recognised as F&B revenue on redemption. The $5 difference disappears.

c) Third party gift cards

Crown purchases gift cards from third parties. e.g. David Jones, BP, Coles. The gift cards work in the way described in the third party's terms and conditions. For example, David Jones states as follows:

> Gift Cards with a PIN can be used to shop instore and online. Gift Cards without a PIN can be used to shop instore. Gift Cards are treated as cash and cannot be replaced if lost or stolen. Gift Cards may only be used for purchases at David Jones and cannot be returned or exchanged for cash or used to pay any David Jones branded Credit Card account or other Credit Card accounts. David Jones Gift Cards in AUD currency cannot be redeemed outside of Australia. The funds available can be verified on request or at time of purchase at any point of sale in any David Jones store within Australia. No change is given and any balance that remains on the card can be used in whole or part against future purchases at David Jones. Gift Cards expire 24 months after issue. Any balance that remains on the Gift Card after expiry will not be available for use.

(I have reviewed each of these third party's terms and conditions as available on their websites. I do not discern any relevant differences.)

Crown purchases gift cards for their face value, unless it has negotiated a bulk buying price, in which case the third party will provide Crown a discount of between 2% and 5%.

When a gift card is given to a Reward Member as winnings from playing the pokies, Crown treats the purchase cost to it of that card as a deduction in the Gross Gaming Revenue formula. So if a gift card with a face value of $100 was purchased for $98, then Crown would deduct $98 in the month that it is provided to the Reward Member.

4) Analysis

a) Cash

Crown's payments of cash bonuses are clearly sums paid out as winnings on the pokies under the Gross Gaming Revenue formula. Its treatment was correct.

b) Crown food and beverage (F&B) vouchers

As with Category 8 Dining Rewards analysed in my Opinion, a Reward Member must purchase food and beverages at their menu prices. At the time of settling the restaurant bill, the voucher acts as the discharge of part or all of the Reward Member's debt to Crown for food and beverages. At that same time, the Reward Member receives its monetary consideration from Crown for gambling on the pokies, being the amount utilised in discharging the bill.

Accordingly, although Crown's F&B revenue treatment was correct, its Gross Gaming Revenue treatment of the F&B voucher was wrong. Crown ought to have deducted the *utilised monetary amount referable to* the F&B voucher, not its face value and ought to have done so only at the time of its redemption by the Reward Member in discharge of his or her payment obligation to Crown, not the time that the F&B voucher was issued as winnings.

Crown's error, insofar as it relates to *timing* of the deduction, is likely to be of no moment over the Period, given the short duration of the F&B vouchers. A deduction claimed wrongly near the end of one month ought to have been claimed in the next month, etc.

However, the *quantum* of Crown's deduction from Gross Gaming Revenue ought to have corresponded exactly with its recognition of F&B revenue, i.e. the *utilised monetary amount referable to* the F&B voucher. Any unused F &B coupons and any excess that was not utilised by Reward members were neither Crown's F&B revenue nor sums that Crown paid out as winnings.

There is then the issue of the State Tax Credit, which depends on Crown's correct GST treatment.

The precise issue is whether an F&B coupon is within the definition of "total monetary prizes" in the Global GST amount formula in s126-10 of the GST Act, viz.

> "total monetary prizes" is the sum of:
>
> (a) the * monetary prizes you are liable to pay, during the tax period, on the outcome of gambling events (whether or not any of those gambling events, or the * gambling supplies to which the monetary prizes relate, take place during the tax period)

"Monetary prize" is defined in s195-1 GST Act to means:

> (a) any prize, or part of a prize, in the form of * money or * digital currency; or
>
> (b) if the prize is given at a casino--any prize, or part of a prize, in the form of:
>
> (i) money or digital currency; or
>
> (ii) gambling chips that may be redeemed for money or digital currency.

"Money" is defined in the GST Act to include:

> (a) currency (whether of Australia or of any other country); and
>
> (b) promissory notes and bills of exchange; and
>
> (c) any negotiable instrument used or circulated, or intended for use or circulation, ascurrency (whether of Australia or of any other country); and
>
> (d) postal notes and money orders; and
>
> (e) whatever is supplied as payment by way of:
>
> (i) credit card or debit card; or
>
> (ii) crediting or debiting an account; or
>
> (iii) creation or transfer of a debt….."

The first question then is whether Crown incurs a liability to pay money at the time that it issues a F&B coupon to the Reward Member.

There are two views: one is that Crown comes under an existing contingent liability to pay money; the other is that Crown's liability to pay money is yet to arise, and is no more than impending or expected.

This is a well-known distinction in the area of bankruptcy law, and other areas of taxation law.

In my view, Crown's liability to pay money to the Reward Member, in the sense that I have analysed in my Opinion, only comes into existence if and when a Reward Member utilises the F & B voucher. Only when the Reward Member incurs an obligation to pay for food and beverages does his or her contractual rights under the F&B voucher gives rise to corollary monetary liabilities of Crown.

An analogy may be made with an employer's obligation to pay annual holiday or long service leave for an employee. From an accounting perspective it is prudent for the employer to accrue the obligations on a financial year by year basis, but from a legal perspective there is

> at best an inchoate liability in process of accrual but subject to a variety of contingencies

See *Federal Commissioner of Taxation v. James Flood Pty. Ltd.* [1953] HCA 65; (1953) 88 CLR 492, at 507-508.

This issue, insofar as timing is concerned, is unlikely to have any GST impact over the Period.

Nevertheless, for the same reasons as I have explained about in relation to Gross Gaming Revenue, the total monetary prizes ought to have corresponded exactly with Crown's recognition of F&B revenue, i.e. the *utilised monetary amount referable to* the F&B voucher. Any unused F &B coupons and any excess that was not utilised by Reward members were not F&B revenue and were not monetary amounts that Crown was liable to pay, at any time.

Accordingly, Crown will have under-reported its Global GST amount and, as I have discussed in my Opinion, upon any increased reassessment by the Commissioner within the four-year amendment time limit, its monthly State Tax Credit amount will be adjusted upwards.

c) Third party gift cards

That Crown must pay out a sum as winnings for it to be deducted in the Gross Gaming Revenue formula is clear. But the inquiry is never confined to whether Crown has paid cash or coin directly to the relevant Reward Member playing the pokies. As Perram J observed in *Commissioner of Taxation v Rozman* [2010] FCA 324:

> As a matter of ordinary English, the verb "to pay" includes amongst its many meanings notions of satisfaction and discharge. Thus, only a pedant would protest that a woman who buys a pair of shoes on a credit card has not paid for them; and this is so notwithstanding that every credit card purchase conceals at least one payment by direction: *Visa International Service Association v Reserve Bank of Australia* [2003] FCA 977; (2003) 131 FCR 300 at 320-321 [71]- [74] per Tamberlin J. So too, it would be idle to suggest that a man who buys a hat by cheque has not paid for it simply because a cheque is a direction to a financial institution to pay a sum certain to another person: s 10 *Cheques Act 1986* (Cth).
>
> …
>
> In truth, there is no reason to construe "pay" as requiring a direct flow of money from payer to payee. Only in a world in which the concept of money was confined to cash and coin could such a notion even begin to work, for once it be accepted that that concept includes debts and other choses of action, it becomes nonsensical to speak about money literally moving from the payer to the payee. Ms Rozman 's construction of the word "pay" is, therefore, to be rejected. It ignores ordinary usage and it does so for no good reason.

Crown, in offering to provide third party gift cards as part of the prizes to be provided to Reward Members, is effectively offering to discharge any monetary debts that they incur to the third party for goods they might purchase, and paying money in advance to the third party for that purpose.

The advent of the "gift card" as a tri-partite means of effecting this type of arrangement is "a perfectly sensible short cut to the same commercial terminus": *Snook v London & West Riding Investments Ltd* [1967] 1 All ER 518.

That is, Crown pays money to the third party. It is not for the purchase of goods. Rather, it is an "advance in anticipation of an unascertained future liability for" purchased goods to be applied in discharge of any future debt owing to the third party for those goods: see Dixon J in F*ederal Commissioner of Taxation v Steeves Agnew & Co (Vic) Pty Ltd* [1951] HCA 26; (1951) 82 CLR 408, 418.

I have adverted to this well-known legal analysis in my Opinion. It applies to all payments in advance for goods and services. As Dixon J continued:

> Even in the case of rent a voluntary payment in advance has not the quality of rent. "For payment of rent before it is due is not a fulfilment of the obligation of the covenant to pay rent, but is, in fact, an advance to the landlord with an agreement that on the day when the rent becomes due such advance shall be treated as a fulfilment of the obligation to pay the rent" - per Willes J., De Nicholls v. Saunders (1870) LR 5 CP 589, at p 594 ; cf. Copping v. Commercial Flour and Oatmeal Milling Co. Ltd. [1933] HCA 65; (1933) 49 CLR 332, at p 342 .

When Crown provides the gift card to the Reward Member, as contemplated by the third party's terms and conditions, Crown's money – the money it has paid in advance to the third party - is lost to it, for it cannot utilise the third party gift card for itself in discharge of any monetary obligation it might choose to incur in purchasing goods. Crown has transferred its monetary right against the third party to the Reward Member.

It is to be expected that the Reward Member will utilise the gift card. But that would not be Crown's concern (Crown's residual (and practically remote) legal interest would merely be to ensure, as the original contracting party, that the third party honours the gift card for the benefit of the Reward Member). The gambling contract between Crown and the Reward Member is fully executed from the time that Crown provides the gift card to the Reward Member. It has lost its advance payment as a result of the gambling transaction and the Reward

Member has obtained that advance payment as his or her winnings, albeit limited in recourse in the sense I analysed in my Opinion.

The analysis is no different from Crown purchasing, as a prize for the Reward Member, a third party gift card on his or her behalf. That would be a sum paid out by Crown as winnings.

Accordingly, I consider that Crown was correct to deduct at least the (discounted) cost to it of each third party gift card at the time it was awarded as a prize to the Reward Member in the Gross Gaming Revenue formula.

The question remains, however, whether Crown was entitled to deduct the full face value of the third party gift card in the Gross Gaming Revenue formula, or only the (discounted) cost to it.

Crown paid out only one amount of money. That money was an advance payment for goods anticipated to be purchased from the third party to be transferred to the Reward Member as his or her winnings from playing the pokies.

The Gross Gaming Revenue formula is concerned with the sums paid out by Crown as winnings, not the value to the Reward Member of the monetary rights transferred by Crown.

The same analysis follows for GST purposes. A third party gift card is not "money" as broadly defined in the GST Act. But the money paid by Crown to the third party in advance for the purchase of goods become monetary prizes paid by Crown as and when Crown transfers those advance payments to the Reward Member as prizes for its gambling supplies.

The position in relation to items of property acquired by Crown within Division 11 of the GST Act and later supplied as *in specie* prizes is not relevant to this analysis of tri-partite money flows. In this regard, a gift card is a voucher within Division 100 of the GST Act.

Moreover, unlike a luxury car prize, a gift card is not given by Crown as a prize for its intrinsic value. When the gift card is given by Crown to a Reward Member as a prize, the money paid by Crown to the third party as an advance against the purchases of the Reward Member is stamped as part of the actual monetary consideration for or in connection with Crown's gambling supplies. Accordingly, it is a monetary prize in the Global GST amount formula in s126-10 of the GST Act.

With compliments

[redacted]

M L Robertson QC

4 July 2021

RE: VICTORIAN CASINO TAXES

EX PARTE: CROWN RESORTS LIMITED

Supplementary Opinion

Attn: Mr Mark Tafft, partner
EY

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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

Christopher Archibald QC
Ninian Stephen Chambers
140 William Street
Melbourne Vic 3000

Anna Dixon
Gorman Chambers
460 Lonsdale Street
Melbourne Vic 3000

5 July 2021

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

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.

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 o f 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 P ayment 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