

Re: Crown Melbourne Limited

BRIEF TO ADVISE

12 June 2021

Mark Robertson



Crown Melbourne Limited

Dear Mark

Thank you for accepting our brief in this matter.

Per the terms of our engagement with our client, our observations, analysis and submissions forming a part of this Brief should not be regarded as an independent view and should not be referred to as such.

We will arrange a mutually convenient time with your chambers to discuss this matter further in conference.

Should you have any queries or require further information, please contact me on



Yours sincerely

Mark Tafft
Partner - Taxation

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BACKGROUND FACTS AND INSTRUCTIONS

INTRODUCTION

1. We act on behalf of Crown Melbourne Limited (“Crown”) in relation to a Victorian state gaming tax issue arising under the Casino (Management Agreement) Act 1993 (Vic) (‘CMA Act’).
2. Crown raised this matter with us through its advisors Arnold Bloch Liebler on 9 June as a matter requiring prompt but considered attention. Our engagement was scoped on 9/10 June and our engagement letter was executed by Crown on 11 June.
3. Crown operates Crown Melbourne Casino (the “Casino”), through which it has conducted gaming, hotel and entertainment operations since 1994.
4. Pursuant to the Victorian Budget Papers for 2021/22 (Budget Paper No.5 “Statement of Finances), total gambling taxes collected in Victoria in FY 2020/21 were \$1.503bn.
5. In FY 2020/21 Crown paid Victorian gaming taxes of \$255m. Crown’s gaming taxes were thus 16.9% of all Victorian gaming taxes and over 1% of all Victorian taxes. In periods not impacted by Covid-19, Crown’s contribution to Victorian gaming taxes would be even higher.
6. This matter concerns electronic gaming machines (“EGMs”) and whether the Crown’s gaming tax treatments for a number of EGM jackpot and bonus programs (“Programs”) has been appropriate over the period FY 2013 to date (“the Period”).
7. The tax treatments in question have a tax impact of some \$218.5m over the Period

Questions

Counsel is requested to address the following in Conference and advise subsequently in writing:

- a. Should the jackpots and bonuses given by Crown under the various Programs described herein have been taken into account as a reduction in ‘Gross Gaming Revenue’ for the purposes of calculating Victorian state gaming tax liability under of the CMA Act (as amended by its various schedules including 10 Deeds of Variation)?
- b. Any other matter Counsel considers to be relevant

FACTS AND DOCUMENTATION

Documents

We have attached various documents describing the Programs. The documents set out:

1. The current “Crown Rewards Rules”, being the overall terms and conditions governing the Programs:
2. The eight (8) jackpot and bonus categories at issue (the “Categories”):
3. A brief description of each Category (as provided by Crown)
4. The gaming tax amounts at issue for each Category over the Period:

5. The Terms and Conditions for each Category: and
6. Associated regulatory approvals / examples supplied by Crown regarding each Category

Appendix A is the current "Crown Rewards Rules", being the overall terms and conditions governing the Programs. We will ascertain whether any prior versions of the Crown Rewards Rules are materially different and will advise on this as soon as possible. In the interim Counsel should assume these Rules governed the Period.

Appendix B is an Excel Spreadsheet File "Attachment C – Schedule detailing Bonus Jackpot Analysis dated 7 June 2021 w BJ Master V 12 June 2021.xlsx" ("BJ Master File").

The BJ Master File (on the first tab) sets out:

1. The 8 Categories (Column A)
2. Gaming tax at issue for the Period for each Category (Column C). Please note that "TBA" means that Crown is currently ascertaining the correct allocation (for approximately 2% of the gaming tax at issue). Column C is colour coded to enable cross-referencing to the source information for the colour coded amount on the second Tab of the spreadsheet (labelled 'Summary' Tab)
3. Description and Examples (Column D) for each Category as provided by Crown
4. Associated Approval/s – examples for each Category as provided by Crown (Column E). This column contains references (e.g. 05-002). These references are document file names. The document files will be found in the Appendix C to this Brief (see below).
5. Terms and Conditions / Collateral for each Category (Column F). This column also contains references to files that will be found in Appendix C to this Brief

Appendix C is the zip file "RC-Alan.zip". This zip file contains the 26 documents referred to in Columns E and F of the BJ Master File discussed above. It also contains

- "Technical Requirements for Gaming Machines and Electronic Monitoring Systems in the Melbourne Casino" – A Victorian Casino and Gaming Authority document – which includes various requirements for EGMs in respect of bonus jackpots.
- "The Technical Requirements Document for Melbourne Casino" – A Victorian Commission for Gambling and Liquor Regulation document – which includes segments on jackpots, bonus jackpots and player promotion / bonusing systems.

Additional Facts

You also requested clarification of how a Dining Reward voucher would operate and be treated.

We are instructed that how a Dining voucher is used and recognised (from a revenue and income tax perspective) is as follows (written confirmation of the precise process is being obtained from Crown):

Assume a Crown Rewards member purchased a meal for \$150 and had a \$100 dining voucher.

In this case, the customer would redeem the \$100 voucher and pay an additional \$50.

Revenue of \$150 would be recognised for the business unit containing the restaurant and be included as assessable income in respect of the meal. Meanwhile, in the relevant gaming business unit, \$100 is deducted from EGM revenue as a cost to that business unit.

OUR OBSERVATIONS AND SUBMISSIONS

We have discussed our initial Observations and Submissions with you yesterday via teleconference. We are now in the process of committing our views to writing and will send them through to you as soon as possible for your consideration.

We look forward to discussing this matter further with you.

Mark Tafft

12 June 2021