

IN THE MATTER OF THE *CASINO (MANAGEMENT AGREEMENT)*
ACT 1993 AND THE PAYMENT OF CASINO TAX
ON "LUCKY MONEY"

JOINT MEMORANDUM OF ADVICE

A. Introduction

1. We are asked to advise Crown Melbourne Ltd (**Crown**) about its liability to pay "casino tax" on the face value of "Lucky Money" vouchers which are distributed by Crown as part of its promotional activities. Crown is the licensed operator of Crown Casino. It was formerly known as Crown Ltd.
2. In our opinion, for the reasons that follow, "Lucky Money" vouchers ought not be included in the calculation of Commission Based Players' Gaming Revenue for the purposes of determining Crown's liability in respect of the payment of casino tax.

B. Casino Tax

3. Crown operates the casino in accordance with the provisions of the *Casino (Management Agreement) Act 1993* (the **Management Act**). That Act ratifies the Management Agreement for Crown Casino. The effect of ss 6-6I is that the Management Agreement, and the Deeds of Variation thereto, take effect as if they had been enacted by the Management Act. Section 7 of the Management Act provides that if a provision of the Management Agreement is inconsistent with the *Casino Control Act 1991*, the provision of the Management Agreement prevails and the application of the *Casino Control Act 1991*, in relation to the Crown Casino, is modified accordingly.
4. Sections 112A, 113 and 114 of the *Casino Control Act 1991* impose various taxes, charges and levies upon Crown as the operator of Crown Casino. However, these provisions are effectively supplanted by section 11 of the Management Act. Section 11(1) provides that the payments to the State for which provision is made by Part 4 of the Management Agreement are taxes, fees, charges and other payments payable by Crown in lieu of taxes and levies payable under sections 112A, 113 and 114 of the *Casino Control Act 1991*.

5. Clause 22A of the Management Agreement (as varied) provides that while the casino licence remains in force, Crown must pay, among other things, "casino tax" to the State each month. The amount of the casino tax is calculated as a specified percentage of the Commission Based Players' Gaming Revenue for the month in question.¹
6. Commission Based Players' Gaming Revenue is defined in the Management Agreement (as varied) as follows:

Commission Based Players' Gaming Revenue means the total of all sums, including cheques and other negotiable instruments whether collected or not, received in any period after 31 December 1995 by the Company from the conduct or playing of games within the Temporary Casino or the Melbourne Casino (as the case may be) by Commission Based Players less the total of all sums paid out as winnings during that period to Commission Based Players in respect of such conduct or playing of games.

C. Lucky Money vouchers

7. We are briefed with samples of Lucky Money vouchers in a series of denominations between \$100 and \$100,000. On their face, the Lucky Money vouchers state that they are "gaming chip vouchers" for "commission based play". On the reverse of the voucher appears this statement:

Present this voucher in exchange for gaming chips at the cashier in The Mahogany Room at Crown Melbourne or The Pearl Room at Crown Perth. Redeemable only by the person to whom it was issued. Not transferable.

8. We are instructed that Lucky Money is generally given to customers to promote a return visit before the expiry date on the voucher. The vouchers may be issued for a range of reasons including birthdays, prizes and promotions for holiday periods.
9. We are also briefed with the Casino Cage SOPs pursuant to which "gaming chip vouchers" are issued. Clause 1.1 states that a "gaming chip voucher" means a "complimentary bet voucher issued to patrons". Clause 2.39.1(a) states that commission based vouchers will only be issued to a patron who qualifies to participate in a Premium Player Program. When a gaming chip voucher is presented, gaming chips will be issued to the player to the face value of the voucher. Clause 2.39.3(a) states that "gaming chip vouchers" may be issued as a true complimentary or as prize money for a tournament or promotion.

¹ We have considered the issues raised by reference to "Commission Based Players' Gaming Revenue" rather than "Gross Gaming Revenue" because, as we set out below, we understand that "Lucky Money" and "commission based vouchers" are only issued to persons who participate in a premium player arrangement.

10. The "Lucky Money" vouchers are issued at no charge to a player (although we anticipate that, in some cases, the face value of the voucher that is issued may be related, directly or indirectly, to the player's turnover or losses over a given period).
- D. The inclusion of "Lucky Money" vouchers in Commission Based Players' Gaming Revenue**
11. The question we are asked is whether the face value of "Lucky Money" vouchers should be included in the calculation of Commission Based Players' Gaming Revenue for the purposes of determining Crown's liability in respect of casino tax.
12. In our opinion, the answer is "no".
13. "Lucky Money" vouchers and gaming chip vouchers that are issued and subsequently recovered by Crown do not constitute a "sum ... received" in any period by Crown from the conduct or playing of games within the casino. Unlike standard chips,² "Lucky Money" vouchers and gaming chip vouchers do not represent a sum of money to Crown. Crown does not receive any sum from the player for the vouchers. Where the face value of the voucher is calculated, directly or indirectly, by reference to a player's turnover or losses, such sums as are received by Crown from the player (which generate the turnover and/or losses) will already be counted in casino tax. But that does not mean that the face value of the voucher, which is issued without charge to the player and on a complimentary basis, represents a "sum ... received" by Crown. That conclusion accords with the ordinary meaning of "revenue" as income that arises in the course of ordinary activities of an entity³ and with the definition of that concept in *Statement of Accounting Concepts: Definition and Recognition of the Elements of Financial Statements* (SAC4, 1995). Crown receives no income or inflow or other financial enhancement from the issue of the voucher itself.
14. While it might be said that the vouchers are akin to a negotiable instrument in that the vouchers are exchanged for chips, which themselves may be exchanged for cash, it is our view that they are not negotiable instruments of the kind that represent a "sum ... received" by Crown. It is necessary to consider the definition of "Commission Based Players' Gaming Revenue" more closely. The definition is concerned to identify "sums ... received" by Crown from the conduct or playing of

² *Casino Control Act 1991*, s 64(1)(c).

³ *Cheney Ltd v Shepherd Investments International Ltd* (2007) 62 ACSR 359 at [151]-[152] (WASCA).

games. The express inclusion of cheques and negotiable instruments serves to remove any doubt that sums due to Crown as payee of an instrument must be brought to account. That emphasises, however, that the definition is concerned to identify sums received by Crown, including by way of cheques and negotiable instruments, where Crown is the holder (as payee) of the negotiable instrument. Even assuming a voucher is a negotiable instrument, it would be one in which the player (not Crown) is the holder or payee of the negotiable instrument. It remains the case that Crown receives nothing from the negotiable instrument itself.

15. We are aware that this may lead to a situation in which a player uses chips obtained by redeeming a voucher to play a game and upon winning the game and taking the winnings there will be a deduction in the amount of the winnings made by Crown from Commission Based Players' Gaming Revenue. This might be thought to be incongruous in that Crown will make a deduction from Commission Based Players' Gaming Revenue for the winnings without recognising any sums received. We see no incongruity. That is precisely what occurs when Crown issues vouchers at no charge and a player subsequently wins at a game. No doubt if vouchers are issued on a large scale or in large amounts it may be an unsustainable business model for Crown, but the revenue effect is as we have identified above.
16. For these reasons, we consider that "Lucky Money" vouchers and gaming chip vouchers are not "sums ... received" by Crown and ought not be included in the calculation of Commission Based Players' Gaming Revenue.

Dated: 19 December 2014

