From: Jessica Rogers
Sent: Fri, 18 Sep 2020 15:43:10 +1000
To: Mary Manos;Ken Barton;Angelina Bowden-Jones
Cc: Peter Poulos;Rimma Miller;Zanthi Kezelos
Subject: Crown - State Tax [ME-ME.FID4682597]
Attachments: 2016-02-09 Opinion from N Young re casino tax & PP commissions.pdf, 2014-12-19 Commissions Advice from Chris Young.pdf, Casino (Management Agreement) Act 1993.PDF

Mary, Ken and Angelina

Further to our discussion on Monday and my recent discussions with Ken, please see below and attached some high-level background information regarding the state gaming tax issue in respect of Victoria which, subject to your instructions, we propose to provide to Mark.

We would appreciate if you could please review the below and confirm if you are comfortable with the contents, that it is factually correct and that we have your instructions to provide the opinions given by Neil Young QC and Chris Young to Mark. In particular, it would be of assistance if you could confirm the rates of tax imposed currently and over time in respect of Commission Based Players' Gaming Revenue and if there is any additional information you consider would be useful for Minters and Mark in considering the issue.

The below deals with Crown Melbourne only. We understand from our discussion on Monday that there may be a similar issue in relation to NSW. From our initial review we understand that casino duty in NSW is imposed under Part 8 of the *Casino Control Act 1992* (NSW) and specifically in s114. Section 114 refers the rates of duty being determined by agreement with the Treasurer or by determination. We could not locate a determination. Is there any further background for NSW which you could provide?

***

The Issue for Crown Melbourne

In essence the issue is whether or not commissions and rebates should be deducted from "Commission Based Players' Gaming Revenue" on which casino tax is paid. Several years ago Crown was advised that commissions and rebates in respect of individual VIP players should be deducted but that for junkets it should not (see attached opinions provided by Neil Young QC and Chris Young dated 19 December 2014 and 9 February 2016).

***Casino Control Act 1991* (Vic) and *Casino (Management Agreement) Act 1993* (Vic)**

Section 11 of the *Casino (Management Agreement) Act 1993* refers to taxes and charges to be paid as set out in Part 4 of the Management Agreement (Schedule 1) to the Act (this is in lieu of the casino tax referred to in s113 of the *Casino Control Act 1991* (Vic)). A full copy of the *Casino (Management Agreement) Act 1993* is attached.

One of these types of revenue is '*Commission Based Players' Gaming Revenue*'. It is defined in Schedule 3 of the *Casino (Management Agreement) Act* which is the Second Deed of Variation to the Management Agreement (the original deed is annexed as Schedule 1 to the Act). Clause 3.1(a) of Schedule 3 amended the definitions in the agreement so that the following was included:

> "**Commission Based Player**" means a person who participates in a premium player arrangement or a junket where the person and the Company satisfy the requirements of any relevant controls and procedures approved by the Authority under section 121 of the Casino Control Act in respect of a premium player or a junket player (as the case may be);

> **"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.

Schedule 3 also amended the original agreement by inserting clause 22A which deals with Tax on Commission Based Players' Gaming Revenue and also a community benefit levy. These are levied on a percentage of 'Commission Based Players' Gaming Revenue'.

Clause 3.1(e) specifically excludes 'Commission Based Players' Gaming Revenue' from the definition of Gross Gaming Revenue which general taxes and charges apply to under clause 22.

There are two questions. The first is whether commissions and rebates are '*paid out as winnings*'. If they are paid out as winnings, the second question is whether the 'winnings' can be considered as being paid to a Commission Based Player including whether it is sufficient if they are paid to a JTO or their representative and whether it matters if they are ultimately passed on to the player.

We note that the definition of 'Commission Based Player' includes a person who participates in a junket.

The other material variation to the agreement was the sixth variation which appears as schedule 7 of the *Casino (Management Agreement) Act*. These amendments deal with global GST amounts and state tax credit calculations. From our initial review it does not appear as though this had any bearing on the above issue.

In the event that commissions and rebates should be deducted from 'Commission Based Players' Gaming Revenue', a further question arises regarding the limitation period and how far back Crown can seek refunds. In the 2014 opinion, Section H deals with this issue (the last and second last pages) and suggests a limitation period of between 1 year and 6 years.

Kind regards

Jessica

Jessica Rogers
Senior Associate
[redacted]
MinterEllison Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000
minterellison.com Follow us on **LinkedIn** and **Twitter**

Sensitive: Legal