

IN THE MATTER OF
 THE LIABILITY OF BURSWOOD NOMINEES LIMITED
 TO PAY "CASINO TAX" UNDER THE *CASINO (BURSWOOD ISLAND)*
AGREEMENT ACT 1985 (WA) ON COMPLIMENTARY VOUCHERS

JOINT MEMORANDUM OF ADVICE

A. Introduction

1. We are asked to advise Burswood Nominees Ltd (**Crown Perth**) about its liability to pay "casino tax" on certain complimentary vouchers¹ issued by Crown Perth to patrons as part of its promotional activities.
2. Crown Perth operates the Crown Perth casino.
3. In our opinion, the complimentary vouchers issued by Crown Perth ought not to be included in the calculation of "Casino Taxable Revenue" for the purposes of determining Crown Perth's liability in respect of the payment of casino tax.

B. Casino Tax

4. Crown Perth operates the casino under the *Casino (Burswood Island) Agreement Act 1985 (WA)*. That Act ratifies and authorises the implementation of the Casino (Burswood Island) Agreement (the **State Agreement**).
5. The statutory authorisation for the imposition of "casino tax" is found in s 20 of the *Casino Control Act 1984 (WA)*. That section provides that a public company that enters into a casino complex agreement shall undertake in the agreement to pay, amongst other things, "a tax at a rate specified in the casino complex agreement at times specified therein."
6. Clause 23 of the **State Agreement** provides as follows:

- (3) Subject to the succeeding provisions of this clause the Trustee ... shall upon and subject to the grant of the Burswood Casino Licence and so long as a Casino Gaming Licence remains in force in respect of the Burswood Casino pay –

Casino Tax

¹ The complimentary vouchers are identified in Part C below. Crown Perth also has vouchers available for sale. This memorandum does not address vouchers that are for sale.

(a) to the Treasurer of the State in respect of each and every month the aggregate of all of the Casino Taxes ...

7. "Casino Tax" means each of the Electronic Gaming Machine Tax, the Table Game Tax, the Fully Automated Table Game Tax or the International Commission Business Tax, as the case may be, and "Casino Taxes" means two or all of them. Each of the identified taxes is calculated by reference to the "Casino Taxable Revenue" received by Crown Perth for the gaming activity relevant to that tax.

8. "Casino Taxable Revenue" is defined in the State Agreement as follows:

"Casino Taxable Revenue" where used in relation to a particular Casino Tax Activity² means all sums, including cheques and other negotiable instruments whether collected or not, received in any month from the conduct of the Casino Tax Activity, less the total of all sums paid out as winnings during that month in respect of the Casino Tax Activity. For the purposes of this definition:

- (a) any sum received for the issue of a chip for the relevant Casino Tax Activity is a sum received from the conduct of the Casino Tax Activity and any sum paid out to redeem a chip is a sum paid out as winnings;
- (b) in a case in which the Commission consents to the extension of credit, the sum value of chips issued in any month on credit, whether by credit card transaction or otherwise howsoever, shall be deemed to be sums actually received in that month from the conduct of the relevant Casino Tax Activity; and
- (c) the Casino Taxable Revenue for the relevant Casino Tax Activity may be a negative amount.

C. Complimentary vouchers

9. Crown Perth issues complimentary vouchers to its patrons as a promotional activity. Complimentary vouchers are issued for many reasons, including on a patron's birthday, for special events and to promote particular games.

10. Each voucher is a physical item and it is issued at no charge to the patron. Nor does Crown Perth receive anything of monetary value from the patron when the voucher is redeemed.

11. Crown Perth issues four types of complimentary vouchers to patrons:

- (a) Complimentary Vouchers;
- (b) Match Play Vouchers and Match Play Gaming Chips;
- (c) Keno Vouchers; and
- (d) Lucky Money Vouchers.

² "Casino Tax Activity" means gaming by way of Electronic Gaming Machine, Table Game, Fully Automated Table Game or International Commission Business

12. Crown Perth has policies and procedures that govern the issue and use of complimentary vouchers.³ The summary of the vouchers that follows is drawn from those policies and procedures.⁴
13. A Complimentary Voucher may be exchanged at a gaming table for Complimentary Gaming Chips. These vouchers are given to patrons at Crown Perth's discretion including on a patron's birthday, on or around special events, to promote a particular table game or when a patron wishes to redeem Crown Club Loyalty Points. This type of voucher cannot be redeemed for cash or cash gaming chips. The voucher is "non-negotiable for promotional purposes only". All winning Complimentary Chips are paid with cash chips according to the rules of the game and the dealer retrieves the Complimentary Chips. All losing Complimentary Chips are collected by the dealer.
14. Match Play Vouchers are given to patrons by Crown Perth in similar circumstances to Complimentary Vouchers. The voucher may be exchanged at a gaming table in exchange for a Match Play Gaming Chip. Match Play Gaming Chips may be used by a patron when the patron matches the value of the Match Play Gaming Chip with cash chips of equal or greater value. Match Play Gaming Vouchers and Chips cannot be redeemed for cash or for cash gaming chips. If a patron wins a Match Play bet, the dealer pays the bet and then retrieves the Match Play Chip. If the Match Play Chip loses, the dealer removes the Chip along with all other losing bets.
15. Keno Vouchers are issued by Crown Perth to patrons for promotional purposes. The voucher may be redeemed at the Keno podium for a Keno ticket/wager. Keno Vouchers cannot be redeemed for cash nor exchanged for cash chips.
16. Lucky Money Vouchers are offered to international patrons at Crown Perth's discretion. The voucher may be exchanged (at the patron's election) at the Cage for a Chip Purchase Voucher or cash. Chip Purchase Vouchers may be exchanged for gaming chips or for cash.

³ By dl 2.1 and 3.1 of the *Burswood Casino – Directions* made under s 24 of the *Casino Control 1984* (WA), Crown Perth is obliged to adhere to those policies and procedures.

⁴ See, in particular, *Casino Manual, Accounting Procedures and Internal Control Policies and Procedures, Main Bank* at cl 13; *Casino Manual, Accounting Procedures and Internal Control Policies and Procedures, Pit Operations* at dl 9, 11 and 12; *Combined Table Games Procedure Manual*, cl 10; *Casino Manual, Accounting Procedures and Internal Control Policies and Procedures, Electronic Gaming – Casino Operations*, dl 6-7.

D. The inclusion of complimentary vouchers in Casino Taxable Revenue

17. We are asked whether complimentary vouchers and chips should be included in the calculation of Casino Taxable Revenue for the purposes of determining Crown Perth's liability in respect of the payment of casino tax.
18. In our opinion, the answer is "no".
19. Complimentary vouchers and chips that are issued and subsequently recovered by Crown Perth do not constitute a "sum ... received" in any period by Crown Perth from gaming.
20. In context, the natural meaning of this phrase is an amount of money, or its equivalent, that Crown actually gets into its hands from gaming. The word "sum" is used both in the context of a sum received and a sum paid out by Crown to patrons, so it is likely that the word refers to an amount of money, or its equivalent, in both places.
21. Unlike cash or cash chips, complimentary vouchers and chips do not represent a sum of money to Crown Perth. Crown Perth does not receive any sum from the patron for the issue or redemption of complimentary vouchers and chips. We think it is clear that casino tax is a tax on revenue. Accordingly, we note that the conclusion we have just stated accords with the ordinary meaning of "revenue" as income that arises in the course of ordinary activities of an entity⁵ and with the understanding of that concept embodied in Accounting Standard AASB 118 on Revenue. Crown receives no inflow from sales, fees, interest, dividend, royalty or other source from the issue or redemption of complimentary vouchers and chips.
22. There are four additional points to make.
23. First, while the fact that "Lucky Money Vouchers" vouchers may be exchanged for cash makes them more like a negotiable instrument, it is our view that they are not negotiable instruments in the relevant sense envisaged by the State Agreement. It is necessary to consider the definition of "Casino Taxable Revenue" more closely. The definition is concerned to identify "sums ... received" by Crown Perth from gaming. The express inclusion of cheques and negotiable instruments serves to remove any doubt that sums due to Crown Perth as payee of an instrument must be brought to account. That emphasises, however, that the definition of "Casino

⁵ *Chemeg Ltd v Shepherd Investments International Ltd* (2007) 62 ACSR 359 at [151]-[152] (WASC).

Taxable Revenue” is concerned to identify sums received by Crown Perth, including by way of cheques and negotiable instruments, where Crown Perth is the holder (as payee) of the negotiable instrument. Even assuming a “Lucky Money Voucher” voucher is a negotiable instrument, it would be one in which the player (not Crown Perth) is the holder or payee of the negotiable instrument. It remains the case that Crown Perth receives nothing from the negotiable instrument.

24. Secondly, we are aware that this may lead to a situation in which a player uses chips obtained by redeeming a complimentary 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 Perth from Casino Taxable Revenue. This might be thought to be incongruous in that Crown Perth will make a deduction from Casino Taxable Revenue for the winnings without recognising any sums received. We see no incongruity. That is precisely what occurs when Crown Perth issues complimentary vouchers at no charge and a player subsequently wins at a game. No doubt if complimentary vouchers are issued on a large scale or in large amounts and a large number of players win games it may be an unsustainable business model for Crown Perth, but the revenue effect is as we have identified above.
25. Thirdly, we do not think the fact that some Complimentary Vouchers may be issued in redemption of Crown Club Loyalty Points affects our conclusions. Member of Crown Club earn points by spending money gaming at electronic gaming machines or at table games and also earn points by spending money on some accommodation, food and beverage. A member may redeem points in many ways, including by redeeming points for a voucher which may be exchanged for Complimentary Gaming Chips for use in table games.
26. It might be argued that (a) the redemption of points is consideration for the issue of the voucher; or (b) that Crown Perth receives a financial enhancement by way of a decrease in its points liabilities⁶ when a voucher is redeemed in this way. In our view, however, such arguments would fail properly to understand the nature of loyalty points.

⁶ If “sum ... received” is construed broadly to include revenue and gains: see *Framework for the Preparation and Presentation of Financial Statements* at [74]-[75].

- (a) Loyalty points are properly understood as being awarded by the casino to the player for the player's participation in a game.⁷ Crown Perth receives no monetary consideration for the issue of the loyalty points. (The amount wagered, which is included in Casino Taxable Revenue, is received for the acceptance of the bet). In reaching that conclusion we take into account that the patron participates in games at the same "price" as non-members and that points are not something that Crown Perth sells, but are allocated as a consequence of participating in the game.
- (b) The points are relevantly redeemed by the issuance of a voucher which may itself be exchanged for Complimentary Gaming Chips but which may not be exchanged for cash or for cash gaming chips. The redemption of the loyalty points by the players is not properly seen as consideration for the voucher. The redemption of points is merely the exercise of a contractual right arising from past transactions and not the provision of consideration.
27. The essence of the loyalty program is to promote future participation in gaming (ie loyalty) by giving members something (ie points) that requires nothing in exchange or in return, albeit it is given in recognition of the member's participation in past gaming transactions. That something might be convertible into free play at table games. Where loyalty points are redeemed in this way, the essence of the transaction is that the patron receives something for free. Further, any liability in Crown Perth arising from the issuance of the points is simply a recognition that Crown Perth is giving away something for free. In those circumstances, we do not think it can be said that (a) there is consideration which represents a "sum ... received"; or (b) that the decrease in points liabilities represents a "sum ... received" to Crown Perth which must be brought to account in the calculation of Casino Taxable Revenue.
28. It is for similar reasons that we do not think the fact that "Lucky Money Vouchers" may be redeemed for cash means that Crown Perth receives a decrease in its liabilities (being the contingent liability to redeem the voucher for cash) when such a voucher is redeemed for chips and the chips are lost. "Lucky Money Vouchers" are issued and redeemed for no consideration. They are issued on terms that they may be redeemed for gaming chips or cash. The fact that the patron chooses to

⁷ Compare "Goods and Services Tax: Prizes" GSTR 2002/3 at [191].

redeem them for chips, and then loses the chips, only shows that Crown Perth has avoided a loss or liability arising from the circumstances in which the voucher was provided; that is, by giving away something for free. Accordingly, we do not think it can be said that any decrease in Crown Perth's liabilities that might arise from the loss of gaming chips received by the redemption of "Lucky Money Vouchers" represents a sum received by Crown Perth which must be brought to account in the calculation of Casino Taxable Revenue.

29. Finally, we are instructed that Crown Perth presently includes each of the complimentary vouchers the subject of this advice in its count of Casino Taxable Revenue. That is consistent with section 5 of the Casino Manual. We are aware that s 24(5) of the *Casino Control Act 1984* obliges Crown Perth to comply with directions given to it by the Commission, which directions include that Crown Perth must keep records and accounts of the gaming and casino operations in accordance with the Casino Manual (Operations). However, s 24(5) of the *Casino Control Act 1984* does not, in our opinion, authorise the imposition of a tax. The answer to the question whether cl 23 of the State Agreement, properly construed, requires complimentary vouchers to be included in "Casino Taxable Revenue" cannot be affected by the content of the Casino Manual. Clause 23 of the State Agreement either requires the inclusion of complimentary vouchers in "Casino Taxable Revenue", or it does not.
30. For the reasons given above, in our opinion, it does not.

Dated: 1 June 2015



NEIL YOUNG
Ninian Stephen Chambers



Ninian Stephen Chambers