

Gaming Tax Notice 2020

Explanatory notes for SL 2020 No. 126

made under the

Casino Control Act 1982
Gaming Machine Act 1991

General Outline

Short title

Gaming Tax Notice 2020

Authorising law

Section 367C *Gaming Machine Act 1991*
Section 57A *Casino Control Act 1982*

Policy objectives and the reasons for them

The Casino Control Act provides that a casino tax for a given month is required to be paid on or before the 7th day of the following month.

The Gaming Machine Act provides that a gaming machine tax (which includes any health services levy) for a given month is required to be paid on or before the 10th day of the following month.

Tax calculated on gaming machine revenue earned in March 2020 was due to be paid by casinos by 7 April 2020, and by clubs and hotels by 10 April 2020.

In order to support licensed gaming venues that have been negatively impacted by health directives to close during the coronavirus (COVID-19) emergency, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Leader of the House approved, on 2 April 2020, an administrative arrangement which provided for:

- a deferral of the March 2020 gaming machine taxes to 7 July 2020 for casinos and 10 July 2020 for clubs and hotels; and
- a special payment under the *Financial Accountability Act 2009* to 50 club and hotel gaming machine licensees who had already paid tax on the March 2020 gaming machine revenue.

A ministerial media statement released on 6 April 2020 advised of the deferral granted under the administration arrangement and also specified that the Commissioner for Liquor and Gaming would examine flexible repayment options for the deferred taxes, including instalment plans.

At the time the administrative arrangement was made, neither the Casino Control Act nor the Gaming Machine Act allowed for the deferral of gaming machine taxes.

The *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* subsequently amended the Gaming Machine Act to provide the Minister with a time limited ability to defer payment of a gaming tax payable under the Gaming Machine Act and Casino Control Act via a gaming tax notice, subject to the approval of the Treasurer. The power granted under section 367C of the Gaming Machine Act to defer a gaming tax includes the power to decide the terms for the payment of the tax and refund any deferred tax that may have already been paid.

On 2 July 2020, the Treasurer gave retrospective approval of the administrative arrangement on the condition that the deferred March 2020 gaming machine taxes (including any March 2020 gaming machine taxes which have been refunded) be repaid in three equal instalments in February 2021, April 2021 and June 2021, unless licensees opt to make the repayment in one lump sum in February 2021.

The objective of the Gaming Tax Notice is to provide for the deferral, refund and repayment of the March 2020 gaming machine taxes in accordance with the Treasurer's approval.

Achievement of policy objectives

The Gaming Tax Notice achieves the policy objectives by providing that the payment of a gaming machine tax (including any health services levy) under the Gaming Machine Act for the period of March 2020 is deferred. The payment of the casino tax under the Casino Control Act for the period of March 2020 is also deferred but only the portion of the casino tax that relates to gaming machine revenue.

The Gaming Tax Notice allows for an amount paid by a person under the Gaming Machine Act in respect of the March 2020 gaming machine tax may be returned to the person.

The deferred March 2020 gaming machine taxes (including any refunded amounts) is required to be repaid in three equal instalments due in February 2021, April 2021 and June 2021.

For clubs and hotels, the Gaming Tax Notice provides that the instalments must be paid on or before a day approved by the Commissioner that is between the 10th and last day of the relevant month. As club and hotel gaming machine taxes are generally collected monthly through a sweep of funds from nominated bank accounts, it is necessary to provide some contingency to enable the Commissioner to approve another day on which an instalment must be paid in the event that a planned sweep fails or is unable to occur.

Casinos are not subject to the same automated collection process as clubs and hotels and will therefore, be required to pay their instalments on or before the 7th day of the relevant month.

Clubs, hotels and casinos have the option to pay the deferred gaming machine tax in one lump sum in February 2021 if they notify the Commissioner on or before 30 November 2020.

Consistency with policy objectives of authorising law

The Gaming Tax Notice is consistent with the purpose of Part 11A of the Gaming Machine Act. Section 367 of the Gaming Machine Act states that the purpose of Part 11A is to provide for the payment of gaming taxes to be deferred to alleviate the financial burden caused by the COVID-19 emergency on gaming operators.

Inconsistency with policy objectives of other legislation

The Gaming Tax Notice is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

Licensed gaming venues have had to stand down a majority of their employees as a consequence of health directives which mandated their closure during the COVID-19 health emergency. The deferral of the March 2020 gaming machine taxes and health services levy and their subsequent repayment over three instalments will provide temporary relief to these venues and assist in the recovery process as they gradually re-open.

The deferred gaming machine taxes and health services levy equate to a total of approximately \$50 million.

Consistency with fundamental legislative principles

The Gaming Tax Notice will apply retrospectively to give effect to the administrative arrangement of 2 April 2020. The retrospectivity may raise question whether the subordinate legislation has sufficient regard to the rights and liberties of individuals and does not adversely affect rights or liberties, or impose obligations (sections 4(2)(a) and 4(3)(g) of the *Legislative Standards Act 1992*).

The retrospective nature of the Gaming Tax Notice is necessary to confirm actions that have already been undertaken to support businesses negatively impacted by mandated closures as a result of the COVID-19 emergency. As the Gaming Tax Notice will assist impacted businesses, it is considered it will not adversely affect rights and liberties retrospectively, and will instead provide a benefit, thereby negating any breach of fundamental legislative principles.

Further, the retrospective operation of the Gaming Tax Notice is authorised by section 367E of the Gaming Machine Act.

Consultation

Queensland Treasury and the Department of the Premier and Cabinet were consulted on the Gaming Tax Notice. No objections were raised.

A self-assessment by the Department of Justice and Attorney-General determined that no Regulatory Impact Analysis is required for the Gaming Tax Notice because it falls into the self-assessable exclusion category (g) “regulatory proposals that are of a machinery nature”. The Gaming Tax Notice merely seeks to give retrospective effect to an administrative arrangement that was already made in respect of the deferral of the March 2020 gaming machine taxes.

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