

# eALERT

## Gaming Entitlements – Let the bidding begin

By now, all registered bidders should have satisfied the prescribed requirements for eligibility to participate in the first stage of bidding auctions commencing on 20 April 2010. Registered bidders who have met all requirements should have received Eligibility Packs from the VCGR containing login details for the upcoming auction.

Attention is now being channeled towards the structure of bids in anticipation of the auction process for gaming machine entitlements (“GMEs”).

What strategy? What price? How many?

Some things to consider:

### Taxation

Many bidders have noted that having additional GMEs does not necessarily translate into proportional increases in revenue and are consequently electing to bid for fewer GMEs. However, in arriving at such a decision, few bidders are taking into account the possible tax benefits to be derived from holding more GMEs at a venue under the new tax regime:

- Under the new regime, clubs and hotels will be progressively taxed on a venue’s average monthly revenue per GME.
- In its simplest form, assuming that the total revenue for a venue remains the same, the more GMEs per venue, the less tax that will be payable.
- To put things in perspective, Clubs under the regime will be entitled to claim as tax free up to \$32,000 of revenue per year per GME.
- Bidders should thus conduct a cost-benefit analysis to assess the costs of acquiring additional GMEs contra the benefits of:
  - a) any reduction in tax liability that may be afforded by holding a greater number of GMEs; and
  - b) any (present or future) benefit that may be derived from owning a greater

number of GMEs (ie holding a physical asset).

- Bidders will need to consider whether, over a ten year period, having additional GMEs will generate
- enough revenue and tax benefits to justify their operation and to cover costs such as the purchase price for the additional GME’s and the entitlement fee over that period.
- Bidders should also note that amounts paid to the Victorian Government for GMEs will not give rise to a tax deduction, capital allowance claims or a deduction for black hole expenditure. It is likely that the amount paid will form part of the cost base of a CGT Asset which will be taken into account if the GMEs are sold or the rights under the GMEs lapse.

Bidders should discuss the relative merits of any tax issues with their financial advisors.

### ‘Final Form’ Transfer Rules

The ‘Final Form’ Transfer Rules governing the transfer of GMEs was published on 18 March 2010. Save for some minor amendments, the ‘Final Form’ Transfer Rules essentially mirror the draft rules that were published in October 2009. Of particular note:

- The deferred payment scheme for GMEs will not be transferrable.
- Despite numerous objections to the draft rules by various stakeholders, it remains the case that a transfer of GMEs will require any transferee to immediately pay upon transfer all amounts owing on the GMEs being transferred.
- This may affect the short term marketability/transferability of GMEs whilst amounts under the deferred payment scheme remain outstanding.

### Restrictions on GMEs

The VCGR has put the onus on bidders to ensure that they do not exceed the quantity restrictions on the ownership or use of GMEs, namely that:

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- The maximum number of GMEs per venue shall not exceed 105;
- A venue operator (including prescribed connections) must not hold more than 35 per cent of hotel GMEs;
- Ownership of club entitlements is restricted to 420 GMEs.

("the Restricted Amounts")

Notwithstanding the above:

- A venue operator may bid for, and successfully obtain, more GMEs than the number of gaming machines that it is currently approved to operate.
- The Minister has not declared a date upon which the Restricted Amounts are to apply.

## Important Dates

Stage One Gaming Auction  
**20 April 2010 to 4 May 2010** (online bidding)

Stage Two Gaming Auction  
**10 May 2010** at the former Melbourne Convention Centre

Logie Smith Lanyon will be conducting a series of seminars post auction to provide information on a

range of topics to deal with next steps for venue operators who:

- have obtained a full allocation of entitlements;
- have received a quantity of entitlements that is less than the amount they were seeking;
- have been unsuccessful in bidding for any entitlements;
- are interested in the rights of landlords and tenants under the new system in respect of GMEs.

Dates for seminars will be disseminated following the completion of the auction process.

Mag has been intimately involved with the GME process and is happy to discuss any queries or concerns that bidders may have at any stage in the process.

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