

TREASURY EXECUTIVE MINUTE

Minute No. 20100519

1 March 2010

Assistant Treasurer

cc: Treasurer

BRIEFING ON NEW SOUTH WALES WINE INDUSTRY RESEARCH AND DEVELOPMENT ADVISORY COUNCIL NOTE AND ACCESS TO THE WINE PRODUCER REBATE BY NEW ZEALAND WINE PRODUCERS

Timing: At your convenience.**Recommendation/Issue:**

- That you note the attached briefing.

Noted

Signature:/...../2010

KEY POINTS

- Your office has requested briefing on the avoidance issues raised by the NSW Wine Industry Research and Development Advisory Council (the Council) briefing note titled *Briefing Note on Proposed Wine Tax Changes* as well as some briefing on the application of the wine producer rebate to New Zealand (NZ) wine producers.
- We have consulted with the Australian Taxation Office (ATO), Department of Foreign Affairs and Trade (DFAT) and the Australian Customs and Border Protection Service (Customs) in preparing this briefing and their views are set out at Additional Information.
- We note that the taxation of alcohol, including wine, was examined as part of the review of Australia's Future Tax System (AFTS).

Manager
Indirect Tax Unit

Contact Officer:

Ext:

Impact on the underlying cash balance of agreeing to recommendation

2008-09	2009-10	2010-11	2011-12
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ADDITIONAL INFORMATION

NSW WINE COUNCIL BRIEF

Background

- The briefing note states that the Council understands the AFTS review has recommended taxing wine on a volumetric basis according to alcohol content at the ‘beer’ rate and such taxation would lead to the loss of the Wine Equalisation Tax (WET) rebate.
- In their brief the Council acknowledges instances of the WET rebate being misused. These include retailers undercutting the market by directly sourcing wine from grape growers and the use of ‘blending provisions’ in the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) to access the WET rebate when otherwise they would not be entitled.
- The Council’s brief further argues that Government action should focus on closing such loopholes (in consultation with industry) rather than supporting the AFTS’ recommended changes to the taxation of wine.

Australian Taxation Office compliance activities

- We contacted the ATO to seek their views on the claims in the brief.
- In relation to the tax avoidance issues raised by the Council the ATO is aware of a number of issues associated with non-compliance in relation to the WET rebate.

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- The ATO has concerns with various contractual arrangements, post office box arrangements, blending arrangement and artificial wholesaler discounting.
- The ATO has identified a number of entities, some of whom are currently being audited and others where audit activity is due to commence in the short term. This will enable them to better understand potential non-compliance.
- There are some difficulties in terms of dealing with non-compliance. A number of the issues are reflective of long term legitimate industry practice and are within the law. These include the blending of wine, contract wine manufacture and entities operating as a facilitator and not physically handling the wine. Therefore, the capacity of the ATO to prove the non-compliance resides on the facts of each case and proving non-commercial artificial arrangements is difficult, complex and lengthy.
- There are a number of variations on the theme outlined in various press releases by the Winemaker's Federation of Australia (WFA) and other associated lobby groups regarding the

push by major retailers to encourage grape growers to have wine made under contract which is then purchased by the retailers for what is effectively the cost of the wine production (see further discussion of issue under the Winemakers' Federation of Australia pre-budget submission).

THE WINEMAKERS' FEDERATION OF AUSTRALIA PRE-BUDGET SUBMISSION

Tightening eligibility for the wine producer rebate

The Winemakers' Federation of Australia (WFA) argue that the current structure of the rebate:

- is prolonging the oversupply of grapes by encouraging unviable growers to remain in the industry;
- strengthening the market power of retailers; and
- subsidising New Zealand imports.

To address these issues they recommend that eligibility for the wine producer rebate should be tightened by changing the definition of wine 'producer' and wine 'manufacturing'. They estimate such changes would result in savings in the cost of the rebate of the order of \$50 million per annum.

The rebate is currently available to grape growers and wine producers.

The WFA argue that the practice of retailers directly sourcing wine from grape growers with surplus grapes is undercutting the market.

- The retailer pays only for the cost of the winemaking undertaken by a contract winemaker and the grower is recompensed for the cost of the grapes by accessing the rebate.
- They recommend that the definition of producer be amended to require all producers to hold a relevant State Wine Producer license as well as being able to demonstrate that they maintain bona fide control of the winemaking process.

Blended wine

The policy intent of the rebate was to offset a particular WET liability. However, the ATO interpretation of the WET Act allows both the producer of the constituent wine and the producer of a wine that was blended with the constituent wine to receive the WET rebate. This is because the completed blended product is considered a different product to the wine used in the blending. As a result, through wine blending it is possible for rebates provided to separate wine makers to exceed the value of the WET paid.

The WFA suggested response to this is for greater reporting of such blending on wine labelling. They consider this would eliminate multiple rebate claims, leakage of rebate wine into export markets, and questionable bulk wine transactions.

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Budget impact of tightening eligibility to the WET Rebate

The WFA consider that tightening eligibility for the WET Rebate will lead to budget savings of around \$50 million per annum.

The ATO has sought more details from the WFA in relation to a recent claim that the WET rebate is being exploited “to the tune of \$50 million a year”.

- The advice they received from the WFA was that:
 - the \$50 million was not based on any careful evidence or calculation;
 - the WFA did not have any supporting evidence for the figure espoused; and
 - the amount was an order of magnitude estimate only.
- The ATO has also sought details or evidence of any alleged non-compliance but none has been forthcoming.
- However, the ATO anecdotal evidence would indicate that there has been an increase in non-compliance since the rebate was increased from \$290,000 to \$500,000.

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