Wine Equalisation Tax Rebate: Tightened Eligibility Criteria

October 7, 2016

Chris Byrne
Riverland Wine Executive Officer
Phone 0419 555 001

chris@riverlandwine.com.au

Introduction

Riverland Wine is the combined regional body that represents almost 1,000 wine grape growers and numerous large, medium and small wine producers. All of Australia's major wine producers are significant customers of this region's producers. The Riverland consistently produces more than 25% of the national annual grape crush and more than 60% of the South Australian crush. The region forms the 'undercarriage' of the Australian Wine Industry's export program and its research, development and extension funding sources.

In 2012 the winegrowers and winemakers of the region amended the constitutions of their respective advocacy organisations and agreed to operate as a united body – Riverland Wine. This was a bold initiative but one that has enabled the region's (wine industry) stakeholders to develop and implement cohesive, strategic programs; underscoring the critical need for collaboration as the industry adapts to the rigours of global trading.

There is no doubt that during the recent decade of wine industry downturn, there has been a tendency for many stakeholders to act as competitors first, rather than partners or colleagues. This antagonism has been evident between the different sectors (winemakers and growers) but also between members within each sector. It is non-existent in this region.

This brief submission is an example of how the Riverland Wine organisation is willing to forego some preferences in the interests of achieving strong consensus and encouraging the spirit of collaboration to offer clear direction to government agencies. Indeed this submission is a comprehensive endorsement of the South Australian Wine Industry position on reform of the Wine Equalisation Tax Rebate: Tightened Eligibility Criteria.

For ease of reading, the following is a direct extract of the SAWIA submission, with only minor Riverland Wine qualifying considerations in yellow highlighted text:

"SUBMISSION

The implementation paper raises three specific questions:

Rebateable wine: Packaged and branded wine

1. For rebateable wine, is the proposed definition of packaged and branded wine appropriate? If a trademark approach is used, what types of trademarks should be permitted (e.g. exclusively licensed trademarks) and what would be the impact?

   The definition in the Implementation Paper is as follows:

Packaged wine is wine that is packaged in a container not exceeding 5 litres in a form fit for retail sale. Branded wine is wine that is labelled with a wine producer's trademark.

In general terms, SAWIA supports the definition but to be clear wine must be sealed in its final packaging. In relation to trademarks they can be registered, common law and licensed.

SAWIA supports registered trademarks as this reflects the legal ownership of the mark and the rights of use. SAWIA would also support the use of common law trademarks, as these can be in use where a registered trademark is not available for a name such as a place or use of a name that cannot be registered because of its normal everyday usage. Common law trademarks are also used by many producers.

Licensed trademarks means the trademark owner (the licensor) grants a permit to a third party (the licensee) in order to commercially use the trademark legally. This can mean a licence is available for a number of entities. For clarity purposes, SAWIA would support wine producer trademarks that allow an exclusive license to a sole producer of the wine.

Riverland Wine qualifier

A further consideration, regarding integrity, may be to ensure sales of wine must be in general distribution but not exclusive to one customer (for example, a trademark must be excluded where total sales of that trademark exceed 50% to one single customer or retail entity).

Eligible Producers: Owing or leasing a winery

2. For eligible producers, how should a winery ownership and leasing test be applied? What should be the nature and extent of investment in the wine industry required to access the rebate, and how can this be implemented?

The definition in the Implementation Paper is as follows:
A winery is a premise where the quantity of fresh grapes used in the manufacture of wine is not less than 5 tonnes in a year. Definitions of ownership and control could be based on existing tax legislation and leasing requirements could be flexible to accommodate industry practices.

The Implementation Paper further suggests:
An alternative could require a wine producer to retain ownership of the grapes throughout the winemaking process (whether it's made by the wine producer at its own premises or it contracts out the winemaking) and own or lease one of either a winery, vineyard or cellar door.

The Budget set out an eligibility requirement to own or lease a winery.

For SAWIA members, the proposed definition for *eligible wine producer* caused concern. The proposed definition is too narrow and excludes many legitimate business models that strongly support regional communities.

The first definition proposal of what is considered a winery and tests of ownership and control is not supported by SAWIA because it is complex and potentially difficult to determine eligibility – it lacks the very certainty which these reforms require. It also plays out a reality that many current and legitimate wine producers and business models would be excluded.

The ownership of the grapes throughout the winemaking process does have merit but not when it is linked to a requirement to own or lease a winery, vineyard or cellar door.
Given there would be a requirement to define a winery, vineyard and cellar door, during the consultation process definitions were explored but ultimately issues were raised about the integrity of those measures, the ability to easily get around the provisions and the potential for unintended consequences.

The consultation process raised one option for an eligible producer - where 85% of grapes are owned at the crusher through the production process to finished wine. This would allow some third party sourced grapes for style or seasonal issues.

SAWIA supports this proposal on the understanding there is no need for an asset test.

SAWIA does raise the important consideration of a need in extenuating circumstances to have some variation to this 85% rule in the case of significant crop damage which would not allow this rule to be activated. In general terms, an extreme weather event would be easily determined to allow for an exception to the rule to be applied. This would support the business that is already finding it difficult or impossible to produce wine because of crop loss.

Operational Dates

3. What is the impact from a 1 July 2019 start date of the tightened eligibility criteria? How might this change from an earlier transition period?

The consultation process has discussed the potential to change various dates of operation, and proposed bringing some existing dates forward and deferring other dates. In general, the dates of operation serve as notice to producers to prepare for changes that impact on their day to day business operations. Certainty will allow each business to assess the impact and plan accordingly. Each change in operative date will have a differing impact depending on the structure and operations of the business.

Some of the proposals raised during the consultation process include bringing forward the definition of rebateable wine - packaging and branding requirements from 1 July 2019 to 1 July 2017. It is further proposed that all wine currently in tank as at 1 January 2017 will be automatically deemed to comply until 1 July 2018; and it is proposed the eligible producer changes from 1 July 2019 to 1 July 2018.

SAWIA would support the changes of operational measures as set out above and as discussed during the consultation process.

WET Cap Rebate

The implementation paper is silent on the issue of the WET cap rebate proposed reductions.

SAWIA's position is that the $500,000 amount of cap rebate should remain in support of regional wine businesses.

During the consultation process the rebate cap was discussed and explored more fully and the Australian Government's position is the current amount of the rebate is a sufficient incentive to rort the system and the proposed reduction in the rebate amount is an integrity measure.

A new proposal to restructure the WET rebate to allow a wholesale sales and a direct to consumer sales component was explored including a deferral of the date for the rebate cap reduction.

SAWIA's understanding of how this proposal would operate includes:

- The cap reduction commences on 1 July 2018 (deferred from 1 July 2017);
- Restructure the cap to provide for $350,000 for eligible wholesale sales and $150,000 for direct to consumer sales (from 1 July 2018);
- Reducing the cap by a further amount on 1 July 2019 to $290,000 for eligible wholesale sales and $210,000 for direct to consumer sales;
- A physical cellar door (not yet defined) would be required in order to claim the direct to consumer sales amounts (which could be from cellar door, wine club or mail order activity).

SAWIA would support the measures set out for the WET rebate cap that were discussed during the consultation process.

END OF SUBMISSION"

Riverland Wine Summary

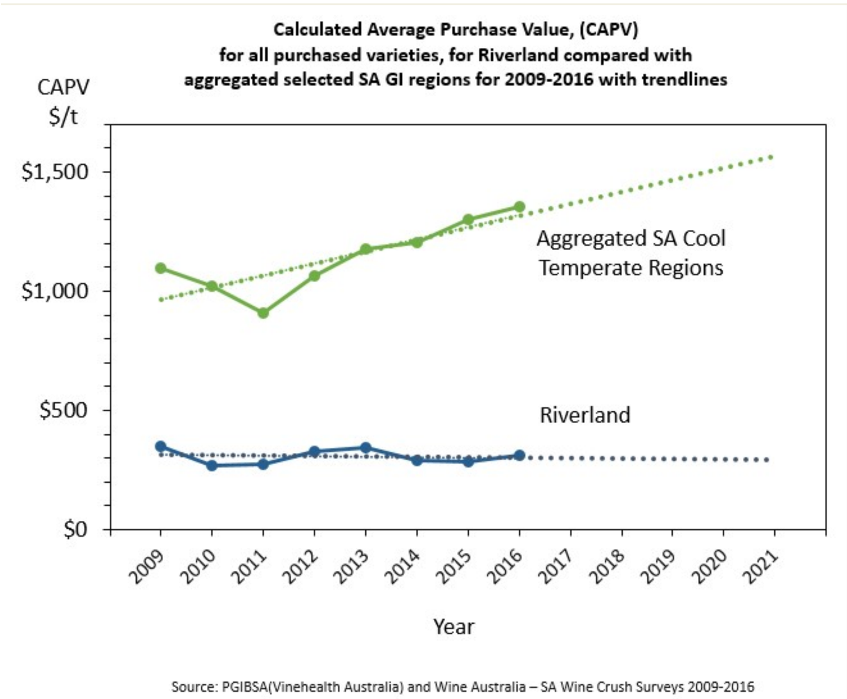
Further to the above and in summary, the following are important considerations:
Riverland Wine has consistently and collaboratively lobbied for the removal of the WET Rebate on bulk and unbranded wine since October 2013.

At that time Riverland Wine wrote to the Winemakers Federation of Australia calling for widespread consultations with a view to securing industry endorsement of a plan for the progressive withdrawal, over a four year period, of what was effectively a tax-payer funded subsidy in a majority of cases. The evidence was clear at the time that many of the claims for rebates were indeed claims for subsidies. That evidence has continued to accrue and is now widely acknowledged as causing unintended but significant net-detriment to long-standing competitive, best practice Australian winegrowers and winemakers while continuing to encouraging unsustainable business practices in some enterprises.

The purpose of that October 2013 submission was three-fold

1. to draw attention to the distortions in the Australian wine export market that were threatening the sustainability of the industry's 'undercarriage'
2. to acknowledge that the beneficiaries of the legislative flaws in the WET Rebates provisions were not acting unlawfully but in a way that was never intended and in fairness, should be granted a reasonable time to revise business models and
3. to ensure that the majority of export wine producers would regain confidence that competition was fair and ongoing investment in the industry was a reasonable risk.

But that was three years ago! The following two graphs illustrate quite clearly that this region, Australia's largest wine exporting region, is continuing to shoulder the burden of the so-called 'perverse outcomes' of the legislative provision of the WET Rebate.



Note: the widening gap between average grape prices in this predominantly 'export focussed' region and the aggregate of other SA Wine regions.

The graphs amply illustrates the accruing negative impact of the existing WET Rebate provisions that enable some 'bulk-wine' exporter-entities to access the rebate, intended for domestic wine sales only, thereby imposing consistent downward pressure on legitimate Australian wine exporters who simply cannot compete with subsidised operations. These trends are NOT sustainable.

Riverland Wine wishes to emphasize, that any delay in removing the WET Rebate from bulk and unbranded wine beyond July 1, 2017 will encourage yet more unnecessary casualties and further detriment to regional, State and national wine industry performance.

Riverland Wine will provide more information and, or further discuss the above details if it might be helpful in the ongoing deliberations. Please contact me on 0419 555 001 or via email at chris@riverlandwine.com.au

Yours faithfully,

Chris Byrne
Executive Officer
Riverland Wine