Wine Equalisation Tax Rebate: Tightened Eligibility Criteria

Submission in response to the Australian Government's Implementation Paper, September 2016

SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

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INTRODUCTION

The Australian Government announced changes to the Wine Equalisation Tax (WET) Rebate in its budget handed down in May 2016.

The South Australian Wine Industry Association (SAWIA) is supportive of the need to reform the WET rebate and while encouraged that the Federal Government has taken steps to announce proposed changes, there are a variety of industry opinions and views about the changes and about their intended and non-intended consequences on the wine industry and regional wine communities. Member views were identified in the SAWIA survey re WET.

Based on the SAWIA's understanding the proposed Federal Budget 2016 WET reform changes include:

- The changes are expected to raise $300M in additional revenue for the Federal Government over the forward estimates, inclusive of the $50M to the Australian Grape and Wine Authority to promote wine overseas and wine tourism within Australia;
- The annual rebate cap will remain at $500,000 until 30 June 2017 but from 1 July 2017 will reduce to $350,000 and then to $290,000 from 1 July 2018;
- The definitions of an *eligible wine producer* and *rebatable wine* will be changed and while each have been defined as set out in the Federal Budget papers, the Government will conduct a consultation process with the industry to resolve these definitions;
- Bulk and unbranded wine will become ineligible for a WET rebate from 1 July 2019;
- strengthen the associated producer rules in WET legislation to help stop multiple claims for the WET rebate by complex structures of associated businesses;
- Claims under the new criteria (from 1 July 2019) will enable wholesale sales in addition to current cellar door sales to be made; and
- New Zealand claimants remain eligible for the rebate but may be impacted by any proposed changes made to definitions as to all claimants.

On that basis, we also welcome the Australian Government's initiative to undertake formal consultation which occurred during September 2016. SAWIA participated in this consultation. Once the reforms are finalised SAWIA will work closely with the Australian Government and the wine industry to implement them effectively.

SAWIA liaises with the Winemakers' Federation of Australia, other State wine industry associations and South Australian regional associations regarding these proposed changes as well as directly with our members on these very significant and important business issues.

SAWIA acknowledges that the primary objective of any change to the WET rebate is to improve integrity. Clearly, the economic and related impact can only be truly assessed once the definitions of an *eligible wine producer* and *rebatable wine* and all proposals for change are finalised.

In defining these terms, all parties need to ensure the outcomes are easy to understand (who is eligible, who is not), avoiding complexity in definition, implementation and compliance - keep it simple, minimise costs to implement and understand the ways and means a business will comply.

It is also important to recognise that settlement of these definitions will allow a significant number of individual businesses who are currently anxious about the reforms to gain certainty about the changes, to assess the impact and the reality of the operational details for their business.

In addition, any proposed changes must be carefully and closely examined to ensure there are no unintended consequences. Once the reform package is clear, it is recommended that in 12 months and then at regular intervals, the operational details and outcomes are reviewed and discussed.

SAWIA appreciates the opportunity to respond to the Australian Government's Implementation Paper and for consideration of our views during the consultation process and remains available to discuss this submission or to give further consideration or input into the detail of proposed changes. SAWIA reiterates the need for certainty in any decisions made.

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SUBMISSION

The Implementation Paper raises three specific questions:

Rebatable wine: Packaged and branded wine

1. For rebatable 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. SAWIA would not support the inclusion of licensed trademarks.

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.

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The consultation process raised one option for an eligible producer - where at least 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 to have some variation to this 85% rule in extenuating circumstances, such as 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. One of the fundamental considerations in regard to all dates is to allow sufficient time for legitimate businesses to adapt their business models to accommodate the changes and minimise detrimental impact, including the loss of jobs in regional communities.

Some of the proposals raised during the consultation process include bringing forward the definition of rebatable 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 in the context that the Australian Government considers 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 during consultation including a deferral of the date for the rebate cap reduction.

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

- The cap reduction would commence on 1 July 2018 (deferred from 1 July 2017);
- Restructure the cap to provide up to $350,000 for eligible wholesale sales and an additional 'top up' of up to $150,000 for direct to consumer sales (from 1 July 2018);
- Reducing the cap 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 sales from cellar door, wine club or mail order activity).

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SAWIA would support the measures set out for the WET rebate cap that were discussed during the consultation process as summarised in the points above.

END OF SUBMISSION

About the South Australian Wine Industry Association Incorporated

The South Australian Wine Industry Association Incorporated (SAWIA) is an industry employer association representing the interests of wine grape growers and wine producers throughout the state of South Australia.

SAWIA is a not for profit incorporated association, funded by voluntary member subscriptions, grants and fee for service activities, whose mission is to provide leadership and services which underpin the sustainability and competitiveness of our members' wine businesses.

SAWIA membership represents approximately 96% of the wine grapes crushed in South Australia and about 36% of the land under viticulture. Each major wine region within South Australia is represented on the board governing our activities.

South Australia is a significant state for wine and a snapshot shows it has:

- 49% of Australia's vineyards;
- 45% of Australia's wine crush;
- more than 700 wineries;
- 378 cellar doors;
- over 3,400 wine grape growers;
- exports $1.3B of wine to over 100 countries; and
- directly employs 8,700 people.

SAWIA has a strong track record as an industry leader and innovator in many areas. SAWIA pro-actively represents members and the greater wine industry with government and related agencies in a wide variety of aspects of business in the wine sector.

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