

Australian Government The Treasury

Exposure Draft Legislation: Wine Equalisation Tax (WET) rebate



SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

SUBMISSION OF: SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

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THE SOUTH AUSTRALIAN WINE INDUSTRY ASSOCIATION INCORPORATED

1. 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.
2. 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.
3. SAWIA membership represents approximately 96% of the 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.
4. 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.

SUMMARY OF SUBMISSION

1. "Owning the source product for the wine throughout the period" is satisfied if you own the 'source product'. For grape wine (the fresh grapes from which the grape wine is produced) is described as "immediately after crushing of that source product".

Ownership from the wine grape grower to the wine producer usually takes place / transfers at the weighbridge. There is a potential for issues to arise as to "ownership and control" that could impact on the ultimate integrity of this part of the reforms that are being proposed.

2. There is a proposed change from the current definition within the WET exposure draft legislation of the term '**producer**'. This proposed change is likely to exclude those winemakers who contract process by another entity even though the winemaker continues to own the grapes.

The proposed amendment to the term 'producer' must be withdrawn. The current definition of 'producer' (allowing the inclusion of third party processing) along with the proposed changes to ownership will ensure the changes to WET that were agreed are detailed in exposure draft legislation.

3. The proposals to change **quoting** rules will apply one set of changes to wine producers and another set of changes to entities within the supply chain.

For wine producers, they will need to administer an additional layer of rules that will be difficult to comprehend and apply with limited resources.

This current area of the legislation and the proposed changes add considerable further complexity for wine producers that will inevitably raise potential compliance issues.

The proposed changes to the quoting rules create a number of situations within the supply chain where a WET liability arises with no producer rebate.

The repeal of WET credit events (CR2 and CR3) has the potential to allow for two amounts of WET to be charged with only one rebate on the same parcel of wine.

SAWIA requests reconsideration of whether the repeal of CR13 is warranted.

On the basis of the proposals for change, any changes that are ultimately passed through the Parliament should be implemented only following a concerted effort to **educate wine businesses** about the changes and in particular quoting rules.

4. It is stated **trademarks** must be owned by the producer, yet the reality suggests entities may be structured to ensure valuable assets (like trademarks) are contained in a separate entity to the trading entity and still be related to the producer. It is possible structures are created to own, license or lease these trademarks and that needs to be taken into account in the exposure draft legislation.

'Use' may not imply a trademark exists without testing in the courts and there are many aspects relating to 'use' that may mean producers are excluded. SAWIA considers these concepts deserve greater examination to ensure the intent of 'trade mark' ownership can be practically applied.

5. SAWIA raises its concern regarding the inclusion in the exposure draft legislation of "an 85% rule" on **wine product**. SAWIA does not recall this change (from 70% to 85%) was ever discussed as being a change needed as a result of agreed measures for WET reform.

These changes are likely to have an unintended consequence and are unlikely to achieve the results set out in the Explanatory Material. Tax increases are likely leading to a flow on to retail pricing raising an issue of whether these products will remain commercially viable. Careful re-examination of the proposed changes to wine products is called for.

6. It is important to have **transitional provisions** to ensure all eventualities are dealt with. On that basis the exposure draft legislation includes 'at a point in time' (1 January 2018) and into the future but does not deal with wine manufactured in the past. Wine that was made under the existing legislation and under those rules should not be subject to changed rules. Such an omission has the effect of retrospective application.

BACKGROUND

This submission responds to the exposure draft set out in the Treasury Laws Amendment (Measures for a later sitting) Bill 2017 relating to the Wine Equalisation Tax (WET).

SAWIA acknowledges the Bill is in response to one part of a suite of measures to reform the Wine Equalisation Tax (WET) rebate. Such measures have been the subject of ‘in principle’ agreement between the Federal Government and the Australian wine industry. The Exposure Draft Bill and Explanatory Memorandum are intended to capture that agreement.

SAWIA’S SUBMISSION

‘Grape Ownership’ Definition

The Explanatory Memorandum and the Bill describe “owning the source product for the wine throughout the period” and indicate satisfaction of the requirement if you own the ‘source product’. For grape wine (the fresh grapes from which the grape wine is produced) is described as “immediately after crushing of that source product”.

Ownership of wine grapes from the wine grape grower to the wine producer usually takes place / transfers at the weighbridge. Ultimately at that point there is a relationship of ownership established between the grower of the wine grapes and the producer.

There is a potential for issues to arise as to “ownership and control” that could impact on the ultimate integrity of the reforms that are being proposed. This needs to be understood to ensure the integrity is tight otherwise new issues will emerge that strikes at the original intent.

Therefore, currently exposure draft legislation refers to throughout the period as essentially only ownership immediately after crushing. Consideration should be given to the ownership definition to ensure it is fit for the purpose of the legislation.

When winemakers may not be the producer

There is a proposed change from the current definition within the WET legislation of the term ‘producer’. This proposed change is likely to exclude those winemakers who contract process by another entity even though the winemaker continues to own the grapes.

This proposed change was not canvassed with the industry as part of the final terms of agreement and will most certainly in its proposed form exclude a business that has its grapes contract processed into wine by a third party from the ability to claim a WET rebate.

The definition proposed for a ‘producer’ (of wine) means “an entity that manufactures the wine”, whereas the current definition goes further to also allow “...or supplies to another entity the grapes...from which the wine is manufactured.”

While the reason provided for the change is stated as being the latter part of the definition is redundant because of the ownership rule (must maintain ownership throughout the wine manufacture process) this is contrary to the Explanatory Memorandum at 1.20 which sets out that:

Manufacturing includes having a product made by a contract manufacturer on your behalf from inputs that you own. Therefore an entity that owns the source product and maintains that ownership throughout the wine making process but has that wine manufactured under contract on its behalf by another entity is still regarded as the producer of that wine for the purposes of WET and eligible to claim the WET producer rebate (provided they satisfy all of the other criteria for claiming the rebate).

On that basis, in our submission, the proposed amendment to the term 'producer' must be withdrawn. The current definition of 'producer' (allowing the inclusion of third party processing) along with the proposed changes to ownership will ensure the changes to WET that were agreed (and confirmed in the Explanatory Memorandum) are set out in the exposure draft legislation.

Quoting and Credit events

Any change to legislation that becomes or that remains complicated, confusing and administratively complex will inevitably raise the possibility of non-compliance. The current legislation together with the proposed changes in the exposure draft legislation, will add considerable complexity for wine producers that will maintain the potential for non-compliance.

In almost every case, a business simply wants to understand what is required to be done so that it may comply. That is difficult when the rules are confusing and complex.

The proposals to change quoting rules will apply one set of changes to wine producers and another set of changes to entities within the supply chain. For wine producers, they will need to administer an additional layer of rules that will be difficult to comprehend and apply with limited resources.

The proposed changes to the quoting rules create a number of situations within the supply chain where a WET liability arises with no producer rebate. This seems to be contrary to an understanding of a tax neutral position within the supply chain.

Similarly, the repeal of WET credit events (CR2 and CR3) has the potential to allow for two amounts of WET to be charged with only one rebate on the same parcel of wine. Surely the intent is not to tax the same parcel of wine twice.

A reconsideration of the repeal of CR13 should also be undertaken. It seems that if wine was destroyed under Customs supervision (as it was not fit for sale) that wine would still be subject to WET irrespective of the repeal of CR13. This repeal must be changed, it must allow for tax neutrality.

On the basis of the proposals for change, any changes that are ultimately passed through the Parliament should be implemented only following a concerted effort to educate wine businesses about the changes. When the GST and WET were originally enacted, the Australian Taxation Office undertook to conduct educative sessions about the system throughout the wine industry within Australia to assist with business compliance.

SAWIA would strongly support such educational activity not only to facilitate an understanding of the changes, but also to identify what has changed. Such education would also serve to refresh existing knowledge.

Trade Mark or Common law ownership requirement

The Explanatory Memorandum at 1.21 states:

To qualify for the WET producer rebate wine must also be packaged in a container that does not exceed five litres, be branded with the trademark owned by the producer and that wine, as packaged, must be ready for retail sale.

Under Explanatory Memorandum 1.23 it goes on to state:

The wine must be packaged so that each container is branded with a trademark that is owned by the producer. Generally this must be a registered trademark, however a common law trademark is allowed in certain circumstances.

These requirements are likely to prevent many producers from claiming a WET rebate because within their operating entities assets of value like trademarks are held in an entity separate from a trading entity.

On that basis, a change should be made to the proposed legislation to recognise that various operating entities may own or may also license or lease those trademarks and are therefore legitimate measures that need to be included.

SAWIA's submission is not seeking to include any parties that are unrelated entities for example that may create a mark and then licence / lease to an unrelated entity, clearly there needs to be a related connection as set out in 1.21 and 1.23 set out above.

In addition, there are likely to be significant issues relating to "marks" denoting a connection with the brand owner and use on packaging. Use may not imply a trademark exists without testing in the courts and there are many aspects relating to use that may mean producers are excluded. SAWIA considers the concepts deserve greater examination to ensure the intent of 'trade mark' ownership can be practically understood and applied.

Wine Product Definition

SAWIA raises its concern regarding the inclusion in the exposure draft Bill of "an 85% rule" on wine product

SAWIA does not recall this change (from 70% to 85%) was ever discussed as being a change needed as a result of agreed measures for WET reform.

Under the definition of grape wine product, Explanatory Memorandum 1.44 the reason given for the change is:

"This change is consistent with the requirement that 85% of the wine, in its final packaged form, must have originated from source product owned by the producer."

The change for wine product is significant and SAWIA members do not support this change.

Wine products have been a traditional part of the wine industry for as long as the industry has existed. Vermouth, ginger wine, marsala style products and any number of cream liqueurs form the backbone of the segment.

Under item 1.10 of the Explanatory Material it states:

"The amendments made by this Schedule improve the integrity of the WET producer rebate to better target the rebate so it supports wine producers who build brands, invest in regional communities and create local jobs."

It is difficult to comprehend how the change in status of "wine products" from a WET product to an excisable product can actually provide support for wine producers, create investment in regional communities or create jobs. More than likely it will have the opposite impact.

In addition, it is likely to increase the tax and have a corresponding impact on increasing the GST which will then flow on to retail pricing. It is also likely to increase costs of production. This impact will question the ability of wine products to continue with these price impacts.

Commercially this may impact the viability of the industry to continue to make such products.

When moving to set rules, care needs to be exercised on whether there needs to be a distinction drawn between a 'production standard' and an 'ownership standard.' Careful consideration needs to be exercised about whether a taxation requirement is needed and how such a requirement may impact the innovation of such products.

Transitional Provisions

It is important to have transitional provisions to ensure all eventualities are dealt with.

On that basis the proposed legislation includes 'at a point in time' (1 January 2018) and into the future but does not deal with wine made in the past (prior to the 'point in time' date) a product that was made under the existing legislation and rules.

This situation needs to be dealt with together with the inclusion of a further 'example' to ensure it is clear how wine made prior to the 'point in time' date will be impacted otherwise, the exposure draft legislative changes will have the effect of retrospectively applying the new rules to all wine currently made.

Conclusion

SAWIA considers the Exposure Bill and Explanatory Memorandum are important in that they provide the necessary detail for the WET reform measures for wine businesses. On that understanding there are a number of changes that are set out in this submission which need to be considered, addressed and included.

SAWIA is available to discuss our submission in further detail and would welcome the opportunity if required.