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To whom it may concern

Implementation Paper: Wine equalisation tax rebate: Tightened Eligibility Criteria– September 2016

We act for several large, medium and small wine producers and, based on our significant experience in acting for them in relation to their entitlement to claim the WET producer rebate, we wish to respond to the Treasury's Implementation Paper.

Our response is limited to comments in relation to the proposed legislative narrowing of both the meaning of "eligible producer" and "rebatable wine", noting that the rationale for alterations to the WET Cap and the extent of industry assistance for international marketing (also raised in the Implementation Paper) is presumably more economic than legal.

That said however, given the anticipated amendments narrowing the eligibility requirements for the rebate (which will reduce the scope for exploitation) we add our voice to that of both the *Winemakers Federation of Australia* (WFA) and the *WET Rebate Consultative Group* (WETRCG) who each recommend that the WET cap remain at $500,000. This we believe is consistent with the rationale for the increase in the WET Cap in 2006 from $290,000 to $500,000 when it was increased *"to provide enhanced assistance to the wine industry"*, noting that the costs to producers in 2016 are higher now than they were 2006.

Definition of Eligible Producer

Our client base includes some wine producers who have been in the industry for several generations, some who started out as growers before having the confidence to expand and produce under their own label, and some of whom who have further invested in cellar door infrastructure complimenting their distributor and online sales with sales on site. Not all however own or lease a winery, many of our wine producers instead contract with a wine processor to process their grape product to wine per the instructions given by themselves (as the producer).

To limit the WET rebate to only those producers who own or lease a winery would be to benefit only a limited few, and arguably be vertically inequitable given those who have invested in such winery infrastructure are not small producers. We remind Treasury that the Government's original policy intent and the reasons for the introduction of the WET producer rebate scheme was that it would provide assistance to *"every wine producer on an annual basis… [and the] initiative [*would amongst other things*] particularly support small wine producers with domestic sales"*.

The devil of any legislative amendment is in the detail of the words used to make the change, but subject to review and specific feedback in relation to any draft Bill that follows this current Implementation Paper Process, we support the recommendation of the WETRCG, being a function of the WFA's recommendation as adjusted, to include an asset test which requires a producer to own or loan 'one out of three' of a vineyard, winery or cellar door. We are not in favour of a two out of three test.

Definition of Rebatable Wine

Historically, the WET rebate was available to the disposal of bulk unbranded wine (provided it met the other requisite conditions for entitlement). Consequently, the rebate has been open to exploitation by some beyond that which has been said (by Treasury) to be the original intent of the rebate scheme. Given the existing definition of eligible producer, this exploitation was made significantly easier.

However from a policy perspective if the definition of "eligible producer" is tightened as is presently being considered (and discussed above), then in conjunction with the historical amendment of the "blending rules"[1] and the foreshadowed clarification of the definition of "associated producer"[2], the integrity grounds for wanting to amend the definition of rebatable wine are significantly reduced. That is, the policy grounds for narrowing the definition of rebatable wine become more economic and based on Treasury's budget and forward cost estimates.

For present purposes however, we acknowledge the Government's position, as stated in the Budget 2016-17, for there to be amendment to the definition of rebatable wine so that it is limited to packaged and branded wine that is sold domestically, and consistency with the WFA and the WETRCG positions. That is, that rebatable wine be wine that is packaged in a single container not greater than 5L and is labelled with a brand wholly owned by or licenced exclusively to the producer.

As for the specific requirements, we express concern in the use of language in the Implementation Paper and seek clarity in Bill provisions that are drafted to effect any change, noting that at law the expression "brand" and "trademark" are not interchangeable. To use the expressions interchangeably within the Implementation Paper, is inaccurate and confusing, and could lead to similar confusion in the legislation.

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1 More particularly, the introduction of the earlier producer rebate provisions including s 19-17 of the A New Tax System (Wine Equalisation Tax) Act 1999.

2 That is, s 19-20 of the A New Tax System (Wine Equalisation Tax) Act 1999.

Subject to the provisions within any draft Bill produced by Treasury, we have a number of potential queries as to Treasury's intended application of the use of both registered and common law trade marks. We defer specific comment on this issue to publication of the draft Bill.

In closing, we ask that we be informed of any continued development in the present reform, and be invited to comment on any draft or exposure legislation that might be produced.

Yours sincerely,

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