

Tightened WET rebate eligibility criteria

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“The original policy intent of the WET rebate (as evidenced by the change in 2006) was to assist small producers in rural and regional Australia by allowing them to reduce or fully offset their WET liability. Since its introduction, the rebate has become an important source of financial support for winemakers—particularly those in regional Australia. It has also been factored into the supply chain. Excerpt WET Rebate Consultative Report - October 2015

The Winery (formerly Piromit Wines) is a family owned small boutique winery located in Riverina area of NSW. The Winery crushes an average of 900 tons per annum.

We submit herewith our perspective in relation to the changes to the WET rebate eligibility criteria.

We agree that changes are definitely necessary to stop the exploitation of this initiative which was originally set up as **support for small wine producers in rural and regional Australia.**

Large producers with big volumes of branded bottled sales, who have benefited from the WET rebate system are on a completely different playing field. Representatives of these large producers should not be heading up and controlling representation from the wine industry in relation to these changes to eligibility criteria.

Unlike the small wine producers, many of these large producers, some of which were not previously involved in the wine making industry prior to the implementation of the WET rebate system, have the resources to employ professionals to create complex artificial company structures to exploit and bastardise the WET rebate system, thereby causing huge price distortion in the market place and detriment to the Australian wine industry in general.

Owning and running a winery is a high cost business. We have a small presence with bottled labelled wine in the domestic market and our export has grown recently to 3 containers per year. **We primarily focus on production due to the nature of the job in that it is diverse and dynamic and needs attention 100% of the time. This takes our attention away from distributing our product. It is a common issue for us to be able to competently make the wine however distributing it is a whole separate and costly department of the business. However in due time and with difficulty, we are working diligently to increase our exposure and sales in both domestic and overseas market with the limited resources we have and high overheads we are exposed to, as owners of a small winery in regional Australia.**

We rely heavily on our bulk wine sales to assist with overheads while building packaged and branded sales. We also rely heavily on sales of unlabelled wine to several entities (non wine producers) who then affix with their own label/brand and on sell to buyers. Bulk and unlabelled bottled sales obviously hold fewer overheads for our business, allowing us to survive through a regular income stream, while slowly building presence in the bottled labelled market. This process has limited options particularly when being based regionally. One of these options is employing inhouse sales representatives and the other is contracting a distributor, both of which are expensive and time consuming.

In addition to the above our wine growing region of the Riverina is unique due to the location and reputation for producing commercial grade wines. The market will only pay what the market rate is, generally speaking currently around the average of \$0.80c/L for SEA material which is close to production cost for us as a small winery. The WET in almost every instance for domestic sales is our profit and enables us to survive and continue on slowly building our business in the difficult conditions we face.

Our domestic and bottled sales equate to approx. 1/10 of what we produce. Therefore if the WET was only applied to labelled bottled sales, and no bulk then, in our circumstances, we would simply only claim 1/10 of what we produce and have to sell the wine at market rate/production cost of \$0.80c/L. I can confidently express if this was the case we would have to close the doors of our business as the present circumstances allow us to barely scrape through as it is. Immediately 5 direct full time employees would lose employment and consequently affect 10-15 of our contract grape growers (900T worth in fruit) if they were not to find a home at another winery.

Removal of WET rebate on bulk wine would also propose a problem of building a bottled market, domestically in two years which we know from experience is completely unachievable with our limited resources.

Discussion Questions

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?**

Answer:

No the proposed definition of packaged and branded wine is not appropriate. As mentioned above, we, and other small producers, rely on sales of unlabelled wine to assist with covering the extensive overheads involved in running a winery.

We are also about to launch an innovative project whereby we will be packaging wine in 30 to 50 litre containers, for sale to wholesalers and in particular on-premis venues in the hope of moving volume faster. This initiative was adopted because of the highly competitive bottle market, with the angle of trying something new and innovative to keep up with the market demands. This was done in response to direct feedback from the industry through our sales reps on the road in both NSW & Victoria. The packaging and associated products have already been purchased and all feasibility and costing estimates have factored in our eligibility to claim WET rebate. This is an initiative which we believe has huge growth potential within the industry. If the proposed definition of packaged container capacity of 5L were adopted, we would immediately be financially disadvantaged and this already costly new initiative would be buried at great cost. **Therefore we believe the container size limit of 5 litres should be amended to 50 litres at least, to accommodate new initiatives and in line with the cider and perry industries.**

Once again being from the Riverina we are in a position where our fruit is the cheapest in the country so we, as a small producer, must think of innovative ways to distribute wine to compete with the larger commercial wineries nearby, and this new initiative gives us a competitive edge but without WET it once again tears away our profits.

In relation to the trademark approach, we don't believe this is an appropriate measure to establish WET rebate eligibility. As the WET rebate system was initially set up to assist **small wine producers**, the measure should be related to other criteria like winery ownership and definition, volume of crush/sales, turnover etc.

Eligible Producers

2. For eligible producers, how should a winery ownership 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?

Answer:

Winery ownership test for companies, trusts and partnerships should be of minimum 20%.

Leasing requirements should include, at the least, a long term 3-5 year lease, as an essential requirement for WET rebate eligibility.

Only Australian wineries should be eligible for WET rebate.

Removal of eligibility of New Zealand wine producers is “critical” if the government is looking to save money.

*Definition of “a winery” should be very specific and include a wine processing facility, with the ability for this facility to carry out all stages of the winemaking process, **including crushing and excluding packaging/bottling**. Crushing is an **essential and costly** stage of the winemaking process so we have difficulty in understanding why it would be excluded, unless exploitation is the objective. Other essential stages of winemaking are bag pressing, cooling, filtering and tank ownership. Excluding any of these elements from the definition of a winery, leaves the criteria and WET rebate open for exploitation.*

Bottling and packaging are not part of the winemaking process and should not be included in the eligibility criteria. Small genuine wine producing facilities rarely have their own bottling lines and usually outsource this stage. If the requirement to own a bottling line is enforced, as part of the criteria, it will cause exclusion of many genuine small wine producers as the cost is prohibitive.

*To be eligible for the WET rebate, a winery should possess equipment to enable complete winemaking process, not just an element of it (eg just tanks for storage or a cellar door for selling wine – in sheer honesty these are the quickest and most cost effective ways to claim you “own a winery” when in fact it’s just some stainless vats or a building with a service area. We kindly remind you of the original policy intent to assist small **‘producers’** in rural and regional Australia) and where the quantity of fresh grapes used in the manufacture of wine is not less than 50 tonnes.*

Owning a vineyard alone should not allow access to the WET rebate. There are no escalated overheads to run a vineyard. Farmers grow the grapes. They do not produce the wine. Any tax rebate initiatives provided to growers should be an entirely separate initiative and policy.

We believe owning a vineyard should not be essential to meet the criteria for eligibility to the WET rebate. The whole purpose of the WET rebate would be defeated if small wine producers were required to own a vineyard.

*The Government implementation paper with proposed positions states “The wine industry has evolved beyond traditional production methods which would not be recognised under certain ownership criterion.” Our response to this statement is that **many industry practices and company structures have changed for the sole purpose of obtaining access to the WET rebate for entities which would not normally be eligible.***

Yes the wine industry has evolved as have production methods but an appropriately equipped winery, across all winemaking elements, is still needed to produce wine and the basic blueprint of making wine has not changed.

*Huge financial and personal investment is required to establish and operate a winery. The most cost heavy components of winemaking, apart from the staffing requirements, include the crushing, pressing, filtering, cooling and the power required to carry out these functions. **Therefore the proposed eligibility requirement to own or lease a vineyard only or a cellar door only, should not even be a consideration.***

In relation to ownership requirements, the proposal to “exclude small wine producers that have a stake in the industry but contract out winemaking for sound economic purposes” needs to be examined and considered very closely. Definition of “stake in the industry” and “sound economic purposes” needs to be clarified without any doubts or potential for exploitation while always bearing in mind which entity this rebate was originally designed to support and the reasons.

Including wine makers who do not own or are committed to a long term lease of a wine production facility will continue to leave the WET rebate open for abuse.

“Stake in the industry” – should be defined as a company, individual, partnership or trust who have a minimum share or financial involvement in a wine processing facility.

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

Answer:

If the WET rebate is removed from bulk and unlabelled wines thereby forcing us to bottle and label 900T of fruit each year up until 1 July 2019, to gain access to WET rebate, then the expense involved to carry out this exercise will definitely cause small wineries such as ours undue hardship and more likely financial ruin.

This implementation date allows very little time, with our limited resources as small producers, to establish further domestic and international sales channels for distribution of wine. Building a domestic market in two years is virtually impossible with the way the supermarkets dictate the market and taking into account Australia’s population size versus wineries servicing the area and investing in sales representatives, which we know from experience is a bottomless money pit with minimum salary requirements of \$100k+ per annum, for anyone half decent. For us again in the Riverina, it boils down to slim margins and high overheads.

Bulk sales are an integral part of our survival as a wine producer and traditionally margins are very slim. The WET rebate is vital to our ability to be competitive in the market.

As a small wine producer and subject target of the WET rebate, we would like to know how the removal of WET rebate from bulk wine will be of benefit to our business? We see it only as a disadvantage.

If the start date of 1 July 2019 is adhered to, in relation to removal of WET rebate on bulk and unlabelled wine, then there should be a transitional period of adjustment, phased in over several years.

Ideally the best outcome for our business as a genuine small wine producer, would be continuation of current WET rebate cap of \$500,000.00 on bulk and unlabelled wine with immediate tightening of integrity rules in relation to ownership, as suggested above. Rather than penalising the genuine producers by reducing the rebate, the “weeding out” of abusers of the system would seem to be a preferable, more practical and cost effective approach.

Immediate introduction of specific anti-avoidance provisions in the WET Act to strengthen the ATO’s capacity to address schemes that inappropriately take advantage of the WET rebate is essential as these schemes are affecting the profitability of small producers generally.

In conclusion we would like to again highlight the reason the WET tax was initially introduced which was to assist and support genuine small wine producers - not the farmers, not the *large* wine producers, not the large retailers, not individual non wine producers, all of whom have jumped on the bandwagon of opportunity to exploit a loosely regulated government initiative.

We implore the government to make careful consideration of every aspect of these changes. This industry is already a very tough one for small producers.

There is a fine line in establishing these rules but if overstepped will cause destruction of small business in the winery sector and give more power to the larger commercial wineries.

Following is a summary of our position in relation to the Tightened WET rebate eligibility criteria:

Definition of Packaged Wine

- The proposed definition of container size limit of 5 litres should be amended to 50 litres at least to accommodate new initiatives and in line with the cider and perry industries.

Definition of Branded Wine

- In relation to the trademark approach, we don’t believe this or branding of wine is an appropriate measure to establish WET rebate eligibility.

Eligible Producer

- Winery ownership test for individuals, companies, trusts and partnerships should be a minimum of 20%.
- Leasing eligibility requirements should include, at the least, a long term 3-5 year lease, as an essential requirement for WET rebate eligibility.
- Only Australian wineries should be eligible for WET rebate.
- Removal of eligibility of New Zealand wine producers is an absolute “no brainer” if the government is looking to reduce budget.
- Definition of “a winery” should be very specific and include a wine processing facility, with the ability for this facility to carry out all stages of the complete winemaking process, ***including crushing, pressing & filtering and excluding packaging/bottling.***
- Bottling and packaging are not part of the winemaking process and should not be included in the eligibility criteria. Requirements for bottling line installation is crippling for small winemakers.
- The quantity of fresh grapes used in the manufacture of wine should be not less than 50 tonnes(as opposed to 5 tonnes).
- Owning a vineyard alone should not allow access to the WET rebate.

- Owning a vineyard should not be essential to meet the criteria for eligibility to the WET rebate.
- The proposed eligibility requirement to own or lease a vineyard *only* or a cellar door *only*, should not be a consideration.
- If adopted the definition of “stake in the industry” and “sound economic purposes” needs to be clarified without any doubts or potential for exploitation while always bearing in mind which entity this rebate was originally designed to support and the reasons.
- WET rebate on bulk and unlabelled wine should continue.
- Maintain current WET rebate cap of \$500,000.00 per annum for genuine eligible producers.
- Immediate tightening of integrity rules in relation to winery ownership.
- Immediate introduction of specific anti-avoidance provisions in the WET Act to strengthen the ATO’s capacity to address schemes that inappropriately take advantage of the WET rebate is essential as these schemes are affecting the profitability of small producers generally.