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Submission To Treasury's "Wine Equalisation Tax Rebate" Discussion Paper August 2015

By John Tucker & Brett Zimmermann

Late last month, Federal Treasury released its discussion paper examining the Wine Equalisation Tax Rebate (WET rebate). This paper was said to form part of the Governments Tax White Paper process and would help inform the conversation on taxation reform. The discussion paper was published seeking input from the wine industry and the tax community on a range of possible ways to sustainably support the wine industry into the future.

Based on our significant experience in acting for large, medium and small wine producers in relation to their entitlement to claim the WET rebate and defending assertions made by the Commissioner of Taxation in relation to their dealings, we thought it prudent to provide an initial response reminding Treasury of the underlying policy behind the rebate's first introduction. Late Friday we lodged our submission, and we hope to be able to provide more constructive feedback to Treasury, if and when, any draft legislative amendments are made available for detailed comment..

Our submission is reproduced below in full.

11 September 2015
General Manager
Small Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir

DISCUSSION PAPER: WINE EQUALISATION TAX REBATE – AUGUST 2015

Based on our significant experience in acting for several large, medium and small wine producers in relation to their entitlement to claim the WET producer rebate and particularly in defending assertions by the Commissioner of Taxation in relation to their dealings supporting claims for the WET producer rebate, we make the following response to the Treasury's Discussion Paper.

Whilst we do not, in the timeframe afforded, provide a detailed submission as to the direction any reform of the WET rebate system should take, nor respond to the specific questions raised in the discussion paper, we submit that Treasury (and the "WET Rebate Consultative Group") need to bear in mind the interest of all wine producers, irrespective of their size, organisational structure and chosen method of operation in making reforms to the WET rebate.

As correctly noted, the Government's original policy intent and their reasons for the introduction of the WET producer rebate scheme, was to 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". Notwithstanding the fact that the introduction of the WET producer rebate might have the consequential effect of encouraging substantial investment and reinvestment particularly in regional Australia, and contrary to the historical view expressed by the Winemakers Federation of Australia and other large wine industry stakeholders, we support the Discussion Paper's restatement of this policy intent.

The introduction of the WET producer rebate has clearly assisted small wine producers, and encouraged growth within the wine industry akin to the introduction of any industry focused rebate or grant. Whether this was the intended consequence of the legislature or not, there ought to be no criticism of producers who were intended to benefit from the initiative making full use of it, even if consciously they legitimately maximise their entitlement.

It is accepted that an artificial manipulation for the sole purpose of accessing the rebate in various ways in excess of what might reasonably have not been within the policy intent, should be prevented.

We submit that the rebate's support of smaller producers is because they are very important to the industry, as was recognised in the policy underlying its introduction. While not their exclusive domain these producers are able to, and do, dwell heavily on producing wines of extreme quality, or which are innovative in grape variety or (more likely) their blends. Their economic outcomes as producers suffer from their time and resources spent in breaking new ground in these ways, but their dedication and innovation expand the consumer base and the market. This is because when their innovation succeeds the larger producers are quick to produce, promote and sell through their distribution networks similar products. The smaller producers are not committed to price points, bulk production or large investments requiring investor returns, they are able, with the support of the WET rebate, to move rapidly to meet and expand changing consumer tastes. Their role and its sustenance in the industry are vital to the growth of the industry.

In closing, if the financial impact for the revenue as a consequence of the introduction of the WET producer rebate, and its further expansion has been significantly greater than that which was originally forecast, and/or there is considered by Treasury to be unintended use of the current provisions, we accept that legislative reform may be required. We submit however that any reform should respect the original policy drivers for the rebate.

Yours sincerely

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