

**SUBMISSION OF NEW ZEALAND WINEGROWERS ON THE IMPLEMENTATION PAPER:
WINE EQUALISATION TAX REBATE: TIGHTENED ELIGIBILITY CRITERIA**

**7 OCTOBER 2016**

**Introduction**

New Zealand Winegrowers (NZW) provides strategic leadership and researches, promotes and represents the interests of New Zealand’s grape growers and winemakers. It was established in 2002 as a joint venture between the New Zealand Grape Growers Council and the Wine Institute of New Zealand. In the year ended June 2016 NZW had 673 winery and 762 grape grower members. [[1]](#footnote-1) NZW is recognised as New Zealand’s peak wine industry organisation.

NZW welcomes the opportunity to provide a submission in response to the Australian Treasury’s implementation paper to revise the eligibility criteria for the wine equalisation tax (WET) rebate.

**New Zealand and Australia are mutually supportive wine export markets**

The New Zealand wine industry’s ambition is to grow wine exports to NZ$2 billion by 2020 through a focus on value as well as volume growth. Wine is New Zealand’s sixth largest exported good. Total exports at June 2016 were $1.57 billion, up 10% on the previous year.

Wine exports to Australia in 2016 were $362 million (53 million litres), our third largest export market after the United States and the United Kingdom.

Australia has long been the country of origin of the majority of wine imported into New Zealand, consistently representing over 70% of imports. In the year ended June 2016, 28.7 million litres of wine were imported from Australia at a value of NZ $89 million dollars. Australian wine accounts for 30% of all wine sold for consumption in New Zealand.[[2]](#footnote-2)

**Equal treatment for New Zealand producers**

The Wine Equalisation Tax (WET) rebate was extended to New Zealand producers in 2005 as a consequence of the recognition of Australia’s obligations under the *Australian-New Zealand Closer Economic Relations Trade Agreement 1983* (CER). Around 40% of our winery members export to Australia (283 as of July 2015) and so are potentially eligible apply for the WET rebate. The estimated rebate received by the New Zealand wine industry in 2013-14 was AU$25 million.[[3]](#footnote-3)

Regardless of the specifics of any changes to the Australian taxation system for wine, in the final outcome there must be equal treatment of Australian producers and New Zealand producers exporting wine to Australia. This is required under CER, and underlies New Zealand wineries’ eligibility to claim the WET rebate. That rationale is as valid today as it was in 2005.

We understand that the underlying motivations for the review include integrity concerns, particularly the creation of ‘artificial business structures to access the rebate and claim multiple rebates’, ‘the conversion of uncommercial grapes into bulk wine for the sole purpose of claiming the rebate, affecting the pricing of both grapes and wine’, and the extent to which it has become payable to big brand retailers.[[4]](#footnote-4)

NZW wishes it to be noted that we are not aware of any integrity concerns regarding our members, their legitimate use of the WET rebate or their businesses practices in exporting wine to Australia. Our industry’s success in exporting to Australia is based on the discerning Australian consumer’s demand for New Zealand wine (achieving an average price of NZ$6.83/litre), not the amount of any tax rebate provided.

However, elimination of any such integrity issues is a prudent step for both the Australian government and its wine industry, and we fully recognise Australia’s right to reform its tax system to suit its needs, while complying with CER and its other international obligations.

**NZW comments on tightened eligibility criteria**

The implementation paper outlines the proposed changes in eligibility criteria and we address the discussion questions outlined in the document. We are aware that in public consultations across Australia, and in submissions already made, a range of alternatives have been floated for government consideration. We also comment on some of those to the extent they may affect New Zealand producers.

**1. *For rebatable wine, is the proposed definition of packaged and branded wine appropriate? If a trademark is used, what types of trade marks should be permitted (e.g. exclusively licensed trademarks) and what would be the impact?***

Packaged wine

From the implementation paper the proposed position is “packaged wine is wine that is packaged in a container not exceeding 5 litres in a form fit for retail sale”.

As we understand it, this eligibility criterion is directed at concerns with:

* a practice that has developed of setting up company structures specifically to enable the claiming of the WET rebate on bulk wine sales;
* the extent to which the rebate is being claimed on sales of bulk wine within Australia; and
* a desire to reflect the original industry intent that the WET would provide financial support to smaller producers to assist their viability.

This tightened criterion would exclude bulk wine from both Australia and New Zealand producers as it is not ‘packaged in a container not exceeding 5 litres in a form fit for retail sale’. In the year ended June 2016 New Zealand exported approximately 23.5 million litres to Australia (approximately 44% of total exports to Australia) in bulk format. Although less than 10% of our winery members export bulk wine to Australia[[5]](#footnote-5), it is a legitimate business model, which may reduce production costs and increase other efficiencies.

In light of the other criteria that are being proposed, we query whether the criterion excluding bulk wine is necessary to achieve the intended goals. In particular, if the criterion discussed below regarding ownership of product from crush-to-branded-product-sale is introduced, the bulk sale exclusion may be redundant, which could preserve for smaller producers the ability to sell their wine in larger format quantities when that is the most efficient way for them to make a profitable sale.

Branded wine

From the implementation paper the proposed position is “Branded wine is wine that is labelled with a wine producer’s trademark”. This, we understand, aims to enhance the link between the eligible wine producer and the product sold – excluding, for example, wine sold under a *retailer’s* brand – as opposed to the *wine producer’s* brand.

Without seeing the detail of how this would be implemented it is difficult to comment fully. Such a restriction may well encourage Australian parties to invest in developing innovative IP ownership arrangements so as to fall within the definition.

We submit that if the trademark criterion is retained, both unregistered and registered trademarks should be equally recognised.

Although many wineries will have registered their trademarks, others – particularly smaller producers – will be relying on established brand identity (and an unregistered trademark) plus the protection offered by consumer protection laws within Australia.

It is unclear what would be gained by insisting on sale under a *registered* trademark. Requiring a registered trademark would:

* impose an additional compliance cost for new or smaller producers who have not yet engaged an IP lawyer and registered their trademarks;
* preclude legitimate (unregistered trademark brand) current sales from the ambit of the rebate, (including sales by those who have just developed a new product range that has not gone through the trademark registration process)
* reduce flexibility (as it takes considerable time to prepare, file and have accepted a trademark).

If the rule is implemented to require the producer to sell under a *registered* trademark, for New Zealand producers allowing registration of that trademark either in New Zealand or Australia ought to suffice, and would satisfy the CER equal treatment obligation.

In addition, if a requirement for trademark registration is imposed, there may, depending on the implementation date, need to be a suitable grandfathering period in which unregistered trademarks are accepted, to enable the owners of unregistered trademarks to have them fully pass through the New Zealand and/or Australian registration and opposition period.

***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?***

***Consultation paper proposed position***: *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.*

New Zealand’s wine regulatory and tax systems generally avoid imposing limits or incentives on the producer that are based on the producer’s business structures. As a result our wine industry has been able to adapt to changing commercial drivers, and consequently a wide variety of business models are found in the New Zealand wine industry. We believe it is critical that any tax structure should not be distorting of valid business models, and urge the Australian Government to consider carefully whether their proposal will continue to permit a broad range of contract winemaking and processing arrangements, complex ownership and investment structures, and will not limit future commercial innovation.

The proposed position is stated at a very abstract level, however the proposal to base it on the definition of winery in the Primary Industries (Excise) Levies Act (which would then require addressing all forms of ownership structures and interests, leases, etc) appears unwieldy. Any implementation of this would need to set out very clearly how the relevant tests were to be defined, and consider any distorting effects (such as incentives to get around the definition) that such a structure and its definitions would give rise to.

One potential eligibility structure noted in the consultation paper (and referenced in the submission of Wines of Western Australia[[6]](#footnote-6)) focuses on ownership of grapes from crushing (or from the point after crushing) and throughout the manufacturing process. If the goal is to link the rebate to the product, this would seem a fruitful approach on which to focus; because it is tied to the product, it is likely to be less amenable to manipulation. Indeed, we consider that this criterion, by itself, may well be sufficient for defining eligible products.

Any such definition would need to take account of legitimate production complexity, including, for example, the likelihood that blending may take place, and that the blending wine may have been separately purchased (it may, for example, be wine permitted in addition to the 85% regional requirement, purchased as finished wine from another region).

It is important that any eligibility criteria can be established by reference to simple record-keeping, and readily audited. This will help reduce compliance costs, and protect the integrity of the system. We note that significant paperwork is required under the current system, and that New Zealand producers must also supply additional paperwork that is not required of Australian producers. We would urge the adoption of a uniform system for all producers.

***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?***

NZW understands that there is significant Australian industry interest in bringing forward the start date of the tightened eligibility criteria.

Our principal concern is that there be clarity on the changes to eligibility criteria, certainty in any new documentation and processes to be applied, that the changes are clearly communicated to the industry, and above all that they are applied fairly and equally to New Zealand and Australian producers. Given the requirement to draft, consult on, and bring into force implementing rules, we anticipate there would be a limit to how soon the new criteria could come into effect without a significant commitment of government resources.

Depending on the changes implemented, grandfathering periods will be required too. These may need to cover:

* wine produced before the new criteria come into effect (eg, grandfathering sale of any wine produced before the effective date, including when blended into subsequent vintages); and
* a transition period of several years during which unregistered trademarks are permitted, to allow for preparation and full completion of trademark registration application processes.

We understand that industry has proposed (as per the Wines of Western Australia submission) that one option is to “maintain the overall rebate of $500,000 but refocus it so that the full amount is only available on cellar door or direct sales, and introduce a limit within the cap on the rebate available for wholesale sales at $350,000.” This, we understand, would refocus a portion of the current rebate as primarily available for smaller producers with direct sales operations. Again, we urge that any adopted criteria take account of the variety of legitimate business structures that producers may use for direct sales of their wines, including, for example, by engaging a service provider to wholly provide their cellar door operation for them. Particular consideration will also need to be given to defining ‘cellar door’ given the existence of ‘virtual’ cellar doors through internet sales, which would not appear to meet the intention to support smaller producers.

While we consider it unlikely that many New Zealand producers would satisfy the requirement to have a cellar door or direct sales operation for their eligible product in Australia, the CER equal treatment obligation does mean that the provisions must provide for them to be eligible for that refocused rebate, if they do have such a sales outlet.

**Conclusion**

We look forward to further participation in this review process. If there are any further questions or information that could be usefully provided please do not hesitate to contact us.

Yours faithfully



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1. New Zealand Winegrowers Annual Report 2016, page 31 <http://www.nzwine.com/info-centre/> [↑](#footnote-ref-1)
2. Ibid, based on 2016 figures of total domestic sales of all wine of 93 million litres and total imports from Australia of 28.7 million litres [↑](#footnote-ref-2)
3. Wine Equalisation Tax Rebate Discussion paper August 2015, page 9 [↑](#footnote-ref-3)
4. Implementation paper September 2016, page 2 [↑](#footnote-ref-4)
5. And some of those are associates of Australian businesses, so do not claim the WET rebate. [↑](#footnote-ref-5)
6. <http://www.winewa.asn.au/news-blog/wet-rebate-reform-wowa-reponse-to-wet-rebate-tightened-eligibility-implementation-paper> [↑](#footnote-ref-6)