

2 August 2004

The Hon Peter Costello, MP
Federal Treasurer
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Mr Costello

Tax Laws Amendment (Wine Producer Rebate & Other Measures) Bill 2004 (‘the Bill’)

I attach for your consideration a Paper outlining some issues raised by clients of Ernst & Young in relation to the above Bill, which was initially introduced into Parliament on 24 June 2004 and is due to be debated in the House of Representatives on 3 August 2004.

This Paper has been prepared by members of Ernst & Young’s National Wine Industry Focus Group. This Group comprises professionals from each of Ernst & Young’s main service lines (Audit & Advisory Business Services, Transaction Advisory Services and Tax). Members of our group have clients in, and/or a personal passion for, the Australian wine industry. We advise a number of Australia’s leading wine companies and are proud of the role we have played within the industry. We consider it a natural extension of our activities to date for us to be now making this submission in respect of an issue which is of such obvious significance for the Australian wine industry.

Background to the Bill

As you are aware, the most publicised aspect of the Bill is the extension to the Wine Producer Rebates arrangements, which are outlined in Schedule 1 to the Bill. We are aware of a number of broad policy concerns that have been raised in relation to these provisions. These include, but are not limited to:

- concerns that the \$290,000 per annum Wine Equalisation Tax (WET) rebate may further encourage investment in an industry already characterised by low margins and a current oversupply of grapes (however, we do note the changes within Schedule 3 to the Bill are intended to offset this to some extent);
- concern whether the potential for increased investment within the wine industry as a result of the new WET rebate amendments would constitute appropriate environmental policy;

- doubt as to whether it is economically efficient to target assistance which is of far greater benefit to smaller, typically loss efficient wine producers, when larger, typically more efficient producers, gain minimal advantage, and may even incur significantly higher costs as a result of the new measures .¹
- concerns as to whether the benefit of the rebates will be able to be retained by the intended recipients, small wineries, or will be ‘captured’ by large retailers.
- concerns that the Bill may cause Australia to have breached specific articles of the Australia and New Zealand Closer Economic Relations Trade Agreement of 1983 (,CER,) ²
- concerns that the WET producer rebate may cause Australia to be in breach of its obligations pursuant to the General Agreement on Tariff and Trade 1994 (‘GATT’).³
- whether an effective tax cut to (typically) premium wines produced by smaller producers is appropriate social/economic policy when no similar cut will be generally available for wines produced by larger producers, many of which may be considered ‘mass marketed’ and marketed at lower to middle income earners.

It is not however the purpose of this submission to consider these issues in any detail. The purpose of this submission is solely to discuss the proposed amendments from a tax technical viewpoint and from practical implementation perspective. In this regard, the enclosed Paper cites some concerns noted by members of our Wine Industry Focus Group and/or advised to us by our clients.

In summary, our group believe that the measures contained in the Bill are certainly well intentioned and generally represent sound policy initiatives, which are welcomed by ourselves and by the Australian wine industry in general. However, we also consider that the Bill, in its current form, does not properly reflect these good initiatives and positive policy initiatives, as various provisions of the Bill:

- fail to fully provide the intended taxation relief for small wineries;
- are drafted in an unacceptably broad manner, potentially applying in situations where the provisions could not have been intended to apply;
- fail to fully address all relevant means in which Wine Equalisation Tax may be avoided on the costs of bottling, etc.

¹ Some larger producers will be financially disadvantaged in the event that those States yet to make an announcement in this regard, discontinue their existing State cellar door subsidy schemes.

² See in particular comments by the Honourable Dr. N. Cullen, Deputy Prime Minister, New Zealand in a media release of 1 June 2004 which is also referred to in the General Distribution Paper prepared by Thomas John, Laws and Bills Digest Section, Department of Parliamentary Services. The specific article referred to is Article 7.2.

³ Also addressed in the General Distribution Paper cited above.

- may, contrary to the obvious intention of the provisions, create opportunities for retailers of wine to take advantage of the new provisions in order to ensure that less, rather than more, WET is paid in future.

I trust you find the comments in the enclosed Paper useful in your consideration of the Bill. I would be happy to discuss any queries or concerns you may have in relation to our comments. I can be contacted on (03) 9288 8733 (telephone), (03) 9650 5874 (facsimile) or by email on gary.funston@au.ey.com.

I have also forwarded a copy of this Paper to the Assistant Treasurer as well as the Shadow Treasurer of the Australian Labour Party.

Yours sincerely

Gary Funston
Partner

Enc.

2 August 2004

The Hon. Mal Brough, MP
Minister for Revenue and Assistant Treasurer
House of Representatives
Parliament House
CANBERRA ACT 2600

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Yours sincerely

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Partner

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2 August 2004

The Hon. Simon Crean, MP
Shadow Treasurer
House of Representatives
Parliament House
CANBERRA ACT 2600

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