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Tax Laws Amendment (2005 Measures No. 4) Bill 2005

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Tax Laws Amendment (2005 Measures No. 4) Bill 2005

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Portfolio: Treasury

Commencement: The substantive provisions and Schedules 1 to 3 of the Tax Laws Amendment (2005 Measures No. 4) Bill 2005 will commence on receipt of Royal Assent. Schedule 4 will commence on a day to be fixed by proclamation, however, provisions of this schedule which have not commenced within 12 months after having received Royal Assent, will commence on the first day after the end of those 12 months.

Purpose

The Tax Laws Amendment (2005 Measures No. 4) Bill 2005 (the Bill) contains a variety of measures which aim to:

- introduce a 30 per cent tax offset or rebate for out-of-pocket expenses incurred in relation to childcare
- make changes to the *Income Tax Assessment Act 1997*, updating the list of deductible gift recipients
- make changes to the *Income Tax Assessment Act 1936*, expanding the purposes for which the Commissioner of Taxation can disclose certain business data to the Australia Statistician, and
- extend the Australian Wine Equalisation Tax Rebate regime to New Zealand participants.

Individual measures

Child care tax offset

Background on Child Care Tax Rebate

During the 2004 election campaign the Howard Government announced in its statement *Extra Assistance for Families* that it would introduce a 30 percent Child Care Tax Rebate (CCTR) for out of pocket child care costs. The CCTR will complement the already existing Child Care Benefit (CCB) which is the Commonwealth's main form of child care subsidy. The CCB provides fee relief to parents who have their children in approved or registered child care. Families, if eligible, can claim up to 50 hours of CCB per week, per child. Further details were given in the Treasurer's Press Release No. 108 of 20 December 2004.[1]

The Child Care Tax Rebate (CCTR)

It is envisaged that the CCTR will only be available to families who are:

- in receipt of the CCB
- use approved child care, and
- who meet the CCB work/study/training test (or are otherwise eligible for up to 50 hours of CCB per week).

The essence of the CCTR is that families will be able to claim 30 percent of their out of pocket costs (that is, costs in excess of CCB payments received) for approved child care up to a maximum of $4 000 per child per annum. This amount will be indexed on an annual basis in line with movements in the Consumer Price Index. Out of pocket child care costs for the 2004-05 financial year will be able to be claimed in 2005-06 taxation returns.[2]

The CCTR is a non-refundable tax offset that can only reduce a person's tax liability to zero. Once a person's basic income tax liability has been reduced to nil, the taxpayer cannot receive the excess as a refund. The Rebate is transferable, so that any excess may be transferred to the taxpayer's spouse.[3]

When the CCTR was originally announced in September 2004 there was no limit on the amount that could be claimed per child. The Treasurer's Press Release No. 108 of 20 December 2004 announced the introduction of the $4 000 limit and also changed the starting date for claims for the CCTR from 1 January 2005 to 1 July 2004.

It is estimated that the CCTR will cost $915 million over the first four years of its operation.[4] By contrast, outlays on the Child Care Benefit (CCB) are estimated to exceed $1.6 billion in 2005-06 alone.[5]

While the announcement of the CCTR has been welcomed in terms of the provision of significant additional funding to the child care sector, there have been a number of adverse comments made about the way in which it will operate. Some of the concerns are briefly outlined below.

Will higher income families benefit the most?

It has been argued that families on higher incomes will get the highest levels of Rebate.[6] This is true and Table 1 set out below clearly shows this. However, it should be noted that the CCTR operates in tandem with the CCB (you must be receiving the CCB to get the CCTR) and because lower income families get the most CCB, it necessarily follows that the families with the largest out of pocket expenses will be those on higher incomes.

Table 1 set out below will demonstrate the interdependence of the CCB and the CCTR:

Table 1: Combined Impact of CCB and CCTR at differing Family Income Levels*

Family Adjusted Taxable Income ⁰ $	CCB received (per week) $	Out of Pocket Amount $	CCTR received (per week equivalent) $	Combined CCB and CCTR received (per week equivalent) $	% of Child Care costs covered by CCB and CCTR
30 000	144.00	56.00	16.80	160.80	80.4
50 000	112.00	88.00	26.40	138.40	69.2
70 000	73.54	126.46	37.94	111.48	55.7
100 000	24.15	175.85	52.76	76.91	38.5

* Calculations assume 1 child in Long Day Care costing $200 per week. CCB rates are as at 1 July 2005. The table was compiled by Greg McIntosh, IRS, Department of Parliamentary Services, July 2005.

⁰ Family income adjusted for various factors including fringe benefits, value of rental property losses or gains et cetera.

The Table shows the rates of the CCB and the CCTR for families on taxable incomes of $30 000 per annum, $50 000 per annum, $70 000 per annum and $100 000 per annum. The calculations in the Table assume that the families at each income level have one child under 5 years of age in full time long day care (50 hours per week) and that the weekly child care fee is $200.[7] Obviously, the calculations would change if the weekly fee was higher or lower than $200 per week and also if more than one child is receiving care.

The Table shows that families on $30 000 per year would see 80.4 percent of their long day care costs covered by CCB and CCTR. By contrast, higher income families would receive a lesser percentage of their child care costs covered by government support – 69.2 percent for families on $50 000 per year, 55.7 percent for families on $70 000 per year and 38.5 percent for families on $100 000 per year.

However, it should be noted that as the cost of childcare increases the CCTR will become more advantageous (in percentage terms) to higher income families. This is because the out of pocket costs will become a greater proportion of the overall cost of childcare.

Is there a delay in payments?

It has been noted that there will be a delay in getting the Rebate. No families will receive any benefit from the CCTR until they complete their 2005-06 taxation returns even though it applies to out of pocket child care costs incurred from 1 July 2004.

This will mean that some families will no longer have children in child care when they finally receive their Rebate. Perhaps a different method could have been used to deliver the extra subsidy to families. The use of the tax system for the CCTR and the need for a finalised reconciliation between CCB received and out of pocket expenses causes the prolonged delay before any CCTR is paid. If the subsidy was based on *estimated* out of pocket expenses and not delivered through the tax system, then such a delay could have been avoided. However, the problems experienced by the Government in recent years with underpayment and overpayment of various family benefits (essentially due to many families either over estimating or underestimating their yearly incomes) has probably led to a more cautious approach being taken with the CCTR.[8]

In what appears to be a response to the delay in receiving the CCTR, one child care provider, ABC Learning Centres, is offering a deferred payment plan that allows parents with children in ABC centres to borrow up to $4 000 per child for out of pocket child care expenses and then pay this money back at a later stage. For example, during the 2005-06 financial year an eligible family will be able to borrow up to $4 000 per child for out of pocket expenses but would then be liable to pay this amount back by 30 September 2006. Any amount left owing after that date would be subject to an 8 percent 'administration charge'. According to an ABC Centres spokeswoman, the deferred payment plan is not related to the introduction of the CCTR.[9] However, given that the CCTR has a $4 000 per child limit and is based on a 30 percent out of pocket subsidy, it is likely that some families will be attracted to the payment plan because the CCTR may offset the amount they borrow from ABC Learning Centres. The danger for families if they take up the payment plan is that the amount they get from the CCTR may not cover the full amount of the loan taken. If they consequently cannot pay back the amount owed by the due date they will then need to pay the 8 percent administration fee on the amount borrowed. The best advice for families considering the payment plan and who are counting on the CCTR to offset the amount they borrow may well be to, firstly, wait for the CCTR legislation to be passed through the Federal Parliament and, secondly, to satisfy themselves that they in fact qualify for the CCTR as per the conditions set out in the legislation.[10]

Will there be fee increases?

It has been suggested that it is possible that child care fees may rise and that much of the extra support available from the CCTR will be soaked up by these higher fees.[11] This is most likely to occur in areas where there is a high demand for child care places. Child care fees have been growing rapidly in recent years (estimated to be at double the inflation rate between 2002 and 2004) and with demand for places exceeding supply in many parts of Australia this rate of fee increase may be exacerbated by the CCTR.[12]

Will the measure overcome supply concerns?

It has also been argued that the measure will do little to increase the supply of child care places.[13] It is difficult to know whether in fact this will be the case. Indeed, it is possible that there may be some incentive effect created by the CCTR. If there is more Commonwealth support available because of the CCTR, new operators may in fact be encouraged into the sector.

Cost of the measure

The proposed measure is expected to result in the following cost to revenue:

2005-06	2006-07	2007-08	2008-09
Nil	$280 million	$305 million	$330 million

Source: Explanatory Memorandum, p. 3

Main provisions

The bulk of amendments proposed in this Bill are amendments to the *Income Tax Assessment Act 1997* (the ITAA 1997). However, the Bill also proposes to make some amendments to other legislation, including, for example, the *Tax Administration Act 1953* (the TAA).

Offset vs rebate – the dilemma of terminology

At the outset it is noted that the measure is generally referred to as the 'Child Care Tax *Rebate*', whilst the proposed legislation stipulates the measure as 'Child Care Tax *Offset*'. The term 'offset' is used because the measure is incorporated into the ITAA 1999, but it describes what has been called 'rebate' or 'credit' in the *Income Tax Assessment Act 1936*. The use of the term offset is accordingly correct, however, the term rebate can be used interchangeably.[14]

Individuals entitled to claim the tax offset

Proposed **new subsection 61-470(1)** stipulates the pool of individuals who will be entitled to claim the CCTR. Under this section, individuals will be entitled to the CCTR if the offset is claimed in one income year in relation to:

- *approved childcare* received by a child in the previous income year, which was
- provided during a *childcare base year*, and where
- there is at least one *childcare base week* for the individual and a particular child.

The italicised terms are further defined in the Bill as set out below.

Approved child care

The term *approved childcare* is defined in proposed **new section 61-475**. Child care is considered to be approved if it is child care provided by a service provider approved under section 195 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (FA(A)A 1999). Further, the proposed provision also covers the situation where a child has been absent from childcare provided by a service provider approved under section 195 of the FA(A)A 1999. Whether the CCTR will be available will then depend upon whether the sections 10 or 10A of the *A New Tax System (Family Assistance) Act 1999* (FAA 1999) will apply—if so, the period of absence is nevertheless considered to be approved child care for the purposes of the CCTR.[15]

Childcare base year

Proposed **new subsection 61-470** defines child care base year as the previous income year.

Child care base week

Proposed **new subsection 61-470(2)** defines the term child care base week. For a week to qualify as a child care base week for the purposes of the CCTR, the week must fulfil 3 requirements, including:

- it must start on a Monday in the child care base year
- the individual must be *entitled to child care benefit* for approved child care, and
- certain limits apply to the individual's *entitlement to child care benefit*, including the:
  - work/training/study test (or '50 hour limit') stipulated under section 54 of the FAA 1999 (proposed **new subparagraph 61-470(2)(c)(i)**)
  - work/disability test (or 'more than 50 limit') stipulated under section 55 of the FAA 1999 (proposed **new subparagraph 61-470(2)(c)(ii)**), or
  - 24 hour care limit provided for under section 56 of the FAA 1999 (proposed **new subparagraph 61-470(2)(c)(iii)**).

The term *entitlement to* or *entitled to child care benefit* is explained in detail in proposed **new section 61-480**.

Amount of the child care tax offset

The amount of CCTR to which an individual may be entitled is calculated on the basis of the formula contained in proposed **new section 61-485**. This proposed new section sets out 5 steps which the taxpayer has to follow in order to determine the offset amount. Amongst others, the formula uses two components which are further defined in the proposed legislation—proposed **new section 61-490** defines the term *approved child care* *fees*, whilst proposed **new section 61-495** explains the meaning of the term *child care offset limit*.

The use of unused offset amounts

As explained above, the CCTR is a form of tax offset. In general terms, a tax offset is an item that is subtracted from the tax payable on a taxpayer's taxable income.[16] The CCTR will work in the same way. Offsets must be contrasted with tax deductions which are items taken into account to determine the taxpayer's taxable income.[17]

However, the CCTR differs in one way from other tax offsets permitted under the ITAAs. A general principle underlying tax offsets is that the sum of all tax offsets allowable to a taxpayer cannot exceed the amount of tax otherwise payable. In other words, taxpayers are generally not able to carry forward any unused offsets to be set off against tax payable in future years.[18] With respect to the CCTR, proposed **new section 61-496** will provide taxpayers with the option to transfer any unused amount of CCTR to a spouse where the amount of offset exceeds the amount of income tax payable by this taxpayer. However, should the transferred excess be even higher than the income tax payable by the spouse, then the spouse cannot use the offset excess any further. In particular, any remaining excess cannot be carried forward into the next financial year.

When can the offset be claimed?

All eligible taxpayers will experience delays between becoming entitled to the CCTR and receiving the payment. The delay will be approximately between one and two years, depending upon the child care base week. The 2005 CCH Australian Master Tax Guide explained that:

> The correct amount of out-of-pocket child care expenses can only be calculated once the final reconciliation of CCB is completed. The 30% rebate will be claimed on the succeeding year's tax return. This means that the rebate entitlement for the 2004/05 year will be claimed in the return for the 2005/06 year.[19]

This delay is the result of the wording chosen for proposed new section 61-470 which, in essence, distinguishes between the entitlement to the CCTR (arising in one income year) and the year in which the child care service was received (the year preceding the year in which the entitlement arose). As indicated above, this is the effect of providing an offset to taxpayers through the tax system. The alternative to such an offset would be, for example, a cash rebate on the basis of the taxpayer's estimated tax liabilities. However, this solution would be prone to over- and under-payments with the resulting administrative difficulties of reimbursing people or trying to claim underpayments.[20]

To provide equality between income receiving taxpayers and taxpayers who are required to make Pay-as-you-go payments (PAYG) to the Commissioner, the Bill further contains consequential amendments to the *Tax Administration Act 1953* (the TAA). **Items 12** and

13 will substitute proposed new **sections 45-340** and **45-375** of the TAA, with the substituted sections providing that PAYG taxpayers must disregard the CCTR when working out their adjusted assessed taxable or withholding income. The Explanatory Memorandum explains that the amendment has been suggested:

> because it is not necessarily reasonable to assume that a taxpayer who receives a certain amount of offset in one year will have the same entitlement to the offset in the next year. PAYG instalment calculations or variations which take the offset from an earlier year into account would not necessarily be an accurate reflection of tax liability for the relevant year and might result in an over- or an under-payment of instalments.[21]

Concluding comments

The CCTR will no doubt be welcomed by many families who will benefit from this new form of child care assistance. The substantial delay between incurring out-of-pocket child care expenses and the actual receipt of the rebate is an unfortunate feature of the new arrangement, however, the decision to provide the benefit in the form of a rebate through the tax system seems reasonable considering the high compliance costs for the government which can result from other forms of benefit payments such as cash rebates.

Whether child care fees will go up as a result of the new CCTR will only be known over time as will the extent to which it has any effect on the supply of child care places. Families who may be considering the taking up of the deferred payment plan for out-of-pocket child care expenses currently being offered by ABC Learning Centres Ltd would be well advised to thoroughly check out the details of the new CCTR and how it works before committing to any such deferred payments.

Deductible gift recipients

Under Australian income tax law, taxpayers are permitted to claim income tax deductions for certain gifts to the value of $2 or more if such a gift was made to a deductible gift recipient (the DGR). To qualify as a DGR, an organisation must fall within one of the categories of organisations set out in Division 30 of the ITAA 1997, or, alternatively, be expressly listed under that Division.

Main provisions

Schedule 2 of the Bill proposes several amendments to Division 30 of the ITAA 1997, adding the Chifley Research Centre Limited, Crime Stoppers Northern Territory Program and the Rotary Club of Katoomba Inc to the list of DGRs (for example, **Schedule 2**, **items 1** and **2**).

In addition, the Bill proposes to implement the former Assistant Treasurer's announcement to ensure that the Playgroup Associations will benefit from the DGR scheme (for example, **Schedule 2**, **items 3** and **10**).[22] The extension of the DGR status to playgroups acknowledges that:

> playgroups make a significant contribution to the community which extends beyond a mere meeting group for parents and their children [… and …] will enable playgroups in Australia to continue their good work.[23]

Cost of the measure

According to the Explanatory Memorandum, the costs are generally unquantifiable, yet expected to be insignificant. The only figure expressly mentioned is the cost of adding Rotary Club of Katoomba Inc, which, according to the Explanatory Memorandum will result in a cost to revenue amounting to $200 000.[24]

Secrecy provisions

Main provisions

Schedule 3 of the Bill proposes changes to the ITAA 1936, namely changes to the secrecy provisions which enable the Commissioner for Taxation (the Commissioner) to communicate certain data collected by the Australian Taxation Office to other agencies. Under **Schedule 3**, **item 1**, proposed **new paragraphs 16(4)(ga)** and **(gb)**, the Commissioner will be permitted to provide the Australian Statistician with data which is currently protected by these secrecy provisions. The Explanatory Memorandum states that this data includes business income tax information which has been requested by the Australian Statistician to, amongst other things, develop a longitudinal database of businesses.[25]

The release of the data through the Commissioner is for the purposes of the *Census and Statistics Act 1905* which obliges the Australian Statistician and all staff of the Australian Bureau of Statistics to give an undertaking of fidelity and secrecy. This obligation should suffice to ensure the confidentiality of the communicated data.

Cost of the measure

The cost of the measure is specified as nil in the Explanatory Memorandum.[26]

Scheme to extend the wine equalisation tax rebate to New Zealand wine producers

Background

On 24 June 2004, the Australian Government introduced the Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004 (the WET Bill 2004). The WET Bill 2004 proposed changes to the *A New Tax System (Wine Equalisation Tax) Act 1999* (the WET Act) to, amongst others, introduce a wine producer rebate to off-set wine equalisation tax (the producer rebate). The maximum wine rebate available to a wine producer is $290 000. The proposed changes became law receiving Royal Assent on 31 August 2004.

Whilst this legislative measure was received positively amongst the Australian wine producers, their New Zealand counterparts and the New Zealand Government criticised the proposed wine rebate heavily. A detailed discussion of the reactions can be found in Bills Digest No. 9 of 2004-2005.[27]

The New Zealand Government argued that the wine rebate proposed to be available to Australian wine makers would violate Australia's obligations under the *Australia and New Zealand Closer Economic Relations Trade Agreement of 1983* (the CER) and under the *General Agreement on Tariffs and Trade 1994* (the GATT). Bills Digest No. 9 of 2004-2005 also contains a discussion of the arguments put forward by New Zealand in relation to the producer rebate as well as a brief overview of legal issues and possible implications of a dispute over the issue both under the CER and the GATT.[28]

The proposed amendments in this Bill aim to reach a solution to the dispute between Australia and New Zealand. The amendments will enable New Zealand wine growers to access the Australian producer rebate. The amendments will be matched by corresponding amendments to the New Zealand legislation. The Supplementary Paper Order No. 380, introduced in the New Zealand House of Representatives on 21 June 2005, made changes to the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill:

> … to enable the Inland Revenue Department to accept applications from New Zealand wine producers for producer rebates payable by the Government of Australia under the *A New Tax System (Wine Equalisation Tax) Act 1999 (Commonwealth)* and to undertake tasks associated with the verification of entitlement of claimants to those rebates.[29]

New Zealand's reactions to the proposed measures

New Zealand's Revenue Minister The Hon. Dr Michael Cullen was satisfied with the measure. In a media release dated 22 June 2005, the Minister stated that he is:

> very pleased that Australia is extending the rebate to New Zealand wine producers who export to Australia, a move that followed strong representation by the New Zealand government and is in the spirit of our Closer Economic Relations agreement.

The measures were also received positively by New Zealand's wine growers. New Zealand Winegrowers chief executive officer, Philip Gregan, has been cited as welcoming the announcement of the measures as 'great news for the industry …[which]… will mean a substantial boost for wine exporters to Australia.'[30]

Main provisions

Schedule 4, Item 9, **proposed new subsection 19-5(2)** of the *A New Tax System (Wine Equalisation Tax) Act 1999* will provide that a New Zealand wine producer will be entitled to access the Australian producer rebate if:

- the producer has been approved as a so called 'New Zealand Participant'
- the wine has been produced by the producer in New Zealand and was exported to Australia, and
- the producer or another entity paid wine tax for its taxable dealings.

Item 10 inserts **proposed new section 19-7** which determines who may be approved as a so called 'New Zealand participant' (the participant). Under **proposed new subsection 19-7(2)**, eligibility will depend upon satisfying the Australian Commissioner for Taxation (the Commissioner) that the New Zealand wine producer is a producer of rebatable wine in New Zealand and that this rebatable wine has been, or is likely to be, exported to Australia. The Commissioner will be able to make a decision on the basis of the wine producer's application, but may also consider any other information of which the Commissioner becomes aware.

The approval as a participant must be made in the form of a written instrument, which is deemed to be not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (**proposed new subsection 19-7(7)**). The Commissioner will have a broad discretion as to when the approval may take effect, including the discretion to issue retrospective and prospective approvals (**proposed new subsection 19-7(4)**).

The refusal of an application must also be in writing, and the Commissioner will be required to inform the applicant of the reasons for refusing the application. This refusal is a reviewable decision for the purposes of the Australian taxation law and can be appealed by the applicant (**proposed new subsection 19-7(6)**).

Proposed new section 19-8 will enable the Commissioner to revoke a previously issued approval as participant. Under **proposed new subsection 19-8(1)**, a provision cast in mandatory terms, the Commissioner is compelled to revoke the approval if the participant ceases to fulfil the requirements to be set forth in proposed new subsection 19-7(2). Under

proposed new subsection 19-8(3), the decision to revoke must be communicated to the previously approved participant and the Commissioner must give reasons for the decision. The revocation may become effective retrospectively or prospectively, with the decision to revoke the approval being an appealable decision.

Where the circumstances of the approved participant change in any way which would compel the Commissioner to revoke the approval, the participant must notify the Commissioner of the change (or the changes) within 21 days after the circumstances occurred (**proposed new subsection 19-9(1)**).

Item 13 adds **proposed new subsections 19-10(3)** and **(4)** which propose circumstances in which an approved participant will not be entitled to the producer rebate. These include the situation where:

- the rebatable wine was exported from Australia and, at the time of claiming the producer rebate, the participant was, or should have reasonably been, aware of the fact the wine would be exported, and
- the producer has previously been paid the producer rebate in relation to the wine.

Item 15, **proposed new subsection 19-15(1A)** provides that the approved participant is entitled to the same amount of producer rebate as the Australian counterpart, that is an amount equal to 29 per cent of the 'approved selling price of the wine'. For the purposes of the producer rebate available to approved participants, the 'approved selling price' is the selling price of the participant's wine minus any expenses which are unrelated to its production. The proposed provision provides examples of costs such as: transport to Australia, the freight and insurance for the export or fees and commissions paid to agents (**proposed new paragraph 19-15(1C)(a)**).

Comment

The proposed measure, which in essence is a subsidy to the New Zealand wine industry to bring it onto equal footing with their Australian counterparts, was received positively in New Zealand and avoided a looming trade dispute between the two countries. Over the next four years, it will cost Australia approximately:

2005-6	**2006-7**	**2007-8**	**2008-9**
$7million	$8million	$8million	$9million

Source: Explanatory Memorandum, p. 5

or $32million in revenue expenditure.

Administration and workability of the measure

The proposed measure only paves the way for New Zealand wine producers to access the wine rebate. The administrative side of this measure, which most likely will attract further costs for both countries, must be further addressed and worked out. According to a media statement issued by the Hon Dr Michael Cullen:

> Australia will assess, pay and generally administer the rebate, while New Zealand will be involved in the registration and application processes and, if necessary, carry out any domestic prosecutions for providing false information.[31]

This, however, does not answer all of the questions. For example, whilst the proposed legislation makes it clear that the Commissioner's decisions to refuse or revoke an application to become a participant are appealable, such an appeal would have to be conducted in Australia. However, this raises the question whether small and medium New Zealand participants, as their Australian counterparts likely to be the greatest beneficiaries under the wine rebate, would be able, or willing, to afford trans-Tasman dispute settlement with the Australian Tax Office.

The general criticism in relation to the wine equalisation tax still not silenced

Further, the criticism expressed by commentators in relation to the Wine Equalisation Tax generally is still alive. Some of the reactions and arguments have been explored in Bills Digest No. 9 of 2004-2005 at pp. 1-2. More recently, it has been argued that:

> Having over-encouraged investment in broadacre vineyards via tax breaks in the 1990s, now the Howard Government imposes wine equalisation tax structured in such a way that it hits mid-sized wineries - which drive most of the research and development - harder than the boutique wineries on one side or the giants on the other.[32]

Australia's international commitments—WTO and GATT

As indicated above, the introduction of the wine rebate was heavily criticised by the New Zealand government. In a speech delivered in August 2004, the Hon. Jim Sutton, New Zealand's Minister for Agriculture, Rural Affairs and Trade Negotiations, attacked the wine rebate as:

> a direct and blatant breach of one of the most fundamental principles of CER, and of the WTO – that of national treatment. It tilts the playing field in favour of Australian producers to the detriment of New Zealand producers. Clearly we cannot accept this. […] We believe the measure is a breach, not only of CER, but of Australia's WTO commitments as well.[33]

He further sounded a warning to Australia, pointing out that New Zealand 'know[s] that there are WTO alternatives if we do not make progress through the CER system.'[34]

Although the proposed measure will be able to alleviate New Zealand's concerns about Australia's wine rebate, it is not enough to safeguard Australia against disputes brought by any other World Trade Organisation (the WTO) member. Rather, as has been argued in Bills Digest No. 9 of 2004-2005 at p. 13, it is important to understand that even if Australia and New Zealand are able to resolve their disagreement diplomatically:

> … for example by introducing an exemption from WET for New Zealand wines, GATT compliance will not be achieved. Due to the multi-lateral nature of the GATT, a violation could still be alleged by any other WTO member with a significant interest in wine production so that Australia, having resolved the issue with New Zealand, may still be exposed to further disputes with other WTO members.[35]

At pp. 9-11, Bills Digest No. 9 of 2004-2005 contains a discussion of the relevant law and possible arguments used by WTO members against the wine rebate to which the reader may refer.

This issue may have become even more relevant after the recent release of a WTO Discussion Paper dealing with WTO-inconsistent direct and indirect taxes.[36] Commenting upon the release of this discussion paper, the Australian Financial Review noted recently that the paper:

> …says recent decisions, particularly the $US4 billion ruling against a tax break offered by the United States to American companies with export operations, should make countries think twice before offering discriminatory incentives.[37]

A country's taxation policy, even though it is still understood to be an expression of the country's fiscal sovereignty, cannot be seen in isolation anymore.[38] The cases decided under the WTO and referred to in the WTO Discussion paper,[39] as well as recent cases in the European Union,[40] are powerful reminders that with the emergence of bi- and multilateral trade agreements, countries will be required more often to consider their tax policies in light of their international obligations.

Endnotes

1 P. Costello, Treasurer, *New early start date for child care rebate*, media release, No. 108, Canberra, 2004.

2 See discussion at pages 4-5 below.

3 See discussion at page 8 below.

4 Explanatory Memorandum, *Tax Laws Amendment (2005 Measures No. 4) Bill 2005.*

5 Department of Family and Community Services, *Portfolio Budget Statements 2005-06*, p. 165.

6 National Association of Community Based Children's Services, *Government's child care rebate will reward the rich*, media release, Northcote, 8 December 2004..

7 The 2004 Australian Government Census of Childcare Services found the average long day care fees in 2004 were approximately $210 per week.

8 See also the discussion at page 8 below.

9 K-A. Walsh, Child-care scheme a debt trap for parents, *Sun Herald*, 24 July 2005, p. 24.

10 For more detail, see further discussion at pages 8-9 below.

11 National Association of Community Based Children's Services, op. cit. See also: S. Peatling, 'Child-care fees soar – if you can find it', Sydney Morning Herald, 1 July 2005, p. 1.

12 S. Marris, 'Childcare costs growing at double the inflation rate', The Australian, 1 July 2005, p. 5.

13 Peatling, op. cit.

14 See generally CCH, Australian Master Tax Guide, CCH Australia Limited, Sydney, 2005, p. 773.

15 Sections 10 or 10A of the *A New Tax System (Family Assistance) Act 1999* deal with the partial or total absence of a child from childcare, for example due to sickness, and set out the possible effects such absence may have depending upon the circumstances of the child's absence.

16 ibid.

17 See generally R. L. Deutsch, M. L. Friezer, I. G. Fullerton, M. M. Gibson, P. J. Hanley, T. J. Snape, *Australian Tax Handbook*, Thomson ATP, Sydney, 2005, p. 862.

18 Australian Master Tax Guide, op. cit.

19 Deutsch, op. cit., p. 818.

20 See the discussion above at page 4 – 5 of this Bill Digest.

21 Explanatory Memorandum, op. cit., p. 19.

22 Senator H. Coonan, former Assistant Treasurer, *Donations to playgroups to be tax deductible*, media release, no. C059/05 of 25 June 2004.

23 ibid.

24 Explanatory Memorandum, op. cit., p. 4.

25 ibid., p. 25.

26 ibid., p. 5.

27 T. John, 'Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004', *Bills Digest*, No. 9, Department of Parliamentary Services, Canberra, 2004-2005, pp. 1-3.

28 ibid., pp. 7-13.

29 Explanatory note to the Supplementary Order Paper No. 380, Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill, introduced 21 June 2005. See also J. McSoriley, Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Bill 2005 (Supplementary Order Paper 2005 No. 380 (Government)), Bills Digest, No. 1287, New Zealand Parliamentary Library, Wellington, 21 June 2005.

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