



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

No. 160, 2005

**An Act to amend the law relating to taxation, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 160, 2005

An Act to amend the law relating to taxation, and for related purposes

[Assented to 19 December 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (2005
Measures No. 4) Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|--|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 19 December 2005 |
| 2. Schedules 1 to 3 | The day on which this Act receives the Royal Assent. | 19 December 2005 |
| 3. Schedule 4 | A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | |

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Child care tax offset

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Section 13-1 (table item headed “child”)

Before:

first child..... Subdivision 61-I

insert:

child care..... Subdivision 61-IA

2 After Subdivision 61-I

Insert:

Subdivision 61-IA—Child care tax offset

Guide to Subdivision 61-IA

61-460 What this Subdivision is about

You are entitled to a tax offset for an income year for child care fees if you meet certain conditions.

The amount of the offset is 30% of the difference between the amounts for each child, in the previous year, of child care fees incurred and child care benefit entitlement. This is subject to an indexed cap of \$4,000 per child.

If the amount of the tax offset exceeds the amount of your income tax liability, the excess may be transferred to your spouse as a tax offset.

Table of sections

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Operative provisions

61-465 Object of this Subdivision

The object of this Subdivision is to provide a *tax offset to assist families with the cost of child care.

Entitlement to the child care tax offset

61-470 Who is entitled to the tax offset

- (1) You are entitled to a *tax offset for an income year (the *child care offset year*) for *approved child care provided in the previous income year (the *child care base year*) if:
 - (a) you are an individual; and
 - (b) there is at least 1 *child care base week for you and a particular child in the child care base year.

Example: If there is at least 1 child care base week for you and a child in the 2004-2005 income year (the child care base year), you are entitled to a tax offset for the child for the 2005-2006 income year (the child care offset year).

- (2) A week is a *child care base week* for you and a particular child in the child care base year if:
 - (a) the week starts on a Monday in the child care base year (whether or not it finishes in the child care base year); and

- (b) you are *entitled to child care benefit for *approved child care provided for the child in the week; and
- (c) one or more of the following limits applies under Subdivision G of Division 4 of Part 3 of the *A New Tax System (Family Assistance) Act 1999* to your *entitlement to child care benefit for that week:
 - (i) the 50 hour limit (see section 54 of that Act);
 - (ii) the more than 50 hour limit (see section 55 of that Act);
 - (iii) the 24 hour care limit for a particular session (or sessions) of care (see section 56 of that Act).

Note: If one of the paragraph (c) limits applies, you satisfy the paragraph (c) condition even if you have not used approved child care for the child during the week up to the full extent of the limit.

- (3) If you are *entitled to child care benefit subject to a limit of only 20 hours for a week under subsection 53(3) of the *A New Tax System (Family Assistance) Act 1999*, the condition mentioned in paragraph (2)(c) is not satisfied for the week.

61-475 Meaning of *approved child care*

- (1) ***Approved child care***, for a particular child, is care provided for the child by a child care service that is approved under section 195 of the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- (2) ***Approved child care*** is also taken to have been provided by such a child care service for the child during a period of absence from care if section 10 or 10A of the *A New Tax System (Family Assistance) Act 1999* applies to the period of absence.

Note: If a child is absent from care during a period for which child care fees are incurred for the child, but neither of sections 10 or 10A of the *A New Tax System (Family Assistance) Act 1999* apply to the period of absence, ***approved child care*** would not be taken to have been provided for the child. As a result, child care fees incurred for the child during the period would not count as ***approved child care fees*** for which the child care tax offset is payable (see sections 61-485 and 61-490).

61-480 Meaning of *entitled to child care benefit* and *entitlement to child care benefit*

- (1) You are *entitled to child care benefit* for *approved child care for a child as provided in this section, and not otherwise. The amount of your *entitlement to child care benefit* for the care is as provided in this section, and not otherwise.

Note: Child care benefit is a benefit provided for by the *A New Tax System (Family Assistance) Act 1999*.

General rule—actual determination of entitlement must have been made

- (2) You are only entitled to child care benefit for the care if you are so entitled because of a determination made under section 51B or 52E of the *A New Tax System (Family Assistance) (Administration) Act 1999*. The amount of your entitlement to child care benefit for the care is the amount worked out under that Act by reference to that determination.

Entitlement based on fee reductions under a determination of conditional entitlement

- (3) However, if:
- (a) a determination (the *conditional determination*) has been made under section 50F of the *A New Tax System (Family Assistance) (Administration) Act 1999* that you are conditionally eligible for child care benefit by fee reduction for the care; and
 - (b) under section 219A of that Act as it applies in relation to the determination, fees for the care have been reduced;
- you are, subject to subsections (4) and (5), taken to be entitled to child care benefit for the care. The amount of your entitlement to child care benefit for the care is the amount of the reduction.
- (4) Despite subsection (3), if:
- (a) a determination (the *final determination*) is subsequently made under section 51B of the *A New Tax System (Family Assistance) (Administration) Act 1999* of your entitlement to be paid child care benefit by fee reduction for the care; and
 - (b) the amount (the *final determination amount*) of your entitlement to child care benefit for the care, as worked out

by reference to the final determination, differs from the amount of the reduction referred to in paragraph (3)(b); the amount of your entitlement to child care benefit for the care is taken to be, and always to have been, the final determination amount.

- (5) Despite subsection (3), if a determination is subsequently made under section 51C of the *A New Tax System (Family Assistance) (Administration) Act 1999* that you are not entitled to be paid child care benefit by fee reduction for the care, you are taken not to be, and never to have been, entitled to be paid any child care benefit for the care.

Entitlement does not end with receipt

- (6) In applying this Act at a particular time in relation to yourself and the care, the fact that you have, by that time, received some or all of your entitlement to child care benefit for the care does not mean that you are no longer to be regarded as being entitled to child care benefit for the care.

Later determinations, variations and substitutions to be taken into account

- (7) If, after applying this Act at a particular time in relation to yourself and the care, a determination mentioned in this section is made or varied, or is set aside and a new determination substituted, the question of your entitlement to child care benefit for the care is to be redetermined taking account of the making, variation or substitution.

Amount of the child care tax offset

61-485 Amount of the child care tax offset

The amount of your *tax offset for a child care offset year is worked out in this way:

| |
|-------------------------|
| <i>Method statement</i> |
|-------------------------|

- Step 1.* For each child in relation to whom you are entitled to the *tax offset for the child care offset year, work out amounts in accordance with steps 2, 3 and 4.
- Step 2.* Work out the total amount of your *approved child care fees for the child in each *child care base week for you and the child in the child care base year.
- Step 3.* Work out the total amount of your *entitlement to child care benefit for *approved child care for the child in each *child care base week for you and the child in the child care base year.
- Step 4.* Work out the lesser of the following amounts (the ***child offset***) for the child:
- (a) the amount worked out using the formula:
$$30\% \times \left(\text{Step 2 amount} - \text{Step 3 amount} \right)$$
 - (b) the *child care offset limit for the child care base year.
- Step 5.* Total the child offsets for each of those children. The result is the amount of your *tax offset for the child care offset year.

61-490 Component of formula—*approved child care fees*

General rule—approved child care fees for a child care base week for you and a child

- (1) The amount of your ***approved child care fees*** for a child for a *child care base week for you and the child is the amount of fees for *approved child care for the child during the week that are incurred by:
- (a) you; or
 - (b) your partner, within the meaning of the *A New Tax System (Family Assistance) Act 1999*, during the week.

Subject to subsection (2), it does not matter whether you are *entitled to child care benefit for all of that care.

Special rule if the week is also a child care base week for your partner and the child

- (2) If the *child care base week is also a child care base week for your partner and the child, your approved child care fees for the week do not include any fees incurred by your partner for *approved child care, for the child in the week, for which you are not *entitled to child care benefit.

If fee reduction applies, count unreduced amount of fees

- (3) If fees for *approved child care have been reduced under section 219A of the *A New Tax System (Family Assistance) (Administration) Act 1999*, then for this section, a reference to the fees incurred for the care is taken to be a reference to the fees that would have been incurred for the care if they had not been so reduced.

61-495 Component of formula—*child care offset limit*

- (1) The *child care offset limit* for the 2004-2005 child care base year is \$4,000. The limit is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

- (2) In applying the indexation formula in subsection 960-275(1) to determine the child care offset limit for the 2005-2006 child care base year or a later child care base year, the relevant financial year is the child care base year rather than the child care offset year for which the offset is being calculated.

Transfer of entitlement to unused balance of child care tax offset

61-496 Entitlement to transfer

- (1) This section applies if the amount of *tax offset for a child care offset year to which you are entitled under section 61-470 exceeds the amount of income tax that you would have to pay for the year if:

- (a) you had not got the tax offset; and
 - (b) you had not got any tax offsets that are of a higher priority under subsection 65-25(2).
- (2) You may transfer your entitlement to so much of the *tax offset as is equal to the excess to an individual who was your *spouse on the last day of the child care offset year, subject to subsection (5).
- (3) If you make a transfer:
- (a) the transferee is entitled to so much of the *tax offset for the child care offset year as is equal to the excess; and
 - (b) you are no longer entitled to so much of the tax offset as is equal to the excess.
- (4) A transfer cannot be revoked.
- (5) If you die during the child care offset year, the reference to your *spouse in subsection (2) is taken to be a reference to your spouse just before your death.

61-497 Form of transfer

- (1) A transfer has effect only if it is in the *approved form.
- (2) The *approved form must require the inclusion of:
- (a) your *tax file number; and
 - (b) the tax file number of the transferee; and
 - (c) the transferee's signed consent to:
 - (i) the transfer; and
 - (ii) the disclosure of his or her tax file number in the form.
- (3) Subsection (2) does not limit what may be required by the *approved form.

3 Subsection 65-25(2) (after table item 2)

Insert:

| | | |
|----|-----------------------|-------------------|
| 2A | child care tax offset | Subdivision 61-IA |
|----|-----------------------|-------------------|

4 Section 960-265 (at the end of the table)

Add:

| | | |
|---|-------------------------|----------------|
| 4 | child care offset limit | section 61-495 |
|---|-------------------------|----------------|

5 Subsection 995-1(1)

Insert:

approved child care has the meaning given by section 61-475.

6 Subsection 995-1(1)

Insert:

approved child care fees has the meaning given by section 61-490.

7 Subsection 995-1(1)

Insert:

child care base week has the meaning given by section 61-470.

8 Subsection 995-1(1)

Insert:

child care offset limit has the meaning given by section 61-495.

9 Subsection 995-1(1)

Insert:

entitled to child care benefit has the meaning given by
section 61-480.

10 Subsection 995-1(1)

Insert:

entitlement to child care benefit has the meaning given by
section 61-480.

Part 2—Consequential amendments

A New Tax System (Family Assistance) (Administration) Act 1999

11 After section 169

Insert:

169A Disclosure of information—child care tax offset

- (1) The Secretary may, for the purposes of the administration of the child care tax offset provided by Subdivision 61-IA of the *Income Tax Assessment Act 1997*, give the Commissioner of Taxation information about people, including their tax file numbers, acquired by an officer in the exercise of the officer's powers, or the performance of the officer's duties or functions, under the family assistance law.
- (2) Information (including tax file numbers) given to the Commissioner of Taxation under subsection (1) may be used only for the purposes of the administration of the child care tax offset provided by Subdivision 61-IA of the *Income Tax Assessment Act 1997*.
- (3) This section does not limit the powers of the Secretary under section 168.

Taxation Administration Act 1953

12 Section 45-340 in Schedule 1 (method statement, step 1)

Repeal the step, substitute:

| |
|--|
| <p><i>Step 1.</i> The income tax payable on your *adjusted taxable income, or on your *adjusted withholding income, for the *base year is worked out disregarding any *tax offset under:</p> |
|--|

- (a) Subdivision 61-H of the *Income Tax Assessment Act 1997* (the private health insurance tax offset); or
- (b) Subdivision 61-IA of the *Income Tax Assessment Act 1997* (the child care tax offset); or
- (c) Subdivision 61-J of the *Income Tax Assessment Act 1997* (the 25% entrepreneurs' tax offset); or
- (d) Subdivision 61-K of the *Income Tax Assessment Act 1997* (the mature age worker tax offset); or
- (e) section 205-70 of the *Income Tax Assessment Act 1997* (the tax offset for *franking deficit tax liabilities); or
- (f) section 159N of the *Income Tax Assessment Act 1936* (the tax offset for certain low income earners); or
- (g) section 159T of the *Income Tax Assessment Act 1936* (the tax offset for superannuation contributions made for a spouse).

13 Section 45-375 in Schedule 1 (method statement, step 1)

Repeal the step, substitute:

- Step 1.* The income tax payable on your *adjusted assessed taxable income for the variation year is worked out disregarding any *tax offset under:
- (a) Subdivision 61-H of the *Income Tax Assessment Act 1997* (the private health insurance tax offset); or
 - (b) Subdivision 61-IA of the *Income Tax Assessment Act 1997* (the child care tax offset); or
 - (c) Subdivision 61-K of the *Income Tax Assessment Act 1997* (the mature age worker tax offset); or

Schedule 1 Child care tax offset
Part 2 Consequential amendments

- (d) section 205-70 of the *Income Tax Assessment Act 1997* (the tax offset for *franking deficit tax liabilities); or
- (e) section 159N of the *Income Tax Assessment Act 1936* (the tax offset for certain low income earners); or
- (f) section 159T of the *Income Tax Assessment Act 1936* (the tax offset for superannuation contributions made for a spouse).

Part 3—Application

14 Application of certain amendments

- (1) The amendments made by items 1 to 10 of this Schedule apply in relation to assessments for income years that start on or after 1 July 2005.
- (2) The amendment made by item 12 of this Schedule applies in relation to the calculation of an entity's adjusted tax for base years that are income years starting on or after 1 July 2005.
- (3) The amendment made by item 13 of this Schedule applies in relation to the calculation of an entity's adjusted assessed tax for variation years that are income years starting on or after 1 July 2005.

Schedule 2—Deductible gift recipients

Income Tax Assessment Act 1997

1 Subsection 30-40(2) (at the end of the table)

Add:

| | | |
|-------|-------------------------------------|---|
| 3.2.8 | The Chifley Research Centre Limited | the gift must be made after 19 May 2005 |
|-------|-------------------------------------|---|

2 Subsection 30-45(2) (at the end of the table)

Add:

| | | |
|--------|---|---|
| 4.2.31 | Crime Stoppers Northern Territory Program | the gift must be made after 13 March 2005 |
|--------|---|---|

3 Subsection 30-70(2) (at the end of the table)

Add:

| | | |
|-------|---|---|
| 8.2.4 | Playgroup NSW (Inc). | the gift must be made after 14 April 2005 |
| 8.2.5 | Playgroup WA (Inc) | the gift must be made after 13 March 2005 |
| 8.2.6 | Playgroup Queensland Incorporated | the gift must be made after 14 April 2005 |
| 8.2.7 | Playgroup Tasmania Inc. | the gift must be made after 14 April 2005 |
| 8.2.8 | Playgroup Association Northern Territory Incorporated | the gift must be made after 24 May 2005 |
| 8.2.9 | ACT Playgroups Association Incorporated | the gift must be made after 14 April 2005 |

4 Section 30-95 (table item 11.2.3)

Repeal the item.

5 Section 30-105 (at the end of the table)

Add:

| | | |
|---------|---|--|
| 13.2.10 | The Rotary Club of Katoomba Inc—Convict Roadbuilders & Pioneer Memorial Wall Fund | the gift must be made after 24 May 2005 and before 25 May 2006 |
|---------|---|--|

6 Subsection 30-315(2) (after table item 2AA)

Insert:

| | | |
|------|--|------------|
| 2AAA | ACT Playgroups Association Incorporated | item 8.2.9 |
|------|--|------------|

7 Subsection 30-315(2) (after table item 30A)

Insert:

| | | |
|-----|---------------------------------|------------|
| 30B | Chifley Research Centre Limited | item 3.2.8 |
|-----|---------------------------------|------------|

8 Subsection 30-315(2) (after table item 40B)

Insert:

| | | |
|-----|--|-------------|
| 40C | Crime Stoppers Northern Territory Program | item 4.2.31 |
|-----|--|-------------|

9 Subsection 30-315(2) (table item 55)

Repeal the item.

10 Subsection 30-315(2) (after table item 86)

Insert:

| | | |
|-----|--|------------|
| 86A | Playgroup Association Northern Territory Incorporated | item 8.2.8 |
| 86B | Playgroup NSW (Inc) | item 8.2.4 |
| 86C | Playgroup Queensland Incorporated | item 8.2.6 |
| 86D | Playgroup Tasmania Inc | item 8.2.7 |
| 86E | Playgroup WA (Inc) | item 8.2.5 |

11 Subsection 30-315(2) (after table item 97)

Insert:

| | | |
|--------|--|--------------|
| 97AAAA | Rotary Club of Katoomba Inc— Convict Roadbuilders & Pioneer Memorial Wall Fund | item 13.2.10 |
|--------|--|--------------|

12 Application

The amendment made by item 4 applies in relation to gifts made on or after 20 May 2005.

Schedule 3—Secrecy provisions

Income Tax Assessment Act 1936

1 Paragraph 16(4)(ga)

Repeal the paragraph, substitute:

- (ga) the Australian Statistician for the purposes of the *Census and Statistics Act 1905*, being the following kind of information about a person who is an employer (whether or not the person is also a business person):
 - (i) the name and address of the person;
 - (ii) the name or description of the industry, trade, business, calling, service, profession or occupation in which the person is an employer;
 - (iii) the number of males and the number of females who are employees of the person;
- (gb) the Australian Statistician for the purposes of the *Census and Statistics Act 1905*, being the following kind of information about a person who is a business person (whether or not the person is also an employer):
 - (i) the name and address of the person;
 - (ii) the name or description of the business;
 - (iii) such other information in relation to the business as is requested by the Australian Statistician;

2 Subsection 16(4AA)

Omit “paragraph (4)(ga)”, substitute “paragraphs (4)(ga) and (gb)”.

3 Application

The amendments made by this Schedule apply to communications of information after the day on which this item commences (regardless of whether the information was acquired before or after that commencement).

Schedule 4—Wine equalisation tax

Part 1—Main amendments

A New Tax System (Wine Equalisation Tax) Act 1999

1 Section 17-5 (table item CR9)

Repeal the item, substitute:

| | | | | |
|-----|------------------|--|---|---|
| CR9 | *Producer rebate | An *assessable dealing is made in circumstances that entitle you to a producer rebate under Division 19. | the amount of the producer rebate under Division 19 | immediately before the end of the financial year in which the assessable dealing occurs |
|-----|------------------|--|---|---|

2 Subsection 17-10(1)

After “a *wine tax credit”, insert “(other than a claim for a *producer rebate under subsection 19-5(2))”.

3 Subsection 17-10(2)

After “a *wine tax credit”, insert “(other than a claim for a *producer rebate under subsection 19-5(2))”.

4 After subsection 17-10(2)

Insert:

- (2A) If you are a *New Zealand participant, you may make a claim for a *wine tax credit under subsection 19-5(2) in the *approved form. The claim must be accompanied by such supporting evidence as the Commissioner requires.
- (2B) The Commissioner may determine, by legislative instrument, the time or times during which claims for *wine tax credits under subsection 19-5(2) may be made.

5 Subsection 17-10(3)

After “subsection (2)”, insert “or (2A)”.

6 Section 17-15

After “subsection 17-10(2)”, insert “or (2A)”.

7 Section 17-20

After “subsection 17-10(2)”, insert “or (2A)”.

8 Section 19-5

Before “You are entitled”, insert “(1)”.

9 At the end of section 19-5

Add:

- (2) You are entitled to a *producer rebate for *rebtable wine for a *financial year if:
 - (a) you are approved as a *New Zealand participant; and
 - (b) the wine was *produced by you in *New Zealand and exported to *Australia; and
 - (c) you, or another entity, paid wine tax for a *taxable dealing in the wine during the financial year.

10 After section 19-5

Insert:

19-7 Approval as New Zealand participant

- (1) You may apply, in writing, in the *approved form, to the Commissioner for approval as a *New Zealand participant.
- (2) You are eligible to be approved as a *New Zealand participant if the Commissioner is satisfied, on the basis of your application and any other relevant information of which the Commissioner becomes aware, that:
 - (a) you are a *producer of *rebtable wine in *New Zealand; and
 - (b) the rebtable wine has been, or is likely to be, exported to *Australia.
- (3) If the Commissioner, after consideration of your application, is satisfied of the matters referred to in subsection (2) in relation to you, the Commissioner must, by written instrument, approve you as a *New Zealand participant.

- (4) The Commissioner must decide the date of effect of that approval and include that date in the instrument of approval. That date may be the day of the decision, or a day before or after that day.

Note: Deciding under this subsection the date of effect of any approval of an entity as a New Zealand participant is a reviewable wine tax decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

- (5) If the Commissioner approves you as a *New Zealand participant, the Commissioner must, by notice in writing sent to you, inform you that you have been so approved and of the date from which the approval has effect.

- (6) If the Commissioner, after consideration of your application, is not satisfied of the matters referred to in subsection (2) in relation to you, the Commissioner must:

- (a) by written instrument, refuse to approve you as a *New Zealand participant; and
- (b) by notice in writing sent to you, inform you that the Commissioner has so decided and of the reasons for that decision.

Note: Refusing to approve an entity as a New Zealand participant is a reviewable wine tax decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

- (7) An instrument of approval under subsection (3) and an instrument refusing approval under subsection (6) are not legislative instruments.

19-8 Revoking an approval as a New Zealand participant

- (1) If, at any time, the Commissioner becomes aware that you cease to satisfy the criteria for approval as a *New Zealand participant, the Commissioner must, by written instrument, revoke your approval.

Note: Revoking under this subsection the approval of an entity as a New Zealand participant is a reviewable wine tax decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

- (2) The Commissioner must decide the date of effect of that revocation and include that date in the instrument of revocation. That date may be the day of the decision, or a day before or after that day.

Note: Deciding under this subsection the date of effect of any revocation of an approval as a New Zealand participant is a reviewable wine tax decision (see Division 7 of Part VI of the *Taxation Administration Act 1953*).

- (3) If the Commissioner revokes your approval as a *New Zealand participant, the Commissioner must, by notice in writing sent to you, inform you that the Commissioner has revoked your approval, indicate the date from which the revocation has effect and of the reasons for revoking that approval.
- (4) An instrument of revocation under subsection (1) is not a legislative instrument.

19-9 Notification of changed circumstances

- (1) An entity approved as a *New Zealand participant must notify the Commissioner in writing of any circumstances under which the Commissioner must revoke the approval. The notification must be given to the Commissioner within 21 days after the circumstances occurred.
- (2) A notification under subsection (1) is not a legislative instrument.

11 Subsection 19-10(1)

Omit “for a dealing in wine because of paragraph 19-5(b)”, substitute “because of paragraph 19-5(1)(b) for a dealing in wine”.

12 Subsection 19-10(2)

After “*producer rebate”, insert “because of subsection 19-5(1)”.

13 At the end of section 19-10

Add:

- (3) You are not entitled to a *producer rebate because of subsection 19-5(2) for a dealing in wine *produced in *New Zealand if:
 - (a) the wine is exported from *Australia after that dealing; and
 - (b) at the time of a claim for producer rebate in respect of that wine you were, or should reasonably have been, aware that the wine had been, or would be, so exported.
- (4) You are not entitled to a *producer rebate because of subsection 19-5(2) for a dealing in wine *produced in *New Zealand if a producer rebate has previously been paid in respect of the wine.

14 Subsection 19-15(1)

After “you are entitled”, insert “because of subsection 19-5(1)”.

15 After subsection 19-15(1)

Insert:

(1A) The amount of the *producer rebates to which you are entitled because of subsection 19-5(2) for the wine for the *financial year is an amount equal to 29% of the approved selling price for the wine.

(1B) In working out the amount of the *producer rebate to which you are entitled because of subsection 19-5(2), any component used to determine the approved selling price that is expressed in a currency other than Australian currency is to be treated as if it were an amount of Australian currency worked out in the manner determined, by legislative instrument, by the Commissioner.

(1C) In this section:

approved selling price, in relation to wine sold by a *New Zealand participant, means the participant's selling price for the wine net of any expenses unrelated to the production of the wine in *New Zealand, including but not limited to:

- (a) expenses relating to transportation, freight and insurance, agent's fees and any other costs associated with exportation of the wine from New Zealand and importation of the wine into *Australia; and
- (b) New Zealand and Australian taxes including customs duties.

16 Subsection 19-15(2)

After "a *financial year", insert "under this Division".

17 Subsection 19-15(3)

After "the financial year", insert "under this Division".

18 Subsection 19-25(1)

After "claim", insert "because of subsection 19-5(1)".

19 After subsection 19-25(1)

Insert:

(1A) If the sum of the amounts of *producer rebates that you claim because of subsection 19-5(2) for the *financial year exceeds the amount of the producer rebates to which you are entitled in respect

of that financial year, you are liable to pay an amount equal to that excess.

20 Subsection 19-25(2)

After “the financial year”, insert “under this Division”.

21 Subsection 19-25(4)

After “*financial year, and,”, insert “except in the case of a *New Zealand participant,”.

22 At the end of section 19-25

Add:

- (5) For the purposes of the application of Part VI of the *Taxation Administration Act 1953*, a *producer rebate under subsection 19-5(2) is to be treated as a net amount.

23 Section 33-1

Insert:

New Zealand means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue.

24 Section 33-1

Insert:

New Zealand participant means an entity that is approved as a New Zealand participant under section 19-7.

25 Application

The amendment made by item 9 of this Schedule applies only to wine on which wine tax has been paid for a taxable dealing during the financial year starting on 1 July 2005 or on a subsequent 1 July.

Part 2—Consequential amendments

Taxation Administration Act 1953

26 Subsection 62(2A)

Repeal the subsection, substitute:

- (2A) Each of the following decisions is a *reviewable wine tax decision* under the Wine Tax Act:

| Reviewable wine tax decisions | | |
|--------------------------------------|---|--|
| Item | Decision | Provision of this Part under which decision is made |
| 1 | disallowing the whole or a part of your claim for a wine tax credit | section 17-45 |
| 2 | deciding the date of effect of your approval as a New Zealand participant | section 19-7 |
| 3 | refusing to approve you as a New Zealand participant | section 19-7 |
| 4 | revoking your approval as a New Zealand participant | section 19-8 |
| 5 | deciding the date of effect of revocation of your approval as a New Zealand participant | section 19-8 |

27 Transitional provision

If:

- (a) an application has been made for the review of a decision that was a reviewable wine tax decision within the meaning of subsection 62(2A) of the *Taxation Administration Act 1953* as in force immediately before the repeal of that subsection; and
- (b) that review has not been completed before the day of that repeal;

Schedule 4 Wine equalisation tax
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that review may continue to be dealt with, on and after that day, as if it had been sought under subsection 62(2A) of the *Taxation Administration Act 1953* as amended by item 26 of this Schedule.

[*Minister's second reading speech made in—
House of Representatives on 23 June 2005
Senate on 11 August 2005*]

(129/05)
