Treasury Laws Amendment (2017 Measures No. 4) Act 2017

No. 94, 2017

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Treasury Laws Amendment (2017 Measures No. 4) Act 2017

No. 94, 2017

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

[*Assented to 23 August 2017*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (2017 Measures No. 4) Act 2017*.

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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**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	23 August 2017
2. Schedules 1 and 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 October 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Wine equalisation tax producer rebate

Part 1—Main amendments

Division 1—Amendments

A New Tax System (Wine Equalisation Tax) Act 1999

1 At the end of Division 5

Add:

5-50 Purchaser quoting on purchase from producer—failure to deal according to quote

(1) This section applies if:
  (a) you *purchased wine under quote from the *producer of the wine; and
  (b) in your *quote you did not state that you have the intention of dealing with the wine in one of the following ways:
    (i) a way described in paragraph 13-5(1)(c) or (d);
    (ii) by sale to an entity that will quote for the sale; and
  (c) you cause an *assessable dealing with the wine that is a dealing in a way described in subparagraph (b)(i) or (ii).

(2) Sections 7-5 (Exemption for dealings that are GST-free supplies etc.) and 7-10 (Exemptions based on quoting) do not apply to the *assessable dealing mentioned in paragraph (1)(c).

(3) For the purposes of this Division:
  (a) disregard paragraph (g) of the definition of ***application to own use*** in section 33-1; and
  (b) treat the matter referred to in that paragraph as being an application to own use.

2 Section 13-30

Omit “or a ground for a *CR6 wine tax credit”.

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3 After section 13-30

Insert:

13-32 Quote not effective if entity to whom quote is made purchased the wine for a price that included wine tax

A *quote is not effective for the purposes of applying subsection 7-10(1) to a particular sale if the entity to which the quote is made purchased the wine for a *price that included wine tax.

4 Subsection 17-5(3) (table items CR2 and CR3)

Repeal the items.

5 Subsection 17-5(3) (table item CR4)

Repeal the item, substitute:

CR4	Avoiding double tax on the same wine	You have become liable to wine tax on an *assessable dealing (the ***current dealing***) in relation to wine, but have *borne wine tax on all of the wine before the time of the current dealing.	the wine tax previously *borne on the wine	time of the current dealing

6 Subsection 17-5(3) (table items CR5, CR6, CR10, CR11 and CR13)

Repeal the items.

7 Section 17-37

Repeal the section.

8 Section 19-5

Repeal the section, substitute:

19-5 Entitlement to producer rebates

(1) You are entitled to a *producer rebate for *rebatable wine for a *financial year if:

(a) you are the *producer of the wine; and

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(b) either:
  (i) you are liable to wine tax for an *assessable dealing in the wine during the financial year; or
  (ii) you would have been liable to wine tax for an assessable dealing in the wine during the financial year had the purchaser not *quoted for the sale at or before the time of the sale; and
(c) if subparagraph (b)(ii) applies—the purchaser's *quote did not state an intention of dealing with the wine in a way described in subparagraph 5-50(1)(b)(i) or (ii); and
(d) you satisfy the requirements in subsection (3) (ownership of source product) for at least 85% of the wine (measured by volume); and
(e) the wine is in a *container that meets the requirements in subsection (7) at the time of the assessable dealing.

(2) You are entitled to a *producer rebate for *rebatable wine for a *financial year if:
(a) you are approved as a *New Zealand participant; and
(b) you are the *producer of the wine; and
(c) the wine was produced in *New Zealand and exported to the indirect tax zone; and
(d) you, or another entity, paid wine tax for an *assessable dealing in the wine during the financial year; and
(e) you satisfy the requirements in subsection (3) (ownership of source product) for at least 85% of the wine (measured by volume); and
(f) the wine is in a *container that meets the requirements in subsection (7) at the time of the assessable dealing.

(3) You satisfy the requirements in this subsection for wine if you own the *source product for the wine throughout the period:
(a) starting:
  (i) if that source product is covered by paragraph (4)(a), (b), (c) or (d)—immediately before the crushing of that source product; or
  (ii) if that source product is covered by paragraph (4)(e) or (f)—immediately before the initial fermentation of that source product; and

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(b) ending when the wine is placed in a *container that meets the requirements in subsection (7).

(4) The ***source product*** for wine is:

(a) for *grape wine—the fresh grapes from which the grape wine is produced; or

(b) for *grape wine products—the fresh grapes from which the grape wine products are produced; or

(c) for *fruit or vegetable wine—the fruit or vegetables from which the fruit or vegetable wine is produced; or

(d) for *cider or perry—the apples or pears from which the cider or perry is produced; or

(e) for *mead—the honey from which the mead is produced; or

(f) for *sake—the rice from which the sake is produced.

(5) You are taken to have satisfied the requirements in subsection (3) for wine, to the extent that the wine is composed of any of the following substances that you have caused to be added to the wine:

(a) grape spirit;

(b) brandy;

(c) alcohol used in preparing vegetable extracts (including spices, herbs and grasses);

(d) ethyl alcohol from a source as specified in the regulations for the purposes of paragraph 31-4(b), 31-5(b), 31-6(b) or 31-7(b);

(e) water;

(f) if no more than 10% of the wine (measured by volume) is grape juice concentrate that you have caused to be added to the wine—that grape juice concentrate;

(g) if no more than 1% of the wine (measured by volume) is another substance that you have caused to be added to the wine—that other substance.

(6) For the purposes of paragraph (5)(g), treat substances that are similar to each other as being the same substance.

(7) A *container in which wine is placed meets the requirements in this subsection if:

(a) any of the following requirements are satisfied:

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(i) the container is suitable for *retail sale and the volume of the container does not exceed 5 litres;

(ii) if the wine is *cider or perry—the container is suitable for retail sale of portions of the contents of the container and the volume of the container does not exceed 51 litres; and

(b) the container in which the wine is placed at the time of the *assessable dealing is branded by a trade mark applied to the container; and

(c) the trade mark identifies, or can readily be associated with, the *producer of the wine; and

(d) the trade mark is owned by:

(i) the producer of the wine; or

(ii) an entity that is an *associated producer of the producer of the wine for the *financial year in which the assessable dealing occurs because it satisfies the requirement in paragraph 19-20(1)(a) (on the assumption that it were a producer); and

(e) the trade mark is:

(i) a trade mark (within the meaning of the *Trade Marks Act 1995*); or

(ii) if paragraphs (2)(a), (b) and (c) apply—a trade mark (within the meaning of the *Trade Marks Act 2002* of New Zealand); and

(f) the trade mark satisfies any of the following requirements:

(i) the trade mark is a registered trade mark (within the meaning of the *Trade Marks Act 1995*);

(ii) if paragraphs (2)(a), (b) and (c) apply—the trade mark is a registered trade mark (within the meaning of the *Trade Marks Act 2002* of New Zealand);

(iii) an application for registration of the trade mark under the *Trade Marks Act 1995* satisfies the requirements under that Act for the application to be pending (within the meaning of that Act);

(iv) if paragraphs (2)(a), (b) and (c) apply—an application for registration of the trade mark under the *Trade Marks Act 2002* of New Zealand satisfies requirements under that Act that are equivalent to the requirements mentioned in subparagraph (iii);

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(v) the trade mark has been used by the producer of the wine throughout the period beginning on 1 July 2015 and ending at the time of the assessable dealing.

9 Section 19-10

Repeal the section.

10 Section 19-17

Repeal the section.

11 Section 19-28

Repeal the section.

12 Section 19-30

Repeal the section.

13 Paragraph 31-15(4)(b)

Omit "quote; or", substitute "quote.".

14 Paragraph 31-15(4)(c)

Repeal the paragraph.

15 Section 33-1 (definition of *CR1*)

Omit "CR2, CR3", substitute "CR4, CR7".

16 Section 33-1 (definition of *earlier producer rebate*)

Repeal the definition.

17 Section 33-1 (definition of *producer*)

Repeal the definition, substitute:

producer, of wine, means:

(a) an entity that *manufactures the wine; or

(b) an entity that satisfies the following requirements:

(i) the entity (the ***first entity***) supplies another entity with the *source product from which the wine is manufactured;

(ii) the other entity manufactures the wine on behalf of the first entity.

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18 Section 33-1

Insert:

source product has the meaning given by subsection 19-5(4).

Division 2—Application and transitional provisions

19 Application

(1) The amendments made by this Part apply to assessable dealings in wine in the 2018-19 financial year and later financial years.

(2) The amendments made by this Part also apply to assessable dealings in wine if:

(a) in a case where the source product for the wine is covered by paragraph 19-5(4)(a), (b), (c) or (d) of the *A New Tax System (Wine Equalisation Tax) Act 1999*—the crushing of the source product for more than 50% of the wine (measured by volume) occurred on or after 1 January 2018; or

(b) in a case where the source product for the wine is covered by paragraph 19-5(4)(e) or (f) of that Act—the initial fermentation of the source product for more than 50% of the wine (measured by volume) started on or after 1 January 2018.

20 Transitional—85% ownership requirement taken to be satisfied for certain assessable dealings

(1) Subitems (4) and (5) apply in relation to an assessable dealing in wine if:

(a) in a case where the source product for the wine is covered by paragraph 19-5(4)(a), (b), (c) or (d) of that Act—the crushing of the source product for more than 50% of the wine (measured by volume) occurred before 1 January 2018; and

(b) in a case where the source product for the wine is covered by paragraph 19-5(4)(e) or (f) of that Act—the initial fermentation of the source product for more than 50% of the wine (measured by volume) started before 1 January 2018; and

(c) the producer of the wine owned the wine throughout the period:

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(i) starting immediately before 1 January 2018; and
(ii) ending at the time of the assessable dealing; and
(d) the assessable dealing is covered by subitem (2) or (3).

(2) The assessable dealing is covered by this subitem if:
(a) the time of the dealing is before 1 July 2023; and
(b) the wine is in a container at the time of the dealing, and any of the following requirements are satisfied:
(i) that container clearly displays the vintage date of the wine;
(ii) the wine had been placed in that container before 1 July 2018.

(3) The assessable dealing is covered by this subitem if:
(a) the time of the dealing is before 1 July 2025; and
(b) on 1 January 2018:
(i) the wine was in the process of being manufactured into fortified wine; or
(ii) the wine was fortified wine, and was already in the container in which it was placed at the time of the assessable dealing.

(4) Treat the requirements in paragraph 19-5(1)(d) and 19-5(2)(e) of the *A New Tax System (Wine Equalisation Tax) Act 1999* as being satisfied in relation to the assessable dealing in the wine.

(5) Despite item 19, the amendment made by items 10, 11 and 16 of this Schedule do not apply in relation to the wine.

21 Transitional—producer taken to own the source product for certain wine

(1) Subitems (2) and (3) apply in relation to an assessable dealing in wine if the following requirements are satisfied:
(a) the wine is fortified wine;
(b) the fortified wine was manufactured using wine (the ***stored wine***) that was stored in tanks or in barrels (but not in bottles) immediately before 1 January 2018;
(c) the producer of the fortified wine owned the stored wine immediately before 1 January 2018.

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(2) Treat the producer of the fortified wine as satisfying the requirements in subsection 19-5(3) of the *A New Tax System (Wine Equalisation Tax) Act 1999* for the stored wine.

(3) Despite item 19, the amendment made by items 10, 11 and 16 of this Schedule do not apply in relation to the fortified wine.

22 Definitions

In this Division:

commencement time means the time this item commences.

fortified wine means wine that meets the requirements for fortified wine set out in clauses 3 to 7 of Standard 4.5.1 (Wine Production Requirements) (as registered on the Federal Register of Legislation and as in force at the commencement time), assuming that the Standard applied to wine manufactured in or outside of Australia.

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Part 2—Maximum producer rebate amendments

A New Tax System (Wine Equalisation Tax) Act 1999

23 Subsections 19-15(2) and (3)

Omit “$500,000”, substitute “$350,000”.

24 Subsection 19-25(2)

Omit “$500,000”, substitute “$350,000”.

25 Application

The amendments made by this Part apply to assessable dealings in wine in the 2018-19 financial year and later financial years.

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Part 3—Other amendments

A New Tax System (Wine Equalisation Tax) Act 1999

26 Subsection 19-20(1)

Omit "the end of", substitute "any time during".

27 Application

(1) The amendment made by this Part applies to assessable dealings in wine in financial years that start on or after the commencement of this item.

(2) For the purposes of subsection 19-20(1) of the *A New Tax System (Wine Equalisation Tax) Act 1999*, treat a producer as an associated producer of another producer for a financial year if:

- (a) the financial year:
  - (i) started at a time before the commencement of this Part; and
  - (ii) ended at a time after the commencement of this Part; and
- (b) the requirements in paragraphs (a), (b) or (c) of that subsection are satisfied at any time during the period:
  - (i) starting on the day of commencement of this Part; and
  - (ii) ending on the last day of the financial year.

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Schedule 2—Income tax relief for transfers within a fund to a MySuper product

Income Tax Assessment Act 1997

1 Subsection 40-340(1) (table item 7, column headed "Type of CGT roll-over")

Omit "MySuper product", substitute "*MySuper product".

2 Section 311-1

Repeal the section, substitute:

311-1 What this Division is about

This Division provides tax relief for certain entities if a member's accrued default amount is required to be transferred to a MySuper product.

If the transfer is to a MySuper product in another complying superannuation fund, a trustee of a complying superannuation fund, a life insurance company, or a trustee of a pooled superannuation trust, that satisfies certain conditions can:

(a) choose to transfer a loss; or

(b) choose an asset roll-over; or

(c) choose to transfer a loss and choose an asset roll-over.

If the transfer is to a MySuper product in the same complying superannuation fund, a trustee of the complying superannuation fund, a life insurance company, a trustee of a pooled superannuation trust, or the trustee of an interposed trust, that satisfies certain conditions can choose an asset roll-over.

Note 1: This Division will be repealed on 2 July 2019: see Part 3 of Schedule 1 to the *Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013*.

Note 2: Part 2C of the *Superannuation Industry (Supervision) Act 1993* provides rules about MySuper products.

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3 Section 311-5

Omit "MySuper products in other complying superannuation funds", substitute "*MySuper products".

4 Section 311-10 (heading)

Repeal the heading, substitute:

311-10 Certain entities can choose transfer of losses, asset roll-overs, or both for transfers between funds

5 Paragraph 311-10(2)(c)

Omit "units in the entity", substitute "units in the trust".

6 After section 311-10

Insert:

311-12 Certain entities can choose asset roll-overs for transfers within a fund

(1) If an *arrangement is made for which the conditions in this section are satisfied, a trustee of a *complying superannuation fund, a *life insurance company or a trustee of a trust (the ***transferring entity***) can choose an asset roll-over.

Entity's assets must support interests in a fund

(2) The first condition is satisfied if, just before the *arrangement was made:

(a) for an entity that is a trustee of a *complying superannuation fund (the ***original fund***)—its assets included assets other than:

(i) a *complying superannuation life insurance policy; or

(ii) units in a *pooled superannuation trust; or

(b) for an entity that is a *life insurance company—a complying superannuation life insurance policy issued by the entity was held by a complying superannuation fund (the ***original fund***); or

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(c) for an entity that is a trustee of a pooled superannuation trust—units in the trust were held by a complying superannuation fund (the ***original fund***); or

(d) for an entity that is the trustee of a trust (other than a trustee for which paragraph (c) is satisfied)—all or substantially all of the units in the trust were wholly owned, directly or indirectly (through one or more interposed entities), by one or more of the following:

(i) a trustee of a complying superannuation fund (the ***original fund***);

(ii) a life insurance company that has issued a complying superannuation life insurance policy that, just before the arrangement was made, was held by a complying superannuation fund (the ***original fund***);

(iii) a trustee of a pooled superannuation trust that has issued units that, just before the arrangement was made, were held by a complying superannuation fund (the ***original fund***).

Transfer of accrued default amount

(3) The second condition is satisfied if:

(a) under the *arrangement at a particular time (the ***completion time***), the original fund attributes to a *MySuper product an *accrued default amount of a person who is a member (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and

(b) the amount is so attributed as a result of an election made under paragraph 29SAA(1)(a) of that Act.

Investment structures of default product and MySuper product must be substantially the same

(4) The third condition is satisfied if:

(a) the investment structure of the class of beneficial interest to which the *accrued default amount is attributed just before the completion time; and

(b) the investment structure of the *MySuper product;

are substantially the same.

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Choice relates to period from 29 June 2015 to 1 July 2017

(5) The fourth condition is satisfied if the completion time occurs during the period beginning on 29 June 2015 and ending on 1 July 2017.

7 Section 311-15

Omit "The transferring entity", substitute "If section 311-10 applies, the transferring entity".

8 Paragraph 311-20(4)(b)

Omit "transferring entity", substitute "trust".

9 Section 311-40 (heading)

Repeal the heading, substitute:

311-40 Assets roll-over—transfers between funds

10 Subsection 311-40(1)

Omit "The transferring entity can choose", substitute "If section 311-10 applies, the transferring entity can choose under that section".

11 Subparagraph 311-40(1)(b)(i)

Before "the continuing fund", insert "a trustee of".

12 Subparagraph 311-40(1)(b)(ii)

Before "a *pooled superannuation trust", insert "a trustee of".

13 Subsection 311-40(2)

Omit all the words before paragraph (a), substitute:

(2) This subsection applies to an asset (an ***original asset***) if the asset is an asset of the transferring entity just before the *arrangement was made, and:

14 Paragraphs 311-40(2)(a), (b) and (c)

Omit "entity choosing under Subdivision 311-B", substitute "transferring entity".

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15 After section 311-40

Insert:

311-42 Assets roll-over—transfers within a fund

(1) If section 311-12 applies, the transferring entity can choose under that section an asset roll-over for an asset in relation to which, under the *arrangement, a *CGT event happens if:
  (a) subsection (2) applies to the asset; and
  (b) subsection (3) applies to the CGT event.

(2) This subsection applies to an asset (an ***original asset***) if the asset is an asset of the transferring entity just before the *arrangement was made, and:
  (a) in a case where the transferring entity is a trustee of a *complying superannuation fund—the asset is reasonably attributable to the *accrued default amount of the member; or
  (b) in a case where the transferring entity is a *life insurance company—the asset is reasonably attributable to:
    (i) the accrued default amount of the member; and
    (ii) a *complying superannuation life insurance policy issued by the transferring entity and held by the original fund; or
  (c) in a case where the transferring entity is a trustee of a *pooled superannuation trust—the asset is reasonably attributable to:
    (i) the accrued default amount of the member; and
    (ii) units in a pooled superannuation trust issued by the transferring entity and held by the original fund; or
  (d) in a case where the transferring entity is a trustee of a trust (other than a trustee for which paragraph 311-12(2)(c) is satisfied)—the asset is reasonably attributable to the accrued default amount of the member.

(3) This subsection applies to a *CGT event if an asset (the ***received asset***) becomes an asset of one of the following (the ***receiving entity***) as a result of the CGT event:
  (a) a trustee of the original fund;
  (b) a *life insurance company with which a *complying superannuation life insurance policy is held by the original fund just after the completion time;

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(c) a trustee of a *pooled superannuation trust in which units are held by the original fund just after the completion time;

(d) a trustee of a trust in which all or substantially all of the units are wholly owned, directly or indirectly (through one or more interposed entities), just after the completion time by one or more of the following:

(i) a trustee of the original fund;

(ii) a life insurance company with which a complying superannuation life insurance policy is held by the original fund just after the completion time;

(iii) a trustee of a pooled superannuation trust in which units are held by the original fund just after the completion time.

16 Section 311-45

Omit "If the roll-over is chosen", substitute "If a roll-over is chosen under Subdivision 311-B".

17 Before subsection 311-50(1)

Insert:

(1A) This section applies if a roll-over is chosen under Subdivision 311-B.

18 Subsections 311-55(1) and (2)

Omit "the roll-over", substitute "a roll-over chosen under Subdivision 311-B".

19 Subsection 995-1(1)

Insert:

MySuper product has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

20 Application of amendments

The amendments made by this Schedule apply in relation to the attribution or transfer of accrued default amounts on or after 29 June 2015.

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[*Minister's second reading speech made in—*
House of Representatives on 22 June 2017
Senate on 16 August 2017]

(139/17)

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