



Tax Laws Amendment (Wine Producer Rebate and Other Measures) Act 2004

No. 129, 2004

**An Act about tax relating to wine and capital
allowances for grapevines, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

Contents

1	Short title	1
2	Commencement	2
3	Schedule(s)	2
Schedule 1—Wine producer rebates		3
	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>	3
Schedule 2—Compliance improvement measures		8
	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>	8
Schedule 3—Capital Allowances for grapevines		10
	<i>Income Tax Assessment Act 1997</i>	10
Schedule 4—Technical amendment		14
	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>	14



Tax Laws Amendment (Wine Producer Rebate and Other Measures) Act 2004

No. 129, 2004

An Act about tax relating to wine and capital allowances for grapevines, and for related purposes

[Assented to 31 August 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Wine Producer Rebate and Other Measures) Act 2004*.

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.	31 August 2004
2. Schedule 1	1 October 2004.	1 October 2004
3. Schedule 2	The day on which this Act receives the Royal Assent.	31 August 2004
4. Schedule 3	1 October 2004.	1 October 2004
5. Schedule 4	The day on which this Act receives the Royal Assent.	31 August 2004

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

A New Tax System (Wine Equalisation Tax) Act 1999

1 Division 19

Repeal the Division, substitute:

Division 19—Producer rebates

19-1 What this Division is about

Wine producers are entitled to a rebate for certain dealings in wine. The rebate is provided in the form of a wine tax credit.

Note: Credit ground CR9 is producer rebates.

19-5 Entitlement to producer rebates

You are entitled to a *producer rebate for *rebatable wine for a *financial year if you are the *producer of the wine and:

- (a) you are liable to wine tax for a *taxable dealing in the wine during the financial year; or
- (b) you would have been liable to wine tax for a dealing in the wine during the financial year had the purchaser not *quoted for the sale at or before the time of the sale.

19-10 Exceptions

- (1) You are not entitled to a *producer rebate for a dealing in wine because of paragraph 19-5(b) if the purchaser notifies you at or before the time of purchase that the purchaser intends to make a *supply of the wine that will be *GST-free.
- (2) You are not entitled to a *producer rebate for a dealing in wine for which you are liable to wine tax if you have claimed a *wine tax credit, or a wine tax credit subsequently arises for you, for the dealing (except because of a producer rebate).

19-15 Amount of producer rebates

- (1) The amount of the *producer rebates to which you are entitled for the wine for the *financial year is:
 - (a) for *wholesale sales—29% of the *price (excluding wine tax and *GST) for which the wine was sold; and
 - (b) for *retail sales and *AOUs—29% of the *notional wholesale selling price of the wine.
- (2) The maximum amount of *producer rebates to which a *producer is entitled for a *financial year is \$290,000.
- (3) However, if the *producer is an *associated producer of one or more other producers for a *financial year, the maximum amount of *producer rebates to which those producers are entitled as a group for the financial year is \$290,000.

19-20 Associated producers

- (1) A *producer is an ***associated producer*** of another producer for a *financial year if, at the end of that financial year:
 - (a) the producer would be *connected with the other producer if subsection 152-30(8) of the ITAA 1997 were omitted; or
 - (b) the producer:
 - (i) is under an obligation (whether formal or informal); or
 - (ii) might reasonably be expected;
to act in accordance with the directions, instructions or wishes (however communicated) of the other producer in relation to the first producer's financial affairs; or
 - (c) the other producer:
 - (i) is under an obligation (whether formal or informal); or
 - (ii) might reasonably be expected;
to act in accordance with the directions, instructions or wishes (however communicated) of the first producer in relation to the other producer's financial affairs.
- (2) 2 *producers are ***associated producers*** if each of them:
 - (a) is under an obligation (whether formal or informal); or
 - (b) might reasonably be expected;

to act in accordance with the directions, instructions or wishes (however communicated) of the same third entity in relation to their financial affairs.

- (3) A *producer is an ***associated producer*** of another producer if:
- (a) the first producer:
 - (i) is under an obligation (whether formal or informal); or
 - (ii) might reasonably be expected;
to act in accordance with the directions, instructions or wishes (however communicated) of a third producer in relation to the first producer's financial affairs; and
 - (b) the third producer:
 - (i) is under an obligation (whether formal or informal); or
 - (ii) might reasonably be expected;
to act in accordance with the directions, instructions or wishes (however communicated) of the other producer in relation to the third producer's financial affairs.

19-25 Excess claims

- (1) If the sum of the amounts of *producer rebates that you claim for *tax periods during the *financial year exceeds the amount of the *producer rebates to which you are entitled in respect of the financial year, you are liable to pay an amount equal to that excess.
- (2) Subsection (3) applies if a *producer is an *associated producer of one or more other producers for a *financial year and the *producer rebates claimed by those producers as a group for the financial year is more than \$290,000.
- (3) Each *producer member of the group is jointly and severally liable to pay an amount equal to the excess. However, none of the individual producer members is liable to pay an amount that exceeds the sum of the amounts of *producer rebates that that producer claimed for the *financial year.
- (4) An amount payable under this section is to be treated as if it were wine tax payable at the end of the *financial year, and, for the purposes of Part 5, were attributable to the last tax period of the financial year.

Note: The main effect of treating the amount as if it were wine tax is to apply the collection and recovery rules in Part VI of the *Taxation Administration Act 1953*.

19-30 Obligation of purchasers

A person is guilty of an offence if:

- (a) the person purchases wine from a *producer and *quotes for the purchase; and
- (b) the person intends, at the time of the purchase, to make a supply of the wine that will be *GST-free; and
- (c) the person does not notify the producer, in the *approved form, of that intention at or before the time of the purchase.

Maximum penalty: 20 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

2 Section 33-1 (definition of *annual rebatable turnover*)

Repeal the definition.

3 Section 33-1

Insert:

associated producer has the meaning given by section 19-20.

4 Section 33-1

Insert:

connected with has the meaning given by section 152-30 of the ITAA 1997.

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

Repeal the definition, substitute:

producer, of *rebatable wine, means an entity that *manufactures the wine, or supplies to another entity the grapes, other fruit, vegetables or honey from which the wine is manufactured.

6 Section 33-1 (definition of *producer's licence*)

Repeal the definition.

6A Section 33-1 (definition of *rebatable wine*)

Omit “or *mead”, substitute “, *cider or perry, *mead or *sake”.

7 Application

The amendments made by this Schedule apply to dealings in wine made on or after 1 October 2004.

8 Transitional provisions

- (1) The amount of producer rebate for a producer of rebatable wine under the *A New Tax System (Wine Equalisation Tax) Act 1999* (as in force immediately before the commencement of this Schedule) for dealings in wine made on or after 1 July 2004 and before 1 October 2004 is the amount worked out under section 19-10 of that Act (as so in force) as if 30 September 2004 were the end of a financial year.
- (2) The maximum amount of producer rebate for a producer, or a group of associated producers, of rebatable wine under the *A New Tax System (Wine Equalisation Tax) Act 1999* (as in force after the commencement of this Schedule) for the 2004-05 financial year is \$217,500.

Schedule 2—Compliance improvement measures

A New Tax System (Wine Equalisation Tax) Act 1999

1 Section 5-5 (after table item AD2e)

Insert:

AD2f	*retail sale, in the course of any business, of wine that is placed in *containers at a time after wine tax became payable on the wine by a person other than the seller	seller	time of sale	the *notional wholesale selling price
------	--	--------	--------------	---------------------------------------

1A Section 5-5 (after table item AD12e)

Insert:

AD12f	*retail sale, in the course of any business, of wine that is placed in *containers at a time after wine tax became payable on the wine by a person other than the seller	seller	time of sale	the *notional wholesale selling price
-------	--	--------	--------------	---------------------------------------

2 After section 17-35

Insert:

17-37 Clawback of CR10 wine tax credit on later sale

- (1) A *wine tax credit under *CR10 in relation to wine that is *exported is subject to the condition that you are liable to pay an amount equal to the credit if:

- (a) the wine is returned to Australia; and
 - (b) the *local entry of the wine is not taxable because of:
 - (i) paragraph 7-5(b) (as it operates because of section 42-10 of the *GST Act); or
 - (ii) section 7-25; and
 - (c) you later sell the wine by *retail sale or there is a later *AOU of the wine.
- (2) The amount is to be treated as if it were wine tax that became payable by you at the time of the later sale or later *AOU of the wine, and, for the purposes of Part 5, were attributable to the *tax period in which the later sale or later AOU happened.

Note: The main effect of treating the amount as if it were wine tax is to apply the collection and recovery rules in Part VI of the *Taxation Administration Act 1953*.

3 Application

The amendment made by item 1 of this Schedule applies to wine that is placed in containers after the commencement of this Schedule.

Schedule 3—Capital Allowances for grapevines

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “capital allowances”)

Omit “, horticultural plants and grapevines”, substitute “and horticultural plants”.

2 Section 12-5 (table item headed “grape vines”)

Repeal the item.

3 Section 40-10 (table item 1.5)

Repeal the item, substitute:

- 1.5 *Primary production depreciating assets* Subdivision 40-F
- You can deduct amounts for capital expenditure on:
- *water facilities* over 3 income years; or
 - *horticultural plants* over a period that relates to the effective life of the plant.

4 Subsection 40-425(2)

Omit “(including a grapevine)”.

5 Subsection 40-425(5)

Omit “(including a grapevine)”.

6 Section 40-510

Omit “, horticultural plants or grapevines”, substitute “or horticultural plants”.

7 Section 40-515 (heading)

Repeal the heading, substitute:

40-515 Water facilities and horticultural plants

8 Paragraphs 40-515(1)(b) and (c)

Repeal the paragraphs, substitute:

(b) a *horticultural plant.

9 Subsection 40-515(1) (note 1)

Omit “, 40-545 and 40-550”, substitute “and 40-545”.

10 Subsection 40-525(3)

Repeal the subsection.

11 Section 40-530 (heading)

Repeal the heading, substitute:

**40-530 When a water facility or horticultural plant starts to decline
in value**

12 Section 40-530

Omit “, *horticultural plant or grapevine”, substitute “or horticultural
plant”.

13 Section 40-530 (table item 3)

Repeal the table item.

14 Section 40-550

Repeal the section.

15 Subsection 40-555(3) (heading)

Repeal the heading, substitute:

Horticultural plants

16 Subsection 40-555(3)

Omit “or a grapevine”.

17 Section 40-565 (heading)

Repeal the heading, substitute:

40-565 Extra deduction for destruction of a horticultural plant

18 Subsection 40-565(1)

Repeal the subsection, substitute:

- (1) You can deduct the amount worked out under subsection (2) for a *horticultural plant for an income year if its *effective life is 3 years or more and it is destroyed during the income year while you own it and use it for *commercial horticulture.

19 Subsection 40-565(2) (method statement)

Repeal the method statement, substitute:

Method statement

- Step 1.* Work out the total of the amounts you could have deducted under this Subdivision for the *horticultural plant for the period:
- (a) starting when the plant could first be used for *commercial horticulture; and
 - (b) ending when it was destroyed;
- assuming that, during that period, you satisfied a condition in section 40-525 for the plant and used it for commercial horticulture.
- Step 2.* Subtract from the capital expenditure that is attributable to the establishment of the *horticultural plant:
- (a) the result from step 1; and
 - (b) any amount you received (under an insurance policy or otherwise) for the destruction.
- The remaining amount (if any) is your deduction under subsection (1).

20 Subsection 40-565(3)

Omit “or 40-550”.

21 Section 40-575 (heading)

Repeal the heading, substitute:

40-575 Getting tax information if you acquire a horticultural plant

22 Subsection 40-575(1)

Repeal the subsection, substitute:

- (1) If you begin to satisfy a condition in section 40-525 for a
*horticultural plant, you may give the last entity (if any) that
satisfied such a condition for the plant a written notice requiring
the entity to give you any or all of the following information:
 - (a) the amount of establishment expenditure for the plant;
 - (b) if the entity used the plant's *effective life to work out the
decline in value of the plant—its effective life and the day on
which it could first be used for *commercial horticulture.

23 Subsection 40-575(6)

Omit “or grapevine”.

24 Subparagraph 40-840(2)(d)(ii)

Omit “including grapevines”.

25 Application

The amendments made by this Schedule do not apply to a grapevine:

- (a) for which an entity has satisfied a condition in subsection
40-525(3) of the *Income Tax Assessment Act 1997* (as in
force immediately before the commencement of this
Schedule) before 1 October 2004; and
- (b) that the entity first used in a primary production business for
the purpose of producing assessable income before 1 October
2004; and
- (c) for which the entity has deducted or can deduct an amount
worked out under section 40-550 of that Act (as so in force).

Schedule 4—Technical amendment

A New Tax System (Wine Equalisation Tax) Act 1999

1 Subsection 3-5(3) (table item 4)

Repeal the table item.

*[Minister's second reading speech made in—
House of Representatives on 24 June 2004
Senate on 9 August 2004]*

(127/04)
