Australian Government
Australian Taxation Office

Wine Equalisation Tax Ruling

Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand

Contents Para

This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

You can rely on this publication (excluding appendices) to provide you with protection from interest and penalties in the following way. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Summary – what this ruling is about

1. The *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) imposes a tax on sales, importations and certain other dealings with wine which take place on or after 1 July 2000. The tax on wine is referred to in this Ruling as WET.

2. This Ruling explains how the WET producer rebate operates for producers of wine in New Zealand that have their wine exported to Australia. It explains who is eligible to claim the rebate, how the rebate is calculated and when and how a claim for the rebate may be made.

3. Unless otherwise stated, all legislative references in this Ruling are to the WET Act or the *A New Tax System (Wine Equalisation Tax) Regulations 2000* (WET Regulations).

4. [Omitted.]

5. [Omitted.]

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Date of effect¶
<#>This Ruling explains the Commissioner's view of the law as it applied from 1 July 2005. You can rely upon this ruling on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).¶
Note 1 The Addendum to this Ruling that issued on 6 July 2011, explains our view of the law as it applies from 1 July 2005.¶
Note 2 The Addendum to this Ruling that issued on 30 April 2014 explains our view of the law as it applies:¶
<#>both before and after its date of issue to the extent that it deals with the treatment of marketing and promotional fees;¶
<#>on and from 10 December 2012 to the extent that it aligns with the view expressed in WETR 2009/2 in relation to amendments made to the producer rebate provisions of the WET Act, that came into effect on 10 December 2012;¶
<#>both before and after its date of issue to the extent that it aligns with the view expressed in WETR 2009/2 and clarifies the Commissioner's view with respect to what happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed;¶
<#>where it is aligned with the view expressed in WETR 2009/2 in relation to amendments made to the *A New Tax System (Goods and Services Tax) Act 1999*, the WET Act and the TAA as a result of the *Indirect Tax Laws Amendment (Assessment) Act 2012*, which introduced a self-assessment regime for indirect taxes and applies:¶
<#>to payments of refunds that relate to tax periods starting on or after 1 July 2012; or¶
...

Background

How does the WET work?

6. The broad aim of the WET Act is to impose WET on dealings with wine in Australia. WET is applied to both Australian produced wine and imported wine. Dealings which attract WET are called assessable dealings. These can include selling wine, using wine, or making a local entry of imported wine at the customs barrier.

7. WET is normally a once only tax designed to fall on the last wholesale sale. It is calculated at the rate of 29% of the taxable value of the dealing.[1]

8. [Omitted.][2]

9. [Omitted.][3]

10. Refer to Wine Equalisation Tax Ruling WETR 2009/1 for a detailed discussion on how WET works.

10A. This Ruling reflects changes made to the WET Act by *Treasury Laws Amendment (2017 Measures No.4) Act 2017.*

Producer rebates

11. A rebate of WET is available for producers of rebatable wine that are registered or required to be registered for GST in Australia.

12. [Omitted.][4]

13. From 1 July 2005, access to the producer rebate was extended to eligible New Zealand wine producers that have their wine exported to Australia. New Zealand wine producers may apply to the Australian Commissioner of Taxation to become approved New Zealand participants. If approved, a producer can claim the New Zealand wine producer rebate where it manufactures wine in New Zealand, has the wine exported to Australia, meets certain eligibility requirements, and can demonstrate WET has been paid on the wine in Australia.

14. The rebate entitlement is 29% of the approved selling price (in Australian dollars) of the wine received by the New Zealand participant excluding any expenses incurred by the New Zealand participant that are unrelated to the production of wine in New Zealand.

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[1] [Omitted.][5]
[2] [Omitted.]
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Deleted: Where wine is sold by wholesale to a reseller, for example, to a distributor, bottle shop, hotel or restaurant, wine tax is calculated on the selling price of the wine excluding wine tax and Australian goods and services tax (GST). If wine is not the subject of a wholesale sale, for example, it is sold by retail by the manufacturer at the cellar door or used by the manufacturer for tastings or promotional activities, alternative values are used to calculate the tax payable.
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Deleted: Normally for retailers (including bottle shops, hotels, restaurants and cafes) wine tax is included in the price for which the retailers purchase the wine. Most retailers are not entitled to a credit for wine tax included in the purchase price of the wine. The system is designed so that wine tax is built into the retailers' cost base and is then effectively passed on in the price of the wine to the end consumer.
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Deleted: From 1 October 2004 to 30 June 2006, the maximum amount of rebate an Australian producer (or group of associated producers) can claim in a full financial year is A$290,000, effectively offsetting wine tax on A$1 million (wholesale value) of eligible sales and applications to own use per annum.
Deleted: <#>From 1 July 2006, the maximum amount of rebate an Australian producer (or group of associated producers) can claim in a full financial year is A$500,000, which equates to approximately A$1.7 million (wholesale value) of eligible sales and applications to own use per annum.¶
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14A. The maximum amount of rebate a New Zealand producer (or group of associated producers) can claim in a full financial year is AU$350,000.

Frequently used terms

14B. ***Australia*** - From 1 July 2015, the term 'Australia' was replaced in nearly all instances within the Goods and Services Tax, Luxury Car Tax, and WET legislation with the term 'indirect tax zone'.[5B] The scope of the term is the same as the repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

14C. ***Financial year*** - Where the term 'financial year' appears in this Ruling, it refers to a period of 12 months beginning on 1 July.

15. [Omitted.]

Ruling

16. [Omitted.]

Who is eligible for the producer rebate?

16A. You can claim a producer rebate for wine for a financial year where you meet all of the following requirements:[5C]

- you are approved as a **'New Zealand participant'**
- you are the **'producer'** of the wine
- the wine was produced by you **in New Zealand** and **exported** to Australia
- **WET was paid** on the wine in Australia
- of the total volume of the wine, you **owned at least 85% as 'source product'** at all times from immediately prior to crushing (or immediately prior to fermentation in the case of mead and sake), and

[5A] [Omitted.]
[5B] *Treasury Legislation Amendment (Repeal Day) Act 2015.*
[5C] Subsection 19-5(2).

Deleted: The maximum amount of rebate a New Zealand producer (or group of associated producers) can claim in a full financial year is AU$350,000.A$290,000 for the financial year ending 30 June 2006 and A$500,000 for each financial year thereafter.

Deleted: 14A. From 10 December 2012, where a New Zealand participant blends or further manufactures wine in New Zealand using wine produced by another producer, any rebate claim for the blended or further manufactured wine must be reduced by the sum of any rebate amounts attributable to the other producer's wine.¶
A New Zealand wine producer may be registered or required to be registered for GST in Australia, in which case the producer can claim the rebate on the producer's business activity statement (BAS). However, a New Zealand producer that is registered or required to be registered for GST in Australia cannot claim the rebate twice in relation the same wine (that is, through the producer's BAS and again under the New Zealand rebate scheme).¶
Ruling and Explanation¶
Eligibility¶
For a New Zealand wine producer to be eligible to claim the producer rebate, they must meet a number of requirements, all of which are discussed in detail below.¶

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- at the time of the assessable dealing on which WET was paid, the wine was packaged in a **container for retail sale**:
  - of no more than 5 litres (51 litres for cider and perry), and
  - **branded with a trade mark owned** by you (or an associated entity) that identifies you or can be readily associated with you.

16B. Each of these requirements is explained in more detail below.

Approval as a New Zealand participant

17. Before you can claim a producer rebate you must be approved as a New Zealand participant.

18. To be considered for approval as a New Zealand participant, you must apply in writing in the approved form to the Australian Commissioner of Taxation (the Commissioner).[6] However, to streamline the approval process, you can send your application for approval to New Zealand Inland Revenue, which will send the application on to the Australian Taxation Office.

19. For you to be eligible for approval as a New Zealand participant, the Commissioner must be satisfied that:

- you are a **producer** of rebatable wine in New Zealand, and
- the rebatable wine has been, or is likely to be, **exported** to Australia.[8]

Rebatable wine

19A. Rebatable wine means grape wine, grape wine products, fruit or vegetable wine, cider or perry, mead or sake. Each product is separately defined in the WET Act.

19B. The definitions and examples of these various products are set out in Appendix 1 to this Ruling and are discussed in paragraphs 8 to 36 of WETR 2009/1.

Producer of rebatable wine

19C. You are entitled to a producer rebate for rebatable wine only if you are the 'producer' of the wine.[8AA]

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[6] Subsection 19-7(1).
[7] [Omitted.]
[8] Subsection 19-7(2).
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Deleted: More information about the application form and how to lodge is available from New Zealand Inland Revenue or its website at www.ird.govt.nz.

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20. There are two main elements to the definition of producer. You are the producer of rebatable wine if you:

- 'manufacture' the wine, or
- supply 'source product' to another entity that manufactures wine from it on your behalf.[9]

Manufacture of wine

21. Manufacture is defined[9A] in the WET Act to include:

(a) production

(b) combining parts or ingredients so as to form an article or substance that is commercially distinct from the parts or ingredients, and

(c) applying a treatment to foodstuffs as a process in preparing them for human consumption.[9B]

22. The definition of manufacture is inclusive, not exhaustive, and extends the ordinary meaning of manufacture.[10]

22A. We consider that wine is manufactured when processes are applied to inputs that result in an article (wine) that is commercially distinct from those inputs.[10A]

22B. Whether or not certain processes that are carried out constitute manufacture is a matter of fact and degree in each case.

23. [Omitted.]

24. [Omitted.]

25. [Omitted.]

26. [Omitted.]

27. [Omitted.]

28. [Omitted.]

Example 1 – manufacture from grapes

29. NZWine Co grows Merlot grapes on its vineyard. It crushes the grapes and carries out primary and secondary fermentation.

[8A] [Omitted.]

[9] 'Source product' is a defined term in the WET Act and is discussed in paragraphs 35C and 35D in this Ruling.

[9A] Section 33-1.

[9B] This third limb of the extended meaning of manufacture in section 33-1 is not relevant in determining if an entity is a producer of rebatable wine. This is because wine is not a foodstuff.

[10] Section 3 of the *Sales Tax Assessment Act (No. 1) 1930*.

[10A] *McNichol and Anor v. Pinch* [1906] 2 KB 352; *Federal Commissioner of Taxation v. Jack Zinader Pty Ltd* [1949] HCA 42.

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Deleted: In commenting on the similarly inclusive definition of 'manufacture' in the sales tax legislation, Murray J stated in *Deputy Commissioner of Taxation v. Cohn s Industries Pty Ltd* (1978) 9 ATR 479 at 480; 79 ATC 4025 at 4027:

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The definition of 'manufacture in the WET Act also uses identical words to the first three paragraphs of the definition of manufacture in the sales tax legislation. The meaning of 'manufacture has been considered in a number of sales tax cases. The Commissioner considers that the cases that examined that part of the sales tax definition as replicated in the WET Act apply equally to wine tax.¶
In McNichol and Anor v. Pinch [1906] 2 KB 352, Darling J stated at page 361:¶
...the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made.¶
This statement was quoted with approval in Federal Commissioner of ...

Deleted: See paragraphs 18 to 25 of WETR 2009/2 for a discussion of the meaning of producer of rebatable wine.

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filtration and stablisation. The resulting merlot wine is packaged in 750ml bottles ready for retail sale.

30. *As the wine is a commercially distinct product from its inputs, NZWine Co has manufactured the wine.*

Example 2 – purchasing and bottling

31. *NZBottle Co purchases bulk Chardonnay wine from Chard Pty Ltd in isotankers. The Chardonnay is pumped from the isotanker into a storage tank at NZBottle Co's premises in preparation for bottling. After it has passed through a fine mesh filter in the bottle filling line to reduce the risk of insoluble matter making its way into the bottles, the Chardonnay is placed in bottles that have been washed. The bottled wine is labelled and branded with a registered trade mark.*

32. *The processes undertaken to package the bulk wine are not considered to result in a product that is commercially distinct from its inputs and as such, Bottle Co has not manufactured the Chardonnay wine.*

Blending as manufacture

32A. In the wine industry it is a normal part of winemaking to blend wines. In some cases the wines that are blended may be different varieties of wine, for example Cabernet Sauvignon and Merlot. In other cases the blended wines may be the same variety of wine but with each individual blended wine having characteristics that, when combined with the characteristics of the other blended wine results in a wine with its own commercially distinct characteristics.

32B. Where you combine different wines (or quantities of the same variety of wine that have different characteristics) to produce wine with its own characteristics that are distinct from the inputs, you manufacture wine.

Example 3 – manufacture by blending own wine with purchased wine

32C. *NH Wines Ltd manufactures Cabernet Sauvignon wine from fresh grapes it owns, and purchases bulk Merlot wine from another winemaker. NH Wines blends the wines to produce their own distinctive Cabernet Merlot wine.*

32D. *NH Wines Ltd manufactures the Cabernet Merlot wine.*

Example 4 – blending wine with grape juice concentrate

32E. *Blend Co purchases bulk Grenache wine from BBB Wines. To increase the sweetness of the wine, Blend Co blends the Grenache*

[11] [Omitted.]

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Deleted: It is important to note that even if NZ Wines is approved as a New Zealand participant, it is not entitled to claim the rebate for any wine it purchases (whether locally or imported) and subsequently exports because wine eligible for the rebate must be produced by NZ Wines in New Zealand. See paragraph 36 of this Ruling.

wine with grape juice concentrate before bottling. The grape juice concentrate comprises 2% of the total volume of the finished product.

32F. *The addition of the grape juice concentrate to the Grenache wine is considered to have resulted in a product that is commercially distinct from its inputs, so Blend Co is considered to have undertaken manufacture.*

32G. Although wine blending or further treatment may be considered manufacture for the purposes of the definition of 'producer', you are not entitled to claim a rebate for blended or further manufactured wine unless you meet all of the other eligibility criteria, including the 85% source product ownership rule (see paragraphs 71A to 71C of this Ruling).

33. [Omitted.]

34. [Omitted.]

35. [Omitted.]

'Producer' of wine – contract manufacture

35A. There are two limbs to the definition of producer. Under the first limb, you must manufacture the wine yourself (either personally or by engaging employees).

35B. Under the second limb, you will be the producer of wine where you engage a contract winemaker to manufacture the wine on your behalf, and you provide the winemaker with the source product from which the wine is made.

Source product

35C. Source product has the meaning given by subsection 19-5(4), and for each wine product is as follows:

- grape wine – fresh grapes
- grape wine products – fresh grapes
- fruit or vegetable wine – fruit or vegetables
- cider or perry – apples or pears
- mead – honey
- sake – rice.

35D. To qualify for a producer rebate, a producer must 'own' the source product from immediately prior to crushing (or immediately prior to fermentation in the case of mead and sake). We consider this

[12] [Omitted.]

Deleted: Sections 31-1, 31-2, 31-3, 31-4, 31-5, 31-6 and 31-7. See also WET Regulations 31-2.01, 31-4 01 and 31-6.01 in relation to the requirements for some of the products listed in paragraph 31 of this Ruling.

to mean that you must have good title to the source product before it is crushed or, where relevant, ferments.[12A]

Wine produced in New Zealand

36. For approval as a New Zealand participant, the wine that has been, or is likely to be, exported to Australia must be produced 'in New Zealand'.[13]

37. 'New Zealand' is defined in the WET Act to mean 'the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue'.[14]

Example 5 – Wine that is not produced in New Zealand

38. *NZ Wines Co supplies grapes to a contract winemaker in Australia. The grapes are made into bulk wine in Australia under contract. The wine is shipped back to NZ Wines in New Zealand, where it is bottled and labelled and subsequently exported to Australia. NZ Wines is considered to be the producer of the wine, but the wine is not produced by NZ Wines in New Zealand. Therefore, with respect to this wine NZ Wines is not a producer of rebatable wine for the purpose of approval as a New Zealand participant.*

38A. *Wine is not produced 'in New Zealand' if any additional manufacturing processes in the production of the wine occur in Australia, subsequent to its export from New Zealand. For example, if raw wine manufactured 'in New Zealand' undergoes stabilisation, fining, filtering and secondary fermentation in Australia before it is bottled for sale, the resultant finished wine is not produced 'in New Zealand'.*

Wine has been, or is likely to be, exported to Australia

39. To be approved as a New Zealand participant the Commissioner must be satisfied that the wine you have produced in New Zealand 'has been, or is likely to be, exported to' Australia.[15]

Meaning of export

40. The term 'export' is not defined in the WET Act. Its ordinary meaning is 'to send (commodities) to other countries or places for sale, exchange etc'.[16]

[12A] Paragraph 1.15 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.
[13] Paragraph 19-7(2)(a).
[14] Section 33-1.
[15] Paragraph 19-7(2)(b).
[16] Macquarie Dictionary.

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Rebatable wine

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41. Similarly, exportation refers to '...the sending of commodities out of a country, typically in trade'.[17]

42. [Omitted.]

43. [Omitted.]

44. We consider that wine is exported from New Zealand when the wine is physically taken out of New Zealand with the intention that the wine be landed in Australia.[17A]

Meaning of Australia

45. Because a New Zealand wine producer must produce rebatable wine that has been or is likely to be exported to Australia to be eligible for approval as a New Zealand participant, it is necessary to establish what constitutes 'Australia'.

46. 'Australia' is defined in the WET Act by reference to the definition of *'indirect tax zone'* in section 195-1 of the GST Act. It does not include any external Territory, but does include an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia.[17B]

47. [Omitted.]

'Likely to be'

48. To be eligible for approval as a New Zealand participant, you don't need to have exported wine to Australia. It is sufficient for approval as a New Zealand participant if the Commissioner is satisfied that the wine you have produced in New Zealand is likely to be exported to Australia.[19]

49. [Omitted.]

50. We consider that the expression, 'likely to be' means that on the balance of probabilities, it can be concluded that the wine is more likely than not going to be exported to Australia.[19A]

51. [Omitted.]

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[17] Macquarie Dictionary.

[17A] *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1992) 36 FCR 517 at 523; *Wesley-Smith and Ors v. Balzary* (1976-77) 14 ALR 681 at 688.

[17B] Australia as defined does not include external territories such as Norfolk Island, Christmas Island or the Australian Antarctic Territory. Typically, the installations referred to in section 5C of the *Customs Act 1901* are oil drilling rigs and similar mining exploration installations (see paragraph 51 of GSTR 2005/2).

[18] [Omitted.]

[19] Paragraph 19-7(2)(b).

[19A] *Australian Telecommunications Commission v. Krieg Enterprises Pty Ltd* (1976) 14 SASR 303 per Bray CJ at 312-313, '...'likely' in the sub-section means 'probable' and I think that that means that there is a more than fifty per cent chance of the thing happening.'

Deleted: The Federal Court of Australia commented on the meaning of export in *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1992) 36 FCR 517. At page 523, Beaumont, Gummow and Einfeld JJ stated:¶
The ordinary meaning of 'export' is to send commodities from one country to another using the verb 'send' as indicating that which occasioned or brought about the carriage of the commodity from one country to another.¶
<#>The Supreme Court of the Northern Territory has considered the term export in the context of the Customs Act, where, like the WET Act, the term is not defined. In *Wesley-Smith and Ors v. Balzary* (1976-77) 14 ALR 681 Forster J said at page 688:¶
Export in the first sense no doubt means taking goods out of a proclaimed port or across a low water mark with the intention of landing them at some place beyond the seas.¶
The Commissioner considers that the ordinary meaning, as commented upon in these cases, applies to the use of the word 'export' in the WET Act. A New Zealand producer exports wine to Australia

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<#>*Australia* is defined in section 195-1 of the GST Act as follows:¶
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52. [Omitted.]

53. [Omitted.]

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55. [Omitted.]

56. [Omitted.]

57. [Omitted.]

58. [Omitted.]

59. [Omitted.]

60. [Omitted.]

Entitlement to claim the rebate

61. If you are an approved New Zealand participant, you are entitled to claim the producer rebate for a financial year for wine that you produced in New Zealand if:[24A]

- the wine is exported to Australia,
- you or another entity paid WET for a taxable dealing with the wine during that financial year,
- of the total volume of the wine, you owned at least 85% as source product from immediately prior to crushing (or immediately prior to fermentation in the case of mead and sake), and
- at the time of the assessable dealing on which WET was paid, the wine is packaged in a container that is suitable for retail sale:
  - with a volume not exceeding 5 litres (51 litres for cider and perry), and
  - that is branded by a trade mark that you (or an associated entity) own and that identifies you or can be readily associated with you.[25A]

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[20] [Omitted.]
[21] [Omitted.]
[22] [Omitted.]
[23] [Omitted.]
[24] [Omitted.]
[24A] Paragraphs 19-5(2)(c)-(f) inclusive.
[25] Subsection 19-5(2).
[25A] Subsection 19-5(7).

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Approval or refusal of application¶
If the Commissioner is satisfied that an applicant is the producer of rebatable wine in New Zealand that has been or is likely to be exported to Australia, the entity will be approved as a New Zealand participant. Such an entity will be given written notice of the approval, including the date from which the approval has effect.¶
An entity may request that the date of approval be backdated.¶
¶
Example 3¶
NZ Wines is a producer of wine in New Zealand. After receiving an order from a wholesale distributor in Australia, NZ Wines recently exported a number of cases of bottled wine to Australia. The wholesale distributor provided a quotation to Customs upon entering the wine into Australia.¶
Until receiving the order from the Australian distributor, NZ Wines sold its wine exclusively in New Zealand and had not anticipated exporting wine to Australia. As such, NZ Wines was not an approved New Zealand participant when the wine was exported.¶
As the wine has been exported to Australia, NZ Wines can apply for approval as a New Zealand participant and have the date of effect of the approval backdated to the date the wine was exported.¶
If an entity is not satisfied with the Commissioner's decision on the date of effect, the entity may have the decision reviewed in accordance with section 111-50 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).¶
If the Commissioner is not satisfied that an applicant is the producer of rebatable wine in New Zealand that has been or is likely to be exported to Australia, the entity will not be approved as a New Zealand participant. In these circumstances, the entity will be given written notice of the refusal, including the reasons for the decision. Refusing to approve an entity as a New Zealand participant is also a reviewable decision under section 111-50 of Schedule 1 to the TAA.¶
¶
Revocation¶
If at any time the Commissioner becomes aware that an entity no longer meets the requirements for approval as a New Zealand participant, the approval will be revoked. An entity will be notified of such a revocation in writing, including the date from which the revocation has effect and the reasons for the revocation.¶
Revocation and the date of revocation of approval as a New Zealand participant is also a reviewable decision under section 111-50 of Schedule 1 to the TAA.¶ ...

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Deleted: Where the term 'financial year' appears in this Ruling, it refers to a period of 12 months beginning on 1 July as defined in section 33-1 of the WET Act.

Wine exported to Australia

62. Before you are entitled to claim the producer rebate, the wine you have produced in New Zealand must have actually been exported to Australia (within the meaning of 'export' set out in paragraphs 40 to 44 of this Ruling).

63. You do not have to be the exporter of the wine to be able to claim the producer rebate. The requirement that the wine be exported from New Zealand to Australia will be met whether the wine is exported by you or another entity.

WET paid for an assessable dealing with the wine

64. We consider the requirement that you or another entity must have *paid* WET for an assessable dealing with the wine requires more than the existence of a liability for the WET, and requires that WET for the dealing must have been remitted to the Australian Taxation Office.

65. Where liability for WET on wine that is exported from New Zealand to Australia is incurred by an entity other than you, it may be difficult for you to establish whether that liability has been met and WET on the wine has been remitted to the Australian Taxation Office.

66. In light of this consideration and of the fact that you are:

- required to substantiate a claim for the rebate by providing supporting documents to evidence that WET has been included in an assessable dealing with the wine[27], and
- not eligible to lodge the claim until after the end of the financial year in which the relevant taxable dealing took place,

we consider that it is reasonable for you to assume that WET on the wine for which the rebate is being claimed has been remitted to the Australian Taxation Office by the end of the financial year in which the assessable dealing took place. However, it is not reasonable for you to make this assumption if you are aware, or should reasonably have been aware, that the WET has not been paid to the Commissioner in respect of that wine (for example, if the entity that has the liability for WET is in liquidation).

66A. We consider that you should reasonably have been aware that the WET has not been paid if it is likely that an ordinary reasonable person in all of your circumstances would have been

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[26] [Omitted.]
[27] See paragraphs 103 to 108 of this Ruling.
[28] [Omitted.]
[29] [Omitted.]

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Exceptions¶
A New Zealand participant is not entitled to a producer rebate for a taxable dealing in the wine if:¶
the wine is exported from Australia after the dealing and at the time of the rebate claim the New Zealand participant knew, or hould reasonably have be ...

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aware, at the time of making the claim, that WET has not been paid on the wine.

67. [Omitted.]

68. [Omitted.]

69. [Omitted.]

70. [Omitted.]

71. [Omitted.]

Source product - 85% ownership rule

71A. You are eligible for a producer rebate only where at least 85% of the total volume of the wine (in its final packaged and branded form ready for retail sale), originated from source product you own.[31A]

71B. Whether the 85% ownership of source product rule for wine is satisfied will be determined on the facts of each case.

71C. Paragraph 35C of this Ruling set out the source products for various types of wine.

71D. To comply with the 85% source product ownership rule, you must maintain 100% legal ownership of at least 85% of the source product at all relevant times. For grape wine, grape wine products, fruit or vegetable wine, and cider or perry, you must own at least 85% of the source product from immediately prior to crushing all the way through the winemaking process, until the wine is placed in a container that meets the packaging and branding requirements discussed at paragraphs 71CB to 71DI of this Ruling.[31B]

71E. Because honey and rice are not crushed as part of the winemaking process, you must own the source product for mead and sake from immediately prior to initial fermentation all the way through the winemaking process, until the wine is placed in a container that meets the packaging and branding requirements discussed at paragraphs 71CB to 71DI of this Ruling.

Example 6 – ownership of source product at all times

71F. *Winery Wines Co has grape supply contracts with Grapey Grapes Ltd and with Fresh Grape Co. Under the terms of these contracts, legal title to the grapes passes from the grape supplier to Winery Wines Co upon delivery of the grapes to their weighbridge.*

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[30] [Omitted.]

[31] [Omitted.]

[31A] Paragraph 19-5(2)(e).

[31B] Paragraph 1.16 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No.4) Act 2017.*

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Example

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NZ Wines is an approved New Zealand participant. Bottled cleanskin wine produced by NZ Wines in New Zealand is exported to Australia to a company called All Aussie Exports. NZ Wines deals with All Aussie Exports

Deleted: *a regular basis and is aware that once the cleanskin wine arrives in Australia, All Aussie Exports puts its own label on the wine and exports half of it to various countries. All Aussie Wines pays wine tax on the wine upon importation*

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Deleted: Subsection 19-10(3).

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71G. *Winery Wines pays for the grapes in instalments paid both before and after the time that legal title passes.*

71H. *Winery Wines Co has a grape crushing and wine processing contract in place with another entity. The grapes owned by Winery Wines Co are comingled, crushed and made into bulk wine under contract. At no time does legal title to the grapes or the resultant wine pass to the entity responsible for crushing the grapes and processing the wine, or to any other entity.*

71I. *The bulk wine is delivered to Winery Wine Co's premises, where it is bottled in 750ml bottles and labelled with Winery Wine Co's registered trade mark.*

71J. *Winery Wine Co has maintained ownership of the grapes and resultant wine at all relevant times throughout the winemaking process.*

Example 7 – retention of title clause

71K. *Winery NZ has a grape supply contract with Grapes Co. Under the contract, Winery NZ pays for the grapes in three separate instalments.*

71L. *The contract includes a retention of title (Romalpa) clause, under which Grapes Co retains ownership of the grapes until they are paid for in full.*

71M. *The grapes are delivered to Winery NZ at the weighbridge and the grapes are crushed before the final instalment is paid.*

71N. *As Winery NZ does not own the grapes as whole unprocessed grapes, it will not satisfy the 85% source product ownership rule in respect of these grapes.*

Source product – deeming provisions

71O. The WET Act recognises that traditional winemaking processes involve the use of additives and ingredients (in small quantities) other than source product. Therefore, certain ingredients and additives are deemed, or taken to be, source product owned by you for the purpose of determining whether the 85% source product ownership rule has been satisfied.[31C] These ingredients are:

- grape spirit
- brandy
- alcohol used in preparing vegetable extracts (including spices, herbs and grasses)

[31C] Subsections 19-5(5) and 19-5(6).

- ethyl alcohol from a source specified in the regulations[31D]
- water
- grape juice concentrate that you have added to the wine[31E], provided the grape juice concentrate does not comprise more than 10% of the total volume of the wine, and
- any other substance that you have added to the wine[31F], provided that substance (or that substance together with similar substances) does not comprise more than 1% of the total volume of the wine.

71P. Although these ingredients are expressly deemed to be source product, they can only be added to rebatable wine to the extent allowable under the individual wine product definitions.

71Q. Grape juice concentrate may be a source product when it comprises no more than 10% of the wine. Where grape juice concentrate comprises more than 10% of the total volume of the wine, then none of it is considered source product for that wine.

Example 8 – grape juice concentrate more than 10% of total volume of wine

71R. *Wine-ing Co manufactures grape wine using whole unprocessed fresh grapes it has purchased, and maintains ownership of those grapes and the resultant wine throughout the winemaking process. Each one litre bottle of wine manufactured by Wine-ing Co contains the following ingredients:*

- *800mls originating from grapes owned by Wine-ing Co that it owned immediately prior to crushing, up to and including bottling, and*
- *200mls of purchased grape juice concentrate.*

71S. *As the grape juice concentrate comprises more than 10% of the total volume of the wine, it is not a source product for the purposes of determining whether the 85% source product ownership rule is satisfied.*

71T. *Wine-ing Co does not satisfy the 85% source product ownership rule and is not eligible for a producer rebate.*

[31D] Refer to subsections 31-4(b), 31-5(b), 31-6(b) and 31-7(b).

[31E] For the purposes of clarity, this includes grape concentrate that you have caused to be added to the wine where you have wine made under contract on your behalf.

[31F] For the purposes of clarity, this includes any other substance that you have caused to be added to the wine where you have wine made under contract on your behalf.

Example 9 – purchased grape pulp not source product

71U. *Purple Wine Co has Shiraz wine made under contract on its behalf by another entity from purchased grape pulp (crushed unprocessed grapes) and purchased grape juice. Purple Wine Co maintains legal ownership of the grape pulp and the grape juice from the time of purchase, throughout the process up to and including bottling and labelling.*

71V. *Of the total volume of the packaged and labelled wine, 45% originates from the grape pulp and 45% originates from the grape juice.*

71W. *Because neither grape pulp or grape juice are source product, Purple Wine Co does not satisfy the 85% source product ownership rule.*

71X. Substances added temporarily to wine as a part of the winemaking process do not count toward the 85% source product ownership test. For example, charcoal might be added and removed as part of a filtration process.[31G]

71Y. The addition of 'any other substances' refers to substances that include, but are not necessarily limited to yeast, preservatives, juice, colours, and flavours to the extent they are allowed under the wine definitions.[31H] Each of these substances is deemed to be a source product for which the producer satisfies the ownership test provided that substance comprises no more than 1% of the total volume of the wine in its final packaged and branded form.

71Z. Where a particular substance exceeds 1% of the total volume of the wine, no part of it is deemed to be source product that satisfies the ownership test.

71AA. Similar substances are considered together for the purpose of determining whether 'any other substance' makes up more than 1% of the total volume of the wine. As this is not a defined term in the WET Act, it takes on its ordinary meaning.

71AB. Substances are considered to be similar where they resemble one another in character, function and purpose, without being identical.[31I]

71AC. In the context of wine, different varieties of grape juice are considered to be similar substances and would be considered together for the purpose of determining whether grape juice as 'any other substance' makes up more than 1% of the total volume of the wine. Likewise, different types of flavouring (whether natural or artificial) are considered to be similar substances. Different forms of sulphites added to wine are also considered to be similar substances.

[31G] Paragraph 1.21 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.
[31H] Refer to Appendix 1 of this Ruling.
[31I] Refer to GSTR 2003/5.

71AD. However, yeast and sulphur dioxide for example are considered to be different substances. This is because yeast is added to wine to covert sugars into alcohol and carbon dioxide, whereas sulphur dioxide is added to wine as a preservative. These substances are different in character, function and purpose.

71AE. Whether substances added to wine are similar to each other will be a question of fact in each case.

Example 10 – any other substances – not similar

71AF. *Winemaker Co manufactures a Cabernet Merlot wine from a combination of grapes it grows in its vineyard, and whole fresh unprocessed grapes it purchases. During the winemaking process, Winemaker Co adds yeast, a preservative and some Merlot grape juice. Of the final volume of the finished wine in its packaged, branded form, the wine comprises: 1% grape juice, 0.5% yeast, 1% preservative and 97.5% wine.*

71AG. *As these additives are not considered to be similar substances, and each comprises not more than 1% of the total volume of the wine in its final packaged and branded form, they are all taken to be source product for the purpose of determining whether the 85% source product ownership rule is satisfied.*

Example 11 - any other substances – similar

71AH. *Vigneron Co manufactures a Grenache Shiraz Mouvedre wine, which is packaged in branded 1 litre bottles. Of the total volume of the wine:*

- *820ml originated from whole fresh unprocessed grapes owned by Vigneron Co at the commencement of the winemaking process*
- *150ml is bulk wine that was purchased by Vigneron Co.*
- *10ml is unfermented Grenache grape juice*
- *10ml is unfermented Shiraz grape juice*
- *8ml is unfermented Mouvedre grape juice, and*
- *2ml is preservative.*

71AI. *Although the three portions of grape juice each comprise 1% or less of the total volume of the wine when considered individually, they are considered to be 'similar substances' and must therefore be considered collectively for the purpose of the deeming provisions. On the basis that the grape juices comprise 28ml (2.8%) of the total volume of the wine, the grape juices are not taken to be source product for which the producer satisfies the ownership test. However the preservative, a different substance, comprises only 0.2% of the*

total volume of the end product and as such is taken to be source product that satisfies the ownership test.

71AJ. *Only 82.2% of the Grenache Shiraz Mouvedre wine (being 82% from grapes owned by Vigneron and 0.2% preservative) is source product owned by Vigneron Co at all relevant times. The remaining 17.8% of the total volume is not source product that satisfies the ownership test. Vigneron Co does not satisfy the 85% source product ownership rule for this wine.*

71AK. You must convert solid or gaseous additives to a volumetric measure to determine whether a wine satisfies the 85% source product ownership rule.[31J]

Example 12 – 85% source product ownership rule satisfied

71AL. *WeFortify Ltd produces a fortified grape wine. Another entity manufactures the wine on behalf of WeFortify Ltd pursuant to a wine processing agreement. The wine is manufactured from whole unprocessed grapes owned by WeFortify Ltd. At no time throughout the winemaking process does ownership of the grapes or resultant wine pass from WeFortify Ltd. Each 1 litre bottle of fortified grape wine is comprised of the following:*

- *500ml originating from the grapes owned by WeFortify Ltd as whole unprocessed grapes*
- *200ml purchased brandy*
- *150ml purchased wine*
- *80ml grape juice concentrate*
- *50ml water*
- *10ml yeast, and*
- *10ml sulphur dioxide*.

71AM. *50% of the product originated from whole unprocessed grapes owned by WeFortify Ltd at all relevant times and as such, 50% of the total volume of the wine is made from source product for which WeFortify Ltd satisfies the ownership test.*

71AN. *The brandy, grape juice concentrate (no more than 10% of the total volume of the wine), water, and the additives (each comprising no more than 1% of the total volume of the wine) are taken to be source product that satisfies the ownership test. Together these substances comprise 350ml (35%) of the total volume of the wine and are taken to be source product owned by WeFortify Ltd at all relevant times.*

[31J] Paragraph 1.20 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

71AO. *Therefore, of the total volume of the fortified wine in its packaged, branded form, WeFortify Ltd owned 85% as source product at all relevant times.*

Example 13 – 85% source product ownership rule not satisfied

71AP. *OwnGrape Pty Ltd grows its own grapes, which it uses to make Sauvignon Blanc wine. Ownership of the grapes is maintained by OwnGrape Pty Ltd throughout the winemaking process, up to and including bottling. Each 1 litre bottle of wine is comprised of the following:*

- *700ml originating from grapes grown and owned by OwnGrape Pty Ltd*
- *200ml of purchased wine*
- *50ml of grape juice concentrate*
- *40ml of water, and*
- *10ml of additives (yeast, sulphur dioxide, tartaric acid).*

71AQ. *700ml (70%) of the total volume of the end product originated from source product owned by OwnGrape Pty Ltd at all relevant times. A further 100ml (10%), being the water, grape juice concentrate and additives, are deemed to be source product that satisfies the ownership test.*

71AR. *OwnGrape Pty Ltd does not satisfy the 85% source product ownership rule because only 80% of the total volume of the wine was owned by OwnGrape Pty Ltd as source product (including deemed source product). The remaining 200ml (20%) is purchased wine (a substance other than source product).*

Example 14 – Beverage that falls under the grape wine product definition – 85% ownership of source product rule not satisfied.

71AS. *GWP Ltd manufactures an alcoholic beverage that is classified as a grape wine product under the WET Act. Under the grape wine product definition, amongst other things, a beverage must contain at least 700ml of grape wine per litre (70%) grape wine.*

71AT. *GWP's product contains 75% grape wine. 100% of the grape wine in GWP's grape wine product originated from fresh grapes owned by GWP at all relevant times.*

71AU. *The remaining 25% of the total volume of GWP's grape wine product is comprised of various fruit juices, natural colours and flavouring (and each type of additive comprises greater than 1% of the final product).*

71AV. *Because only 75% of the total volume of the grape wine product originated from source product owned by GWP (with the remaining 25% being comprised of substances other than source*

product), GWP does not satisfy the 85% source product ownership rule in relation to the grape wine product.

Example 15 - Grape wine product – 85% ownership not satisfied

71AW. *GWP manufactures a grape wine product. Each 1 litre bottle of grape wine product is made up of the following:*

- *950ml grape wine*
- *38ml water*
- *10ml natural fruit flavouring, and*
- *2ml preservatives*

71AX. *Of the grape wine used to make the grape wine product, 750ml was made from whole unprocessed grapes.*

71AY. *The remaining 200ml is purchased grape wine. Therefore, of the total volume of the grape wine product, only the grape wine made from GWP's grapes, the water, the fruit flavouring and preservatives are (or are taken to be) source product that meets the ownership test. This totals only 80%, and therefore GWP does not satisfy the 85% source product ownership rule.*

Transitional rules

2018 vintage wine

71AZ. 2018 vintage wine is wine where more than 50% of the total volume originates from source product that was crushed (or, in the case of mead and sake, initially fermented) on or after 1 January 2018.

71BA. To be able to claim a producer rebate for 2018 vintage wine that is the subject of an assessable dealing on or after 1 January 2018, you must meet all of the eligibility criteria.[31K]

2017 and earlier wine - 85% source product ownership rule

71BB. In some circumstances, where you have manufactured wine before 1 January 2018, and an assessable dealing with the wine occurs in Australia on or after that date, you will not need to satisfy the 85% source product ownership rule. That is, your ownership of the source product will be deemed.[31L]

71BC. However, you still need to meet all the other eligibility requirements to claim a producer rebate for the wine.

[31K] Subsection 19(2) *Treasury Laws Amendment (2017 Measures No.4) Act 2017.* Producer rebates for 2018 vintage wine are not subject to the earlier producer rebate rules.

[31L] Subsection 20(1) *Treasury Laws Amendment (2017 Measures No.4) Act 2017.*

2017 and earlier wine

71BD. The 85% source product ownership rule for wine is deemed to be satisfied if you meet **all** of the following requirements:[31M]

- the wine was 2017 or earlier wine – that is more than 50% of the volume of the wine that is attributable to source product, must have been from source product crushed (or in the case of mead and sake, initially fermented) before 1 January 2018
- you owned the wine immediately before 1 January 2018 and maintain ownership of it until the time of an assessable dealing
- you have an assessable dealing with the wine before 1 July 2023, and
- either:
  - the wine was in a container[31N] before 1 July 2018, or
  - at the time of the assessable dealing, the wine is labelled with its year of vintage.

71BE. All product derived from source product (for example, purchased wine or purchased juice) is taken into account for these rules. You are not required to meet the source product ownership rules for the purpose of this test.[31O]

71BF. Where you produce wine in New Zealand that is 2017 or earlier wine, the wine is the subject of an assessable dealing in Australia on or after 1 July 2018, and it does not meet all of the requirements above, you will need to meet the 85% source product ownership rules in respect of the wine before you can claim a rebate for the wine. You will also still need to meet all of the other requirements.

71BG. Additionally, where you have used purchased wine to manufacture 2017 and earlier wine that is covered by these transitional provisions, you will still need to account for any earlier rebates for the purchased wine you used.[31P]

Deleted: at least 50% of the total volume of the wine originated from source product that was crushed (or, in the case of mead and sake, initially fermented) before 1 January 2018at least

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[31M] Section 20 *Treasury Laws Amendment (2017 Measures No.4) Act 2017.*

[31N] We consider a container in these circumstances to be a container that meets the packaging and branding requirements explained at paragraphs 71CB to 71DI of this Ruling.

[31O] Paragraph 1.68 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No.4) Act 2017.*

[31P] Subsection 20(5) *Treasury Laws Amendment (2017 Measures No.4) Act 2017.* Refer also to our website for a general discussion about how the earlier producer rebate provisions operate - https://www.ato.gov.au/Business/Wine-equalisation-tax/Producer-rebate/Earlier-producer-rebate-amounts/.

Example 16 – 85% source product ownership rule deemed to be satisfied for 2017 vintage wine

71BH. *In January 2017, PT Wines Co purchased bulk 2017 vintage Riesling. In February 2017, PT Wines blended the purchased Riesling wine with purchased grape concentrate.*

71BI. *On 30 June 2018, the Riesling owned by PT Wines was held in bulk storage tanks at its winery. On 25 August 2018, PT wines bottled the Riesling, branded it with PT Wines' registered trade mark and labelled it with the 2017 vintage date.*

71BJ. *PT Wines sold the 2017 vintage Riesling in its final packaged form to an Australian entity in September 2018. The 2017 vintage Riesling was exported to Australia in the same month. The Australian entity paid WET on the wine on importation.*

71BK. *More than 50% of the Riesling originated from source product that was crushed before 1 January 2018. The Riesling was owned by PT Wines immediately before 1 January 2018, and it was the subject of an assessable dealing in Australia after 1 July 2018 and before 1 July 2023. At the time of the dealing the Riesling was in a container and was labelled with the 2017 vintage date. Therefore, PT Wines will be deemed to have met the 85% source product ownership rule for the wine.*

71BL. *However, PT Wines will only be able to claim a rebate where it is an approved New Zealand participant and meets all of the other eligibility criteria, and in determining the amount of any rebate to which PT Wines may be entitled, it must account for any earlier rebates for the purchased wine.*[31Q]

2017 year and earlier fortified wine

71BM. For the purposes of the transitional provisions, fortified wine refers to wine (as defined in the WET Act) that meets the requirements for fortified wine specified in the *Australia New Zealand Food Standards Code*.[31R] Specifically, fortified wine must contain no less that 150mls of ethanol per litre, and no more than 220mls of ethanol per litre.

71BN. You are taken to have satisfied the 85% ownership of source product rules to claim a producer rebate for fortified wine if you meet **all** of the following requirements:[31S]

[31Q] Refer to our website for a general discussion about how the earlier producer rebate provisions operate - https://www.ato.gov.au/Business/Wine-equalisation-tax/Producer-rebate/Earlier-producer-rebate-amounts/.

[31R] Section 22 *Treasury Laws Amendment (2017 Measures No.4) Act 2017*. Refer to Standard 4.5.1- Wine Production Requirements as made under section 92 of the *Food Standards Australia New Zealand Act 1991*.

[31S] Section 20 *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

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- more than 50% of the volume of the wine that is attributable to source product, must have been from source product crushed (or in the case of mead and sake, initially fermented) before 1 January 2018
- you owned the wine immediately before 1 January 2018 and maintain ownership of it until the time of an assessable dealing
- you have an assessable dealing with the fortified wine on or before 1 July 2025, and
- on 1 January 2018, the wine was either:
  - in the process of being manufactured into fortified wine, or
  - already bottled fortified wine.

71BO. It is a question of fact whether wine is in the process of being manufactured into fortified wine on 1 January 2018. In the context of this provision, wine that is ageing in wood as at 1 January 2018 to impart oak characteristics for example will be considered to be undergoing 'manufacture'.[31T]

71BP. This transitional provision deems a producer to have satisfied the 85% source product ownership requirement for the wine provided it is sold by 30 June 2025.

71BQ. There is a further transitional rule that applies to stored wine that is to undergo further manufacture prior to sale as fortified wine. A producer is deemed to have owned the source product used to make the stored wine provided the following requirements are satisfied:

- the wine subject to an assessable dealing is fortified wine
- the fortified wine was manufactured using wine that was stored in tanks or barrels (but not bottles) before 1 January 2018, and
- the producer of the fortified wine owned the stored wine immediately before 1 January 2018.

71BR. This transitional rule is timeless in its application. A producer will be deemed to have owned 100% of the source product used to make the stored wine from the point of crushing. This effectively means that a producer who satisfies these tests in respect of stored wine will satisfy the 85% source product ownership rule for any fortified wine they sell, at any point in time, provided no more than 15% of the fortified wine was made from source product that the producer did not own from the point of crushing.

[31T] Refer to paragraph 1.75 of the *Explanatory Memorandum to the Treasury Laws Amendment (2017 Measures No. 4) Act 2017*.

71BS. Where you have used purchased wine to manufacture fortified wine that is covered by these transitional provisions, you will still need to account for any earlier rebates for the purchased wine you used.[31U]

Example 17 - Fortified wine made exclusively from blending wines stored as at 1 January 2018

71BT. *Benny's Wines owns wine stored in a series of barrels immediately before 1 January 2018. Benny blends 900 litres of the stored wine with 100 litres of wine purchased on 1 July 2030. Benny bottles the fortified wine and affixes his proprietary label. He sells the fortified wine in 2031. Benny satisfies the 85% source product ownership rule because 90% of the fortified wine he is selling was made from stored wine that he has owned from before 1 January 2018. Any producer rebate to which Benny is entitled must be reduced by any earlier rebate amounts for purchased wine.*

Example 18 - Blend of stored wine, wine produced by the producer after 1 January 2018 and purchased wine

71BU. *Benny also blended a fortified wine in 2030 comprising:*

- *70% stored wine (that he had owned from before 1 January 2018)*
- *20% wine that he produced from grapes he owned at the time of crushing in 2030, and*
- *10% purchased wine.*

71BV. *In this case, he is deemed to satisfy the source product ownership rule for the 70% of the blended wine that was sourced from his stored wine (that he had owned from before 1 January 2018). He also owned the source product for the requisite time period for the 20% wine component that he made in 2030. Therefore he satisfies the source product ownership rule for 90% of the wine. Any producer rebates to which Benny is entitled must be reduced by any earlier rebate amounts for purchased wine.*[31V]

Example 19 – Fortified wine in a solera system

71BX. *Strong Co is the producer of fortified Tawny wine. Strong Co uses a solera system at its winery to age the Tawny wine by fractional blending.*

31U Subsection 20(5) *Treasury Laws Amendment (2017 Measures No.4) Act 2017*. Refer also to our website for a general discussion about how the earlier producer rebate provisions operate - https://www.ato.gov.au/Business/Wine-equalisation-tax/Producer-rebate/Earlier-producer-rebate-amounts/.

31V Subsection 21(3) *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

71BY. *On 31 December 2017 the Tawny wine that Strong Co has ageing in the solera system in tanks and barrels is a mixture of purchased product and product that originated from grapes grown on Strong Co's vineyard. On and from 1 January 2018, all of this wine is considered to have originated from source product owned by Strong Co.*

71BZ. *Over the following years, Strong Co bottles and sells wine from the tanks and barrels to customers in Australia and tops them up with younger wine. If this younger wine is made from grapes that Strong Co owned immediately prior to crushing, Strong Co will continue to satisfy the source product ownership rule for 100% of the wine in the tanks and barrels. However, if Strong Co adds wine to the tanks and barrels that it did not own immediately before 1 January 2018 and for which Strong Co did not own the grapes at the time of crushing, then Strong Co will need to keep details of the percentage of wine in a particular tank or barrel that satisfies the source product ownership rule. For example, if a barrel held 200 litres of pre 1 January 2018 wine, and 20 litres was drawn off and replaced with purchased wine, then 90% of the wine in the barrel will satisfy the source product ownership rule. If a further 20 litres is drawn off and replaced with purchased wine, then the percentage will drop to 81% (162 litres of the 200 litres will be pre 1 January 2018 wine and 38 litres will be purchased wine).*

71CA. *Any rebate Strong Co is entitled to for any wine made from pre 1 January 2018 wine must be reduced by any earlier rebate amounts for purchased wine used to manufacture the Tawny wine.*[31W]

Container for retail sale

71CB. You are entitled to claim a producer rebate for an assessable dealing with rebatable wine only if the wine is packaged in a container suitable for retail sale with a capacity of 5 litres or less.[31X] The exception to this rule is cider and perry, which may be packaged in containers (such as kegs) of 51 litres or less. This exception recognises that cider and perry are often sold on tap at retail.

71CC. We consider that a retail sale of wine is a sale to the end consumer.[31Y] Wine is packaged in a container suitable for retail sale when it is in a form that consumers would ordinarily expect to find in a retail setting, including displaying the appropriate regulatory markings (for example, complying with Label Integrity Program

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[31W] Refer to our website for a general discussion about how the earlier producer rebate provisions operate - https://www.ato.gov.au/Business/Wine-equalisation-tax/Producer-rebate/Earlier-producer-rebate-amounts/.

[31X] Subsection 19-5(7).

[31Y] Refer to the definition of 'retail sale' in section 33-1.

requirements)[31Z] and being branded with a trade mark (see paragraphs 71CE to 71DI of this Ruling).

71CD. This refers to containers such as bottles, casks and kegs at the stage before it is decanted into glasses or other drinking vessels in retail settings such as hotels and restaurants.

Branded with a trade mark

71CE. To claim a rebate for an assessable dealing with wine, the container that holds the wine at the time of the assessable dealing must be branded with a trade mark that:[31AA]

- identifies or can be readily associated with you as the producer of the wine
- is owned by you or an entity that is associated with you (as determined under paragraph 19-20(1)(a), the first limb of the associated producer provisions)
- is a trade mark within the meaning of the *Trade Marks Act 2002* (New Zealand), and
- satisfies any one of the following requirements:
  - is a registered trade mark within the meaning of the *Trade Marks Act 2002* (New Zealand)
  - an application to register the trade mark has been made under the *Trade Marks Act 2002* (New Zealand) which satisfies the requirements under that Act for the application to be pending, or
  - you have used the trade mark throughout the period beginning on 1 July 2015 and ending at the time of the assessable dealing.

71CF. The container that holds the wine will be 'branded' with the trade mark where it appears on the container that immediately holds the wine. It is not sufficient for the trade mark to appear on a carton that holds 'cleanskin' bottles of wine. The labels on the bottles themselves must bear the trade mark. With regard to cask wine, although the wine itself is contained in a bladder within a box, it is sufficient that the box itself bear the trade mark as the bladder and box collectively form the container that holds the wine.

[31Z] For example, grape wine labels are governed by the *Australian Grape and Wine Authority Act 2013* and Regulations, the *Food Standards Code*, *National Trade Measurement Regulations 2009*, the *Competition and Consumer Act 2010* and State Consumer Laws.

[31AA] Paragraphs 19-5(7)(b)-(f) inclusive.

What is a trade mark?

71CG. Your trade mark must be a 'trade mark' within the meaning of the *Trade Marks Act 2002* (New Zealand). The term 'trade mark', as defined in section 5 of that Act:

> *(a) means any sign capable of –*
>
> *(i) being represented graphically, and*
>
> *(ii) distinguishing the goods or services of one person from those of another person*
>
> *(b) includes, -*
>
> *(i) except in section 85, a certification trade mark, and*
>
> *(ii) except in section 85, a collective trade mark.*

71CH. Under section 5 of the *Trade Marks Act 2002* (New Zealand) a 'sign' includes a brand, colour, device, heading, label, letter, name, numeral, shape, signature, smell, sound, taste, ticket or word, or any combination of signs.

'Identifies' or 'readily associated with' you

71CI. The trade mark on the retail container must 'identify' or be 'readily associated with' you as the producer of the wine.[31AB]

71CJ. Whether a trade mark identifies or can be readily associated with you, as the producer of the wine, will be a question of fact in each case. However, generally, where you can be identified as the owner of a trade mark, it is considered that the trade mark can be readily associated with you.

71CK. The trade mark requirement does not mean that you are required to own a different trade mark for each range or collection of wine you produce. The trade mark requirement operates at the entity level. However, it does not necessarily prevent you from having and using more than one trade mark and still meeting the trade mark requirements.

Example 20 – Container for retail sale rule satisfied

71CL. *NZWineCo is the producer of a Semillon Sauvignon wine. The wine is packaged in 750ml glass bottles. NZWineCo sells the wine in individual bottles, in cases of 12 bottles and by the pallet to purchasers in Australia. Each bottle is branded by WineCo's trade mark registered in New Zealand.*

71CM. *The label also sets out:*

- *the volume of the wine (750ml)*

[31AB] Paragraph 19-5(7)(c).

- *the designation and country of origin (wine of New Zealand)*
- *alcohol content (13.5% alcohol by volume)*
- *allergens (sulphites and processing aids (milk and eggs))*
- *name and street address of the producer (including Lot number)*
- *standard drinks the bottle contains (8.3)*
- *vintage (2018)*
- *variety (Semillon Sauvignon), and*
- *region – (Geographical Indicator)*

71CN. *NZWineCo's bottled Semillon Sauvignon meets the producer rebate eligibility requirement that wine must be packaged in a container with a capacity not exceeding 5 litres in a form that is suitable for retail sale.*

Example 21 – size and not suitable for retail sale

71CO. *Sally Co is a producer of Shiraz wine. The wine is packaged in one litre bottles. Sally Co sells the bottled Shiraz in cases of six to a purchaser in Australia. The bottles are not labelled, but a label affixed to each carton sets out the origin, grape variety, alcohol content and Sally Co's street address.*

71CP. *As the labels are not on each bottle and does not set out all of the information a purchaser at the retail level would ordinarily expect to see, Sally Co's Shiraz wine does not meet the packaging requirements and Sally Co is not able to claim a producer rebate in relation to the Shiraz.*

Bulk wine exported to Australia where it is bottled, labelled and sold

71CQ. You may be able to claim a producer rebate for wine you have manufactured in New Zealand where:

- you export the wine to Australia in bulk containers (that is, a container with a capacity of greater than 5 litres (or greater than 51 litres for cider or perry)
- the bulk wine is packaged and labelled in Australia in accordance with the packaging requirements explained at paragraphs 71CB to 71CD above, and the branding requirements
- you still own the wine during the packaging and labelling process, and

- the wine is packaged and labelled in accordance with the packaging and branding requirements at the time it is the subject of an assessable dealing in respect of which WET is paid in Australia.

71CR. In these circumstances you must make sure that the approved selling price on which the rebate is calculated appropriately excludes the costs (of freight, packaging and labelling, for example) unrelated to the production of the wine in New Zealand.[31AC]

Example 22 – bulk wine packaged in Australia

71CS. *NZ Wine Co manufactures Sauvignon Blanc wine in New Zealand and exports the wine to Australia in isotankers.*

71CT. *An Australian entity bottles and labels the Sauvignon Blanc wine with NZ Wine Co's registered trade mark while NZ Wine Co retains ownership of the wine, and all other regulatory requirements pertaining to the labelling of imported wine in Australia are also met. The Australian entity does not undertake any further manufacture in relation to the imported wine.*

71CU. *NZ Wine Co then sells the bottled and labelled wine to restaurants and bottle shops in Australia for a price that includes WET.*

71CV. *As the wine is packaged at the time of the assessable dealing with the wine for which it pays WET, NZ Wine Co satisfies the packaging requirements for the purposes of claiming the rebate.*

Example 23 – trade mark that identifies the producer

71CW. *NZ Golden Vines is a producer of wine in New Zealand. NZ Golden Vines has registered a label with the imprint of a golden vine and its name as a trade mark.*

71CX. *NZ Golden Vines sells three different ranges of wine, catering to different markets. NZ Golden Vines has a budget range, a mid-tier range, and a premium range. The ranges are called Stringy Vine, NZ Gold, and The Platinum Series respectively, with the name of the range featuring prominently on the front label of each 750ml bottle of wine. None of the ranges have trade marks registered in respect of them.*

71CY. *As Golden Vines affixes the label (registered trade mark) to each bottle of wine it sells, it meets the trade mark requirement.*

[31AC] Refer to paragraphs 84 to 86 of this Ruling for a discussion about 'the approved selling price'.

Ownership of the trade mark

71CZ. You, or an entity associated with you, must own the trade mark.[31AD]

71DA. An entity will be associated with you if, assuming it were a producer (regardless of whether it is in fact a producer), it would be an associated producer of yours under paragraph 19-20(1)(a); the first limb of the associated producer provisions of WET Act. Refer to paragraphs 73 to 74C of this Ruling, which explain when and how entities are determined to be associated producers under this paragraph.

71DB. We consider that ownership of a trade mark refers to the right to use the trade mark to the exclusion of all other entities, and does not include the exclusive use of a trade mark under a licence or other permission. Whether you (or an associated entity) own a trade mark will be a question of fact in each case. However, indicators that you own a trade mark include:

- you are registered as the owner of the trade mark with the Intellectual Property Office of New Zealand
- you have the right to sell, license, or mortgage the trade mark, and
- you can take legal action against third parties for infringement against the trade mark.

Registered trade mark

71DC. A trade mark is registered if it is registered under the *Trade Marks Act 2002* (New Zealand) with the Intellectual Property Office of New Zealand.[31AE]

Example 24 – registered trade mark

71DD. *SFWines Co is the producer of strawberry fruit wine which it sells in 750ml bottles. SFWines Co has registered the trade mark, 'StrawberryFieldz Wines' with the Intellectual Property Office of New Zealand and SFWines Co is the sole owner of the trade mark.*

71DE. *Each bottle of SFWines Co's wine has a label affixed to it on the front and back of the bottle. The trade mark, 'StrawberryFieldz Wines ®' is prominently displayed on the label on the front of the bottle and in smaller writing on the back. As such, SFWines Co meets the producer rebate trade mark requirements.*

[31AD] Paragraph 19-5(7)(d).
[31AE] For further information refer to www.iponz.govt.nz.

Application pending

71DF. For the purposes of the producer rebate, we consider that an application for a New Zealand trade mark satisfies the requirements of subparagraph 19-5(7)(f)(iv) from the time the application is filed until any of the following occurs:

- the application is abandoned or withdrawn
- the Commissioner of the Intellectual Property Office of New Zealand rejects the application to register the trade mark and either:
  - there is no appeal against the decision, or the period allowed for the appeal has ended, or
  - the decision is appealed and the decision to refuse registration is upheld
- the trade mark is registered under the *Trade Marks Act 2002* (New Zealand) with the Intellectual Property Office of New Zealand.[31AF]

In use since 1 July 2015

71DG. You will meet the trade mark requirement where you can show that you have used the trade mark, such as an unregistered trade mark, throughout the period beginning 1 July 2015, and ending at the time of the assessable dealing on which WET is paid in Australia. Whether you have used a trade mark during that time will be a question of fact in each case.

71DH. The following factors may be indicative of whether you have used an unregistered trade mark:

- you can provide details of the specific goods or services sold using the trade mark during the relevant time
- you can provide historical context about your use of the trade mark, including the reason for choosing the trade mark, when you first started using the trade mark, whether it has been used continuously, and if not, when and for how long it was used
- advertising and marketing material, photographs of signage, or other images that show your use of the trade mark, and
- whether there has been any confusion or dispute in relation to the trade mark and how it was resolved.

71DI. Note however that even an unregistered trade mark that has been used by the producer since 1 July 2015 to the time of the

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[31AF] For further information refer to www.iponz.govt.nz.

assessable dealing must be 'owned' by the producer (or an associate). It is accepted that trade marks that you have used since 1 July 2015 are 'owned' by you, provided no-one else owns that trade mark.

Calculation of the producer rebate

72. From 1 July 2018, the maximum amount of producer rebate for a financial year is $350,000. The maximum entitlement for associated producers **as a group** for each financial year from 1 July 2018 is $350,000.[33]

Associated producers

73. From 1 July 2018, you are an associated producer of another producer for a financial year if, at any time during the financial year:[33A]

- you are 'connected with' each other. You are connected with each other if you would be 'connected with' each other under section 328-125 of the *Income Tax Assessment Act 1997* (ITAA 1997) if subsection 328-125(8) of the ITAA 1997 were omitted, or,[35]
- one of you is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the other in relation to your financial affairs.[36]

73A. You are an associated producer of another producer if:

- each of you is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the same third entity in relation to your financial affairs.[37]

73B. Further, you (first producer) are an associated producer of another producer (second producer) if:

- you are under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of a third producer and the third producer is under an obligation (formal or informal), or might reasonably be expected,

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[32] [Omitted.]
[33] Subsections 19-15(2) and 19-15(3). Refer to paragraphs 73 to 74C of this Ruling for a discussion about when producers will be associated.
[33A] Subsection 19-20(1).
[34] [Omitted.]
[35] Paragraph 19-20(1)(a).
[36] Paragraph 19-20(1)(b).
[37] Subsection 19-20(2).

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to act in accordance with the directions, instructions or wishes of the second producer in relation to their financial affairs.[38]

73C. The term 'financial affairs' in the associated producer provisions refers to the business and financial affairs of your wine production business or the wine production business of the other producer(s).[38AA]

74. You may be associated with one or more producers of wine in New Zealand, one or more Australian producers or one or more New Zealand and Australian producers.

74A. [Omitted.]

74B. [Omitted.]

74C. For the 2017/18 financial year, you are an associated producer of another producer for the financial year if, at any time between 1 October 2017 and 30 June 2018, you meet any of the tests set out in paragraphs 73 to 73B above.

75. [Omitted.]

75A. [Omitted.]

75B. [Omitted.]

76. [Omitted.]

77. [Omitted.]

78. [Omitted.]

78A. [Omitted.]

78B. [Omitted.]

79. [Omitted.]

80. [Omitted.]

80A. [Omitted.]

80B. [Omitted.]

81. [Omitted.]

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[38] Subsection 19-20(3).

[38AA] *SJ Buller Pty Ltd and Commissioner of Taxation* [2013] AATA 617.

[38A] [Omitted.]

[38B] [Omitted.]

[38C] [Omitted.]

[38D] [Omitted.]

[38E] [Omitted.]

[39] [Omitted.]

[40] [Omitted.]

[40A] [Omitted.]

[41] [Omitted.]

[42] [Omitted.]

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Not entitled to the producer rebate¶

Deleted: 74A. If a New Zealand participant has claimed a rebate to which it is not entitled, in whole or in part, they should arrange to pay an amount equal to the amount claimed that should not have been claimed by contacting New Zealand Inland Revenue to refer the details

Deleted: the claim to the Australian Taxation Office. If payment is not made, the Commissioner will seek to recover the debt.¶
74B. . Circumstances where an entity is not entitled to a rebate include the following:¶
the entity was not approved as a New Zealand participant;¶ ...

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Amount of producer rebate

82. The amount of a producer rebate is calculated as:

approved selling price (in Australian dollars) × 29%

Example 25 – approved selling price

83. *Approved selling price* *AU$225,000*

Rebate at 29% *AU$65,250*

Approved selling price of the wine

84. The approved selling price of the wine means the price you sell the wine for excluding any expenses unrelated to the production of the wine in New Zealand.[45]

84A. We consider this to mean that if you have incurred any such expenses, the approved selling price must be reduced by the amount of those expenses. If another entity (for example the importer) has incurred these expenses, you are not required to reduce the selling price in respect of these amounts.

85. We consider that 'expenses unrelated to the production of the wine in New Zealand' are those expenses incurred by you that would not be incurred if the wine had been produced in Australia. These expenses may include costs associated with the exportation of wine from New Zealand and the importation of the wine into Australia such as:

- transportation
- freight
- insurance
- agent's fees[46]
- New Zealand or Australian taxes including customs duties,[47] and
- foreign exchange and currency hedging costs.

Example 26 – costs excluded from approved selling price

86. *Total selling price of wine as per sales invoice* *AU$4,500*

Less producer's expenses unrelated to the production of wine in New Zealand:

[45] Subsection 19-15(1C).
[46] Paragraph 19-15(1C)(a).
[47] Paragraph 19-15(1C)(b).

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80A. If any amount of the excess claimed or amounts claimed which should not have been claimed remains unpaid after the time by which it is due to be paid, the New Zealand participant will be also liable to GIC on the unpaid amount. The GIC will continue to accrue on a daily compounding basis up to and including the end of the last day on which the excess and the GIC on the excess claim remains unpaid.¶
80B. The Australian Taxation Office may take action to recover these amounts. This will include offsetting future entitlements to the producer rebate against any amount that remains unpaid.¶
If an entity claims in excess of the amount of producer rebate to which they are entitled for a financial year, they should arrange to pay an amount equal to the excess. They ...

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Transportation	*AU$220*
Insurance	*AU$115*
Agent's fees	*AU$250*
Approved selling price	*AU$3,915*[48]

Trade incentives

87. Your selling price can be affected by trade incentives allowed to your customers. Trade incentives are allowed in different circumstances and these include settlement discounts, volume rebates, promotional rebates, co-operative advertising allowances and deferred credits.

88. Trade incentives will bring about a reduction in the selling price if the incentives relate to the sale and the price of the wine. Factors relevant to determining whether or not an incentive reduces the selling price of the wine include:

- circumstances surrounding the provision of the incentive
- the accounting treatment of the incentive in the financial records of both your records and the customer
- the terms of trade between you and your customer and other sales documentation, such as invoices, incentive claim forms and credit notes, and
- an objective assessment of your intention and the intention of your customer.

89. Examples of incentives which reduce the selling price of wine include:

- volume rebates and deferred credits – these are rebates that relate directly and solely to the volume or value of the wine sold and are calculated accordingly, and
- settlement discounts – these are discounts that relate to the value of the wine supplied by the New Zealand participant and are allowed because payment is made in cash or is made promptly.

90. If you have allowed volume rebates or discounts which effectively reduce the price for which your wine is sold, you will need to account for these volume rebates or discounts when calculating your *approved selling price* of the wine.

91. [Omitted.]

[48] Components that make up the approved selling price that are not expressed in Australian currency are to be converted to Australian currency as explained at paragraphs 93-101 of this Ruling.

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92. [Omitted.]

92A. [Omitted.]

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92L. [Omitted.]

92M. [Omitted.]

92N. [Omitted.]

92O. [Omitted.]

92P. [Omitted.]

Foreign exchange conversion

93. Components that make up your approved selling price that are not expressed in Australian currency are to be treated as if they are amounts of Australian currency[49] worked out according to the Commissioner's Determination.[50]

94. The Commissioner's Determination provides you with the following options for converting to Australian currency any component used to determine the approved selling price, depending on whether the component is expressed in New Zealand currency or a currency other than Australian or New Zealand currency.

[48A] [Omitted.]

[48B] [Omitted.]

[48C] [Omitted.]

[48D] [Omitted.]

[48E] [Omitted.]

[48F] [Omitted.]

[48G] [Omitted.]

[48H] [Omitted.]

[49] Subsection 19-15(1B).

[50] *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination (No.57) 2016* - https://www.legislation.gov.au/Details/F2016L01256.

[51] [Omitted.]

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[Omitted.]¶
¶
Reduction for earlier rebate amounts for wine purchased from an Australian supplier and used in manufacture¶
92A. . From 10 December 2012, where a rebate claim relates to an eligible dealing with wine that was manufactured by a New Zealand participant using wine acquired from an entity that is registered or required to be registered for GST in Australia (Australian supplier), the amount of the claim must be reduced by the sum of any earlier producer rebate for the wine purchased from the Australian supplier and used in the manufacturing process.¶
92B. . Where wine is acquired by a New Zealand participant from an Australian supplier prior to 10 December 2012, but is blended or used in further manufacture after ...

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Option 1 – conversion for components expressed in any foreign currency

95. The conversion under this option is calculated by multiplying the value of the component of the approved selling price, expressed in foreign currency, by the inverse of your *particular exchange rate* on the *conversion day*.

96. Your *particular exchange rate* will be either:

- the foreign exchange rate calculated by the Reserve Bank of Australia, or
- the foreign exchange rate agreed to between you and the recipient of the wine.

97. The *conversion day* is the day you use to convert foreign currency into Australian currency. This date is the earlier of:

- the day on which you receive any of the consideration for the supply of the wine, or
- the date the invoice is issued for that supply.

Option 2 – additional option for components expressed in New Zealand currency

98. You may also convert components of the approved selling price that are expressed in New Zealand currency by using a single average rate of conversion for a financial year. The conversion under this option is calculated by multiplying the value of the component of the approved selling price expressed in New Zealand currency by the average yearly Reserve Bank of New Zealand (RBNZ) rate.

99. The *average yearly RBNZ* rate is the total of the RBNZ average monthly exchange rates for the financial year in which the conversion day occurs, divided by twelve. The Australian Taxation Office publishes the average RBNZ on its website www.ato.gov.au for each financial year.

Consistent use of exchange rate

100. Whichever foreign exchange rate you choose, you must apply that method consistently.[55] We consider that you apply a method consistently if you use the same method for calculations for a financial year. If you switch methods with a view to maximising the

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[52] [Omitted.]
[53] [Omitted.]
[54] [Omitted.]
[55] Paragraph 6 of *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination (No. 57) 2016* - https://www.legislation.gov.au/Details/F2016L01256.

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producer rebate claim for a financial year, we consider you are using the method inconsistently and have therefore not complied with the requirements of the Determination. In these circumstances, you may have overstated your rebate claim for a financial year.

101. An example of the calculation of approved selling price where the components that make up the approved selling price are expressed in New Zealand currency is set out at Appendix 3 of this Ruling.

102. [Omitted.]

Accompanied by supporting evidence

103. Rebate claims must be accompanied by any supporting evidence the Commissioner requires.[56A]

104. You are only entitled to claim the rebate for wine you have produced in New Zealand and exported to Australia if WET was paid on the wine. Of the total volume of the wine, you must have owned at least 85% as source product and at the time of the dealing for which WET was paid, the wine must have met the packaging and labelling requirements.[56B]

104A. To evidence that these things have occurred, the Commissioner requires that you provide the following original supporting documentation with the claim, or copies where it is not possible to obtain originals. These documents will be returned to you after the claim has been processed.

105. If you have sold wine to an Australian importer, the supporting documentation must include:

- your New Zealand sales invoices,
- New Zealand customs export entries as evidence of the export of the wine from New Zealand, and
- Australian customs import entry numbers as evidence of the importation of the wine to Australia; and either:
  - Australian tax invoices (to substantiate that WET has been charged or included in a taxable dealing with wine that is not a customs entry)
  - wholesalers' statements,[57] or
  - if the wine is taxed at the customs barrier, Australian customs import entry numbers (to substantiate a local entry)

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[56] [Omitted.]
[56A] Subsection 17-10(2A).
[56B] Subsection 19-5(2).
[57] An example of a wholesalers' statement is set out at Appendix 4 to this Ruling.

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How do you claim the producer rebate?¶
Approved form¶
The producer rebate is claimed using the approved form, which is sent to the Australian Taxation Office. However, to streamline the claim process, claim forms and supporting documentation can be sent by New Zealand participants to New Zealand Inland Revenue, which will on-send the claim forms to the Australian Taxation Office. Claim forms and supporting documentation sent to New Zealand Inland Revenue will be taken to have been lodged with the Commissioner on the day that they are received by New Zealand Inland Revenue. More information about the form and how to lodge it, is available from New Zealand Inland Revenue, or its website www.ird.govt.nz.¶
¶
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- a worksheet showing how the rebate claim has been calculated.

106. If you have sold wine to another entity in New Zealand who sells the wine to an Australian importer, the supporting documentation must include:

- your sales invoices,
- sales invoices for sales of the wine by the other entity in New Zealand to the Australian importer
- New Zealand customs export entries as evidence of the export of the wine from New Zealand, and
- Australian customs import entry numbers as evidence of the importation of the wine to Australia; and either:
  - Australian tax invoices (to substantiate that WET has been charged or included in a taxable dealing with wine that is not a customs entry)
  - wholesalers' statements,[58] or
  - if the wine is taxed at the customs barrier, the Australian customs import entry numbers (to substantiate a local entry)
- a worksheet showing how the rebate claim has been calculated.

107. If you have imported the wine into Australia and sold the wine in Australia, the supporting documentation must include:

- New Zealand customs export entries as evidence of the export of the wine from New Zealand, and
- Australian customs import entry numbers as evidence of the importation of the wine to Australia; and either:
  - your Australian tax invoices (to substantiate that WET has been charged or included in a taxable dealing with wine that is not a customs entry), or
  - if the wine is taxed at the customs barrier, the Australian customs import entry numbers (to substantiate a local entry)
- a worksheet showing how the rebate claim has been calculated.

108. If you are claiming rebates on wine sold by an Australian distributor, other than the importer, on the basis that the distributor has paid WET on the wine (the wine not having been subject to WET

[58] An example of a wholesalers' statement is set out at Appendix 4 to this Ruling.

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prior to the sale by the distributor), the following additional documentation is required:

- the distributor's purchase invoice of the wine; and either:
  - the distributor's Australian tax invoices (to substantiate that WET has been charged or included in a taxable dealing with the wine by the distributor), or
  - wholesaler's statement[59] from the distributor.

109. [Omitted.]

110. [Omitted.]

111. [Omitted.]

112. [Omitted.]

113. [Omitted.]

113A. [Omitted.]

113B. [Omitted.]

113C. [Omitted.]

113D. [Omitted.]

113E. [Omitted.]

113F. [Omitted.]

113G. [Omitted.]

113H. [Omitted.]

113I. [Omitted.]

113J. [Omitted.]

114. [Omitted.]

115. [Omitted.]

116. [Omitted.]

117. [Omitted.]

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[59] An example of a wholesalers' statement is set out at Appendix 4 to this Ruling.

[60] [Omitted.]

[61] [Omitted.]

[62] [Omitted.]

[62A] [Omitted.]

[62B] [Omitted.]

[62C] [Omitted.]

[62D] [Omitted.]

[62E] [Omitted.]

[62F] [Omitted.]

[63] [Omitted.]

[64] [Omitted.]

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Deleted: 62F. *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006* (Appendix B of this Ruling).

Deleted: Section 17-15.

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118. [Omitted.]

Date of effect

118A. This Ruling applies both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
15 November 2017

[65] [Omitted.]
[66] [Omitted.]

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<#>Although entitlement to the rebate arises in respect of an eligible taxable dealing immediately before the end of the financial year in which the dealing occurs, the WET Act states that the Commissioner may determine, by legislative instrument, when claims for the rebate may actually be made.¶
In accordance with the Commissioner's Determination, a New Zealand participant may claim the producer rebate using the approved claim form

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The Commissioner's Determination is set out at **Appendix** E of this Ruling.¶
The producer rebate claim must be made within four years of the time when the rebate entitlement arises.¶
A producer can make a claim for more than one financial year on the same claim form provided it is after those financial years have ended.¶
¶
Providing notice of rebate entitlement¶
113A. From 10 December 2012, where a New Zealand participant is entitled to a producer rebate for wine sold and exported to a purchaser in Australia, the New Zealand participant may choose to notify the Australian purchaser of

Deleted: entitlement.¶
113B. Where a New Zealand participant chooses to provide an Australian purchaser with notification of their producer rebate amount, notification must be provided in the approved form. Paragraphs 65H and 65I of WETR 2009/2 set out when notification of a rebate entitlement will be in the approved form.¶
113C. A New Zealand participant is not entitled to claim the producer rebate for a dealing until after wine tax has been paid on the wine in Australia.

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113D. Therefore, if a New Zealand participant has not yet become entitled to claim the rebate because WET has not been paid on the wine in Australia, notification of the New Zealand participant's rebate entitlement can still be provided. In this scenario, the amount of earlier rebate to which the New Zealand producer is entitled is taken to be 29% of the approved selling price of the wine.¶
113E. If a person gives a notice of rebate amount to a purchaser and the notice is false or misleading in a material particular, because of something in it or something omitted from it, the person giving the notice will have committed an offence under the WET Act.¶
113F. The recipient of a notice is not required to verify the bona fides of the entity providing the notification, or any other details provided in the approved form, where the recipient has accepted the notice in good faith. However, where information that is required for the notice to be in the approved form is not included the notice will not be in the approved form. This means that the notice will not be effective.¶
113G. A New Zealand participant is not required to provide a copy of the notice to the Commissioner, unless requested to do so. However, a New Zealand participant is required to keep the notice as a record in accordance with the record keeping requirements explained in paragraphs 117 and 118 of

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What this Ruling is about 1¶
Date of effect 4¶
Background 6¶
How does the wine tax work? 6¶
Producer rebates 11¶
Ruling and Explanation 16¶
Eligibility 16¶ ...

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Excess claim – associated producer 78¶
Amount of producer rebate 82¶
Example 5 83¶
Approved selling price of the wine 84¶ ...

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22 November

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Deleted: Subsection 382-5(8) of Schedule 1 to the TAA

Your comments

118B. You are invited to comment on the draft changes to this Wine Equalisation Tax Ruling. Please forward your comments to the contact officer by the due date.

Due date: 12 January 2018

Contact officer details have been removed as the comments period has ended.

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Appendix 1

Rebatable wine

Set out below are the definitions of alcoholic products for the purposes of the WET Act. The definitions incorporate the requirements of the regulations set out in the *A New Tax System (Wine Equalisation Tax) Regulations 2000*.[67] WET applies to alcoholic products which satisfy the definitions and contain more than 1.15% by volume of ethyl alcohol. Some examples of products that satisfy the various definitions and products that do not are provided – the examples are only covered by the definitions where they meet the requirements in the column on the left. Alcoholic products containing more than 1.15% by volume of ethyl alcohol that are not covered by the wine equalisation tax are subject to the excise/duty regime.

Definitions	Examples
Grape wine *Grape wine is a beverage that:* • *is the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes; and* • *does not contain more than 22% of ethyl alcohol by volume.* ***NB.** A beverage does not cease to be the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes merely because grape spirit, brandy, or both grape spirit and brandy have been added to it.*	Grape wine includes: • table wines (red, white and rosé); • sparkling wines; • fortified wines; and • dessert wines.
Grape wine products *grape wine product is a beverage that:* • *contains at least 70% grape wine; and* • *has not had added to it any ethyl alcohol from any other source, except* a) *grape spirit; or* b) *alcohol used in preparing vegetable extracts (including spices, herbs and grasses) where the alcohol:*	Grape wine products include: • vermouth; • marsala; • green ginger wine (except green ginger wine with spirits such as scotch added); • wine based cocktails and creams that do not contain the flavour of any alcoholic beverage (other than wine) whether the flavour is natural or artificial; and • imitation liqueurs (wine based) that do not contain the flavour of any alcoholic beverage (other

[67] Refer to paragraphs 8 to 36 of WETR 2009/1 for further explanation of the definitions of alcoholic products for the purposes of the WET Act.

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Grape wine products are traditional products that have been produced by the wine industry for many years.¶
Up to and including 9 September 2009, grape wine products include:¶
<#>vermouth;¶
<#>marsala;¶
<#>green ginger wine (except green ginger wine with spirits such as scotch added);¶
<#>wine based cocktails and creams; and¶
<#>imitation liqueurs (wine based);¶
but only where they satisfy the requirements in the column on the left.¶
¶
Up to and including 9 September 2009, grape wine products do not include:¶
<#>wine coolers (unless they satisfy the requirements in the column on the left);¶
<#>ready to drink (RTD) or designer drinks that contain a wine base (unless they satisfy the requirements in the column on the left);¶
<#>RTDs or designer drinks that contain spirits (other than grape spirit); and¶
<#>spirit based (other than grape spirit) cocktails, creams and liqueurs.¶
¶
From 10 September 2009 grape

Deleted: *Up to and including 9 September 2009, a grape wine product is a beverage that:*¶
<#>contains at least 70% grape wine; and¶
<#>has not had added to it any ethyl alcohol from any other source, except grape spirit or alcohol used in preparing vegetable extracts (including spices, herbs and grasses) for example, in producing vermouth; and¶
<#>contains between 8% and 22% (inclusive) of ethyl alcohol by volume.¶
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From 10 September 2009, a

– *is only used to extract flavours from vegetable matter;* – *is essential to the extraction process; and* – *adds no more than one percentage point to the overall alcoholic strength by volume of the beverage; and* • *has not had added to it the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial; and* • *contains between 8% and 22% (inclusive) of ethyl alcohol by volume.*	than wine) whether the flavour is natural or artificial; but only where they satisfy the requirements in the column on the left. Grape wine products do not include: • wine coolers (unless they satisfy the requirements in the column on the left); • ready to drink (RTD) or designer drinks that contain a wine base (unless they satisfy the requirements in the column on the left); • RTDs or designer drinks that contain spirits (other than grape spirit); and • Spirit based (other than grape spirit) cocktails, creams and liqueurs.
Fruit or vegetable wine *Fruit or vegetable wine is a beverage that:* • *is the product of the complete or partial fermentation of the juice or must of fruit or vegetables, or products derived solely from fruit or vegetables;* • *has not had added to it any ethyl alcohol from any other source except grape spirit or neutral spirit;* • *has not had added to it any liquor or substance that gives colour or flavour except grape spirit or neutral spirit; and* • *contains between 8% and 22% (inclusive) of ethyl alcohol by volume or if grape spirit or neutral spirit has been added contains between 15% and 22% (inclusive) of ethyl alcohol by volume (NB: a product is only a fruit or vegetable wine after the addition of grape spirit or neutral spirit if that product met the definition of fruit or vegetable wine before the spirit was added).*	Fruit or vegetable wines include: • table wine; • sparkling wine; and • fortified wine. Fruit or vegetable wines do not include: • RTD or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges etc. (unless they satisfy the requirements in the column on the left).

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contains between 8% and 22% (inclusive) of ethyl alcohol by volume.

Deleted: <#>wine coolers (unless they satisfy the requirements in the column on the left);¶
<#>ready to drink (RTD) or designer drinks that contain a wine base (unless they satisfy the requirements in the column on the left);¶
<#>RTDs or designer drinks that contain spirits (other than grape spirit); and¶

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Cider and perry *Cider or perry is a beverage that:* • *is the product of the complete or partial fermentation of the juice or must of apples or pears* • *has not had added to it any ethyl alcohol from any other source, and* • *has not had added to it any liquor or substance (other than water or the juice or must of apples or pears) that gives colour or flavour.*	Cider and perry include: • traditional cider and perry • draught cider and perry • dry cider and perry, and • sweet cider and perry. Cider and perry do not include: • cider or perry that has had lemon, black currant or other fruit flavourings added, and • cider or perry that has had cola or other flavourings added.

Mead
Mead is a beverage that:
• *is the product of the complete or partial fermentation of honey;*
• *has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit*
• *has not had added to it any liquor or substance that gives colour or flavour other than:*
  • *grape spirit or neutral spirit*
  • *honey, herbs and spices, all of which can be added at any time*
  • *caramel, provided it is added after the fermentation process is complete*
  • *fruit or product derived entirely from fruit, provided:*
  • *the fruit or product has not been fermented*
  • *the fruit or product is added to the mead before fermentation of the mead*
  • *after the addition of the fruit or product and before fermentation the mead contains not less than 14% by volume of honey and not more than 30% by volume of the fruit or product*
  • *if fruit or product is added the mead contains between 8% and 22% (inclusive) of ethyl alcohol by volume, and*
• *if grape spirit or neutral spirit has been added contains between*
	Mead includes:
	• honey mead
	• fortified mead
	• liqueur mead, and
	• spiced mead.

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15% and 22% (inclusive) of ethyl alcohol by volume. However, grape spirit or neutral spirit can only be added if the beverage meets the definition of mead before the grape spirit or neutral spirit is added. *Note* If fruit or product derived from fruit is added and it contains concentrated fruit juice or fruit pulp, the proportion of fruit or product in the mead is worked out by assuming that it has been reconstituted according to the recommendations of the manufacturer of the concentrated fruit juice or pulp.*	
Sake *Sake is a beverage that:* • *is the product of the complete or partial fermentation of rice* • *has not had added to it any ethyl alcohol from any other source, and* • *has not had added to it any liquor or substance that gives colour or flavour.*	Sake includes: • fermented sake, and • rice wine. Distilled sake does not satisfy the definition and is not included.

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Appendix 2 – Compliance approach

Approval or refusal of application - New Zealand participant

118C. If the Commissioner is satisfied that you are the producer of rebatable wine in New Zealand that has been or is likely to be exported to Australia, you will be approved as a New Zealand participant. You will be given written notice of the approval, including the date from which the approval has effect.

118D. You may request that the date of approval be backdated.

Example 27 – approval backdated

118E. *NZ Wines is a producer of wine in New Zealand. After receiving an order from a wholesale distributor in Australia, NZ Wines recently exported a number of cases of bottled wine to Australia. The wholesale distributor provided a quotation to the Department of Immigration and Border Protection upon entering the wine into Australia.*

118F. *Until receiving the order from the Australian distributor, NZ Wines sold its wine exclusively in New Zealand and had not anticipated exporting wine to Australia. As such, NZ Wines was not an approved New Zealand participant when the wine was exported.*

118G. *As the wine has been exported to Australia, NZ Wines can apply for approval as a New Zealand participant and have the date of effect of the approval backdated to the date the wine was exported.*

118H. If you are not satisfied with the Commissioner's decision on the date of effect you may have the decision reviewed.

118I. If the Commissioner is not satisfied that you are the producer of rebatable wine in New Zealand that has been or is likely to be exported to Australia, you will not be approved as a New Zealand participant. In these circumstances, you will be given written notice of the refusal, including the reasons for the decision. Refusing to approve an entity as a New Zealand participant is also a reviewable decision.

Revocation of approval as New Zealand participant

118J. You must notify the Commissioner in writing if you no longer meet the eligibility criteria for approval as a New Zealand participant due to a change in your circumstances, for example, if you are no longer a producer of rebatable wine in New Zealand. The notification must occur within 21 days of the change in circumstances. Upon notifying the Commissioner of the change in circumstances the approval will be revoked. You will be notified of such a revocation in writing, including the date from which the revocation has effect.

118K. If at any time the Commissioner becomes aware that you no longer meet the requirements for approval as a New Zealand

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Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006¶

¶

Under subsection 19-15(1B) of the *A New Tax System (Wine Equalisation Tax) Act 1999*, I make the following determination:¶

¶

Citation¶

1. . This determination may be cited as the *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006.*¶

¶

Commencement¶

Deleted: . . **This determination commences on 1 July 2006**

Deleted: the commencement of Schedule 4 to the *Tax Laws Amendment (2005 Measures No. 4) Act 2005*, whichever is the later.¶

¶

Application

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3. . This determination applies to approved New Zealand participants that are required to calculate the approved selling price of their wine in Australian currency, when one or more components of the approved selling price are expressed in a currency other than Australian currency.¶

Note For approved New Zealand participants, the amount of a WET producer rebate is calculated using the approved selling price of their wine.¶

¶

Definitions¶

4.(1) The following terms are defined for the purpose of this determination ¶

***RBA rate* means the foreign exchange rate calculated by the Reserve Bank of Australia (RBA) when the**

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that is *not* a RBA business day, then the RBA rate is the unit of foreign currency per $A calculated by the RBA at 4:00pm Australian Eastern time of the previous RBA business day.¶

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Deleted: and the recipient of the wine. The agreed rate only applies for sales made under the agreement and for the period of the agreement applying to the Australian financial year in which the producer rebate is being claimed.

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the day on which any of the consideration is received by the New Zealand participant for the supply of the wine (the receipt date); or¶

the invoice date.¶

RBA business day means a day that the head office of the RBA is open for busines...

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participant, the approval will be revoked. You will be notified of such a revocation in writing, including the date from which the revocation has effect and the reasons for the revocation.

118L. Revocation and the date of revocation of approval as a New Zealand participant are also reviewable decisions.

How do you claim the producer rebate?

Approved form

118M. You claim the producer rebate using the approved form, which is sent to the Australian Taxation Office. However, to streamline the claim process, you can send claim forms and supporting documentation to New Zealand Inland Revenue, which will send the claim forms to the Australian Taxation Office. Claim forms and supporting documentation sent to New Zealand Inland Revenue will be taken to have been lodged with the Commissioner on the day they are received by New Zealand Inland Revenue. More information about the form and how to lodge it, is available from New Zealand Inland Revenue, or its website www.ird.govt.nz

Timing

118N. Although entitlement to the rebate arises in respect of an eligible taxable dealing immediately before the end of the financial year in which the dealing occurs, the WET Act states that the Commissioner may determine, by legislative instrument, when claims for the rebate may actually be made.

118O. In accordance with the Commissioner's Determination, you may claim the producer rebate using the approved claim form and with the relevant substantiating documents after the end of the financial year in which entitlement to the rebate arises.

118P. The producer rebate claim must be made within four years of the time when the rebate entitlement arises.

118Q. You can make a claim for more than one financial year on the same claim form provided it is after those financial years have ended.

118R. If the claim is disallowed:

- The Commissioner can decide to disallow in whole, or in part, your rebate claim. In the event a claim is disallowed, the Commissioner must notify you of this in writing.
- Disallowance of a claim for the rebate either in whole, or in part, is a reviewable wine tax decision in accordance with section 111-50 of Schedule 1 to the TAA.

What happens if the producer rebate is claimed when it should not have been claimed or when it is over-claimed

Not entitled to the producer rebate

118S. If you have claimed a rebate you are not entitled to, in whole or in part, you should arrange to pay the amount you are not entitled to by contacting New Zealand Inland Revenue, who will refer the details to the Australian Taxation Office. If payment is not made, the Commissioner will seek to recover the debt.

118T. Circumstances where an entity is not entitled to a rebate include the following:

- you did not produce the wine in New Zealand
- the wine was not exported to Australia
- WET was not paid on the wine
- you did not own the source product for at least 85% of the total volume of the wine throughout the period starting immediately prior to crushing (or immediately prior to fermentation in the case of mead and sake) and ending when the wine is placed in a container meeting the packaging and labelling requirements
- the wine did not meet the packaging and labelling requirements when it was the subject of a dealing on which WET was paid, and
- you calculated the amount of producer rebate incorrectly.

Excess claim – single producer

118U. If you claim amounts of producer rebate to which you are entitled under subsection 19-5(2), and then ascertain that the total amount you have claimed exceeds the amount to which you are entitled for a financial year, you are liable to pay to the Australian Taxation Office an amount equal to that excess.

118V. Therefore where you are not an associated producer, you can correct an excess claim by arranging to pay an amount equal to the excess. You can do this by contacting New Zealand Inland Revenue, who will refer the details to the Australian Taxation Office.

118W. However, if the Commissioner discovers the excess claim (for example through compliance activity) and you have not corrected the excess claim, then the Commissioner will seek to recover the excess amount.

Excess claim - associated producer

118X. If you are a member of a group of associated producers and the rebate claimed by the group for a financial year is more than the

maximum amount of producer rebates to which the group is entitled for the financial year, each member of the group is jointly and severally liable to pay an amount equal to the excess. However, you will not be liable to pay an amount that exceeds the sum of the amounts of producer rebate that you claimed for the financial year.

118Y. One or more members of the group must correct the excess claim by arranging to pay an amount equal to the excess. They can do this by contacting New Zealand Inland Revenue, who will refer the details to the Australian Taxation Office.

118Z. However, if the Commissioner discovers the excess claim (for example through compliance activity) and it has not been corrected by one or more members of the group, the Commissioner will seek to recover the excess claim from the group (if appropriate), as each producer member is jointly and severally liable to pay an amount equal to the excess. The excess amount will be recovered as a debt to which the General Interest Charge (GIC) will apply (see further paragraph 118AC of Appendix 2 of this Ruling).

Impact of volume rebates and discounts

118AA. If you have allowed volume rebates or discounts which effectively reduce the price for which wine is sold (see paragraphs 87 to 90 of this Ruling and paragraphs 118 to 122 of WETR 2009/1) and the volume rebate or discount has not been factored into the calculation of the producer rebate claimed, you will need to adjust your producer rebate accordingly.

118AB. Consistent with other amounts you have claimed in excess, in these circumstances, you should arrange to pay an amount equal to the incorrect amount claimed by contacting New Zealand Inland Revenue to refer the details to the Australian Taxation Office (and if payment is not made, the Commissioner will seek to recover the debt).

118AC. If any amount of the excess claimed or amounts claimed which should not have been claimed remains unpaid after the time by which it is due to be paid, you will also be liable to the GIC on the unpaid amount. The GIC will continue to accrue on a daily compounding basis up to and including the end of the last day on which the excess and the GIC on the excess claim remains unpaid.

AU$200 exclusion

118AD. You cannot claim a producer rebate for an amount totalling less than AU$200. However, claims may be aggregated to reach the AU$200 minimum amount. This is also subject to the four year time period referred to in paragraph 118P of Appendix 2 of this ruling.

What records do you need to keep and how long do you need to keep them?

118AE. You are required to keep records of all transactions that relate to the rebate claim for the longest of:

- five years after the completion of the transactions or acts to which they relate
- the period of review for any assessment to which those records, transactions or acts relate. In practical terms this means four years from the day after the day the Commissioner first gives notice of an assessment to the New Zealand participant (unless the period of review is extended in the circumstances set out in section 155-35 of Schedule 1 to the TAA), and
- where an assessment has been amended under Subdivision 155B of Schedule 1 to the TAA, the refreshed period of review that applies to the last of the amendments.

118AF. The records must be in English or readily accessible and convertible into English.

Appendix 3

Example: calculation of approved selling price in Australian currency where the components that make up the approved selling price are expressed in New Zealand currency.

118AG. Kiwi Wines is a wine producer that manufactures wine in New Zealand. Several shipments of wine are sold to an Australian importer during the 2017-18 financial year. The importer pays wine tax on the wine at importation. The invoice prices, expressed in New Zealand dollars, include expenses for freight and insurance to transport the wine to the New Zealand shipping dock. The importer meets the shipping costs from the New Zealand shipping dock to Australia.

118AH. Kiwi Wines invoices the Australian importer for the wine:

Invoice date	Invoice amount (NZ$) including transport costs	Transport costs to shipping dock	Invoice amount (NZ$) excluding transport costs	Date payment received
21 July 2017	$26,500	$500	$26,000	21 Aug 2017
13 Sept 2017	$69,000	$1,000	$68,000	21 Oct 2017
04 Dec 2017	$126,000	$2,000	$124,000	21 Jan 2017
05 April 2018	$22,500	$500	$22,000	21 May 2017

Note: Expenses of freight and insurance incurred by the New Zealand participant are excluded from the invoice price as these expenses are unrelated to the production of the wine in New Zealand.

Options available to convert the invoice amounts to Australian dollars

118AI. The invoice date for each sale must be used as the **conversion day** as the invoice date occurs before the date payment was received.

*Method 1 – the **RBA rate***

118AJ. Assume the following RBA exchange rate for a unit of New Zealand currency per Australian dollar:

21 July 2017 1.0650

13 Sept 2017 1.0741

04 Dec 2017 1.0823

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*Value of component expressed . . . **average yearly**¶ in New Zealand currency ($NZ) . x **RBNZ rate**¶ ¶ where,¶ **average yearly RBNZ rate** is the total of the **average monthly RBNZ rates** for each month in the Australian financial year in which the **conversion day** occurs, divided by twelve; and¶ the **conversion day** is the date that the New Zealand currency is converted into Australian currency for wine equalisation tax purposes.¶ 6. . You must use your particular exchange rate and conversion option consistently.¶*

Dated this 23rd day of March 2006¶

Stephen Neil Olesen¶
Deputy Commissioner and Delegate of the Commissioner¶

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Appendix C¶

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05 April 2018 1.0331

Conversion to Australian currency:

Invoice date	Invoice amount (NZ$) excluding transport costs	Conversion rate	Invoice amount (AU$)
21 July 2017	$26,000	1.0650	$24,413
13 Sept 2017	$68,000	1.0741	$63,309
04 Dec 2017	$124,000	1.0823	$114,571
05 April 2018	$22,000	1.0331	$21,295
		Total of invoices	**AU$223,588**

*Method 2 – the **agreed rate***

118AK. Assume that all sales were made under the same agreement, and that for the period of the agreement in which the sales were made, the agreed exchange rate for a unit of New Zealand currency per Australian dollar was 1.0755.

Conversion to Australian currency:

Invoice date	Invoice amount (NZ$) excluding transport costs	Conversion rate	Invoice amount (AU$)
21 July 2017	$26,000		
13 Sept 2017	$68,000		
04 Dec 2017	$124,000		
05 April 2018	$22,000		
	Total $240,000	1.0755	**AU$223,152**

Note: Where the New Zealand participant and the recipient of the wine are associates, the **agreed rate** should reflect a rate agreed to by parties dealing at arm's length. Where the agreed rate does not apply, you need to select the **RBA rate** or the **average yearly RBNZ rate**, if applicable.

*Method 3 – **average yearly RBNZ rate***

118AL. Assume the **average yearly RBNZ rate** for a unit of Australian currency per New Zealand dollar is calculated to be 0.9390 for the 2017-18 financial year.

Invoice date	Invoice amount (NZ$) excluding transport costs	Conversion rate	Invoice amount (AU$)

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21 July 2017	$26,000		
13 Sept 2017	$68,000		
04 Dec 2017	$124,000		
05 April 2018	$22,000		
	Total $240,000	0.9390	**A$225,360**

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In this example Kiwi Wines may wish to use the **average yearly RBNZ rate** to maximise its rebate claim.

Appendix 4

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Statement for sales of New Zealand wine for the purposes of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

Name of entity making statement
Australian Business Number
Address

Shipment details of New Zealand wine to Australia (* if known)

New Zealand producer's name
Address

Shipment/order number *
New Zealand export permit number *
Australian customs import entry number *
Date of receipt of shipment

Details of wine imported/purchased

Description			
Quantity imported (cases)			

Statement

(Insert name of entity making statement).....hereby states that:

1. the following sales of the New Zealand wine detailed above have been sold into the Australian domestic market in containers suitable for retail sale of not more than 5 litres (51 litres for cider or perry) that meet Australian regulatory labelling requirements at a price that includes wine equalisation tax; and

2. the wine has not been exported from Australia.

Sales of wine for the period ..... in respect of the financial year ended 30 June.....

Tax invoice no	Invoice date	Description of wine	Quantity sold (cases)

Signature details

Name of person authorised to make this statement……
Signature of person authorised to make this statement……...
Date……

Note: This statement may only cover one shipment/order number.

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Detailed contents list

119. Below is a detailed contents list for this Wine Equalisation Tax Ruling:

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Example 3 . 53¶
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Not entitled to the producer rebate 74A¶
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Excess claim – associated producer . 78¶

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Wine lost during manufacture . 92D¶
Example 7 – Calculating reduction of rebate amount . 92M¶

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Approved form . 102¶

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Providing notice of rebate entitlement 113A¶
A$200 exclusion . 114¶
If the claim is disallowed . 115¶
What records do you need to keep and how long do you need to keep them? 117¶

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Appendix F Page 49¶

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Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10; GSTR 2003/5; GSTR 2005/2; WETR 2009/1

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- ANTS(WET)A 1999 19–5(2)(c)
- ANTS(WET)A 1999 19–5(2)(d)
- ANTS(WET)A 1999 19–5(2)(e)
- ANTS(WET)A 1999 19–5(2)(f)
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- ANTS(WET)A 1999 19–5(5)
- ANTS(WET)A 1999 19–5(6)
- ANTS(WET)A 1999 19–5(7)
- ANTS(WET)A 1999 19–5(7)(b)
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- ANTS(WET)A 1999 19–5(7)(f)
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- ANTS(WET)A 1999 19–7(2)(b)
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- ANTS(WET)A 1999 19–9
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- ANTS(WET)A 1999 19–15(1C)
- ANTS(WET)A 1999 19–15(1C)(a)
- ANTS(WET)A 1999 19–15(1C)(b)
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- Food Standards Australia New Zealand Act 1991 92
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- Trade Marks Act 2002 (NZ) 5

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<#>ANTS(WET)A 1999 19–25(2)¶
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<#>WET Regulations 31–3.01¶
<#>WET Regulations 31–4.01¶
<#>WET Regulations 31–6.01¶

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ATO references
NO:
ISSN: 2205-6122
ATOlaw topic: Wine Equalisation Tax

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¶
<#>GSTR 2005/2¶
GSTR 2003/5¶
<#>¶
Under subsection 17-10(2B) of the A New Tax System (Wine Equalisation Tax) Act 1999, I make the following determination:¶
Citation¶
1. . This determination may be cited as the Wine Equalisation Tax New Zealand Producer Rebate Claim Lodgment Determination (No. 34) 2016 - https://www.legislation.gov.au/Details/F2016L00198*2006*.

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Commencement¶
2. . This determination commences on 1 July 2006 or the commencement of Schedule 4 to the *Tax Laws Amendment (2005 Measures No. 4) Act 2005*, whichever is the later.¶
¶
Application of determination¶
3. . This determination applies to approved New Zealand participants entitled to claim the wine producer rebate and sets out the time when the claim for the rebate may be made.¶
¶
Definitions

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4. Terms in this determination have the same meaning as in the *A New Tax System (Wine Equalisation Tax) Act 1999*.¶
¶
When the claim may be lodged¶
5. Where an approved New Zealand participant is entitled to make a producer rebate claim, the claim may be made at any time after the entitlement to the rebate arises and within 4 years after that entitlement arises.¶
Note Entitlement to the producer rebate arises immediately before the end of the Australian financial year in which the relevant taxable dealing takes place.¶

Dated this 23rd day of March 2006¶

...