



Wine Equalisation Tax Ruling

Wine equalisation tax: operation of the producer rebate for other than New Zealand participants

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1 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.

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Summary - what this ruling is about

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1. The *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) deals with 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.

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2. From 1 October 2004, the WET Act provides for a producer rebate in the form of a WET credit.

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2A. This Ruling explains:

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- how the WET producer rebate operates for producers of wine other than New Zealand participants¹
- eligibility for the rebate
- how the rebate is calculated, and
- when and how to claim any rebate you are eligible for.

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3. Unless otherwise stated, all legislative references in this Ruling are to the WET Act and all references to the WET Regulations

¹ See *Wine Equalisation Tax Ruling WETR 2006/1 Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand for an explanation of how the wine tax producer rebate operates for producers of wine in New Zealand that have their wine exported to Australia.*

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are to the *A New Tax System (Wine Equalisation Tax) Regulations 2000*.

4. [Omitted.]

5. [Omitted.]

Background

How does the WET work?

6. The broad aim of the WET Act is to impose WET on dealings with wine in Australia. The WET is applied to both Australian produced wine and imported wine. Dealings that attract WET are referred to as assessable dealings and 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. When a wholesaler sells wine to a retailer - for example, to a bottle shop, hotel or restaurant - WET is calculated on the selling price of the wine excluding WET and Australian goods and services tax (GST). If there is no wholesale sale, for example, where the wine 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.

8. [Omitted.]

9. Refer to Wine Equalisation Tax Ruling WETR 2009/1 *Wine equalisation tax: the operation of the wine equalisation tax system* for a detailed discussion about how WET works.

Producer rebates

10. From 1 October 2004, the WET Act has provided a rebate of WET for producers of rebatable wine that are registered or required to be registered for GST in Australia.

10A. From 1 October 2004, the maximum amount of producer rebates an Australian producer (or group of associated producers) could claim in a full financial year was \$290,000. From 1 July 2006, the maximum rebate amount for a financial year was increased to \$500,000. From 1 July 2018, the maximum amount of rebate an Australian producer (or group of associated producers) can claim in a full financial year is \$350,000, effectively offsetting WET on AU\$1.2 million (wholesale value) of eligible sales and applications to own use per year.

11. [Omitted.]

² [Omitted.]

³ [Omitted.]

⁴ [Omitted.]

Deleted: Date of effect¶

This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue. 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).

Deleted: Note 1 The Addendum to this Ruling that issued on 6 July 2011, explains our view of the law as it applied both before and after its date of issue.¶
Note 2 The Addendum to this Ruling that issued on 19 March 2014 explains our view of the law as it applies:¶

<#>on and from 10 December 2012 to the extent that it relates to amendments made to the producer rebate provisions of the WET Act, that came into effect on 10 December 2012.¶

<#>to payments or refunds that relate to tax periods starting on or after 1 July 2012 or if they do not relate to any tax periods, liabilities or entitlements that arose on or after 1 July 2012 to the extent that it relates to amendments made to the *A New Tax System (Goods and Services Tax) Act 1999*, 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.¶

<#>both before and after its date of issue to the extent it clarifies the Commissioner's views with respect to what happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed. You can rely upon the Addendum on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the TAA.¶

<#>If this Ruling conflicts with a previous private ruling that you have obtained or a previous public ruling, this Ruling prevails. However, if you have relied on a previous ruling, you will be protected in respect of what you have done up to the date of issue of this Ruling. This means that if you have underpaid an amount of WET, you will not be ...

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Deleted: From 1 July 2006, the maximum amount of rebate an Australian producer ...

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Deleted: Subsections 19-15(2) and 19-15(3).

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12. [Omitted.]

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. The operation of the producer rebate for New Zealand participants is described in Wine Equalisation Tax Ruling WETR 2006/1 *Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand*.

13A. [Omitted.]

Deleted: The amount of the producer rebate is:¶
for wholesale sales,

Deleted: 29% of the price for which the wine is sold

Deleted: (excluding wine tax and GST).¶
for retail sales

Deleted: and AOUs,

Deleted: 29% of the notional wholesale selling price of the wine.

Deleted: From 10 December 2012, where a producer blends or further manufactures wine using wine produced by another producer, the amount of rebate for the blended or further manufactured wine is reduced by the sum of any rebate amounts attributable to the other producer's wine.

Deleted: Rulings

Deleted: Pursuant to section 105-60 of the TAA, you will be protected in respect of what you have done up until the date of the withdrawal of WETR 2004/1 to the extent that you have relied on paragraphs 121 to 135 of WETR 2004/1 to ascertain your entitlement to the producer rebate.

Deleted: and Explanation

Previous rulings

14. This Ruling replaces paragraphs 121 to 135 inclusive of Wine Equalisation Tax Ruling WETR 2004/1 *Wine equalisation tax: the operation of the wine equalisation tax system*. WETR 2004/1 was withdrawn on 24 June 2009.

14A. This Ruling reflects changes made to the WET Act by Treasury Laws Amendment (2017 Measures No 4) Act 2017.

Ruling**Who is eligible for the producer rebate?**

14B. You can claim a producer rebate for an assessable dealing you have with rebatable wine during the financial year when you meet all of the following requirements:^{9B}

- you are the producer of the rebatable wine, and
- you either:
 - have a WET liability for the assessable dealing, or
 - would have had a WET liability for the assessable dealing but for the fact the purchaser quoted on the basis that they intended to pay WET on a subsequent dealing with the wine, and
- of the total volume of the rebatable wine, you owned at least 85% as source product at all times from

Deleted: See paragraphs 57 to 61 of WETR 2009/1 for a discussion of 'wholesale sales'.

Deleted: Paragraph 19-15(1)(a).

Deleted: See paragraphs 62 and 63 of WETR 2009/1 for a discussion of 'retail sales'.

Deleted: AOU means application to own use. See paragraphs 80 to 83 of WETR 2009/1 for a discussion of 'application to own use'.

Deleted: Paragraph 19-15(1)(b). See paragraphs 142 to 151 of WETR 2009/1 for a discussion of 'notional wholesale selling price'.

Deleted: Subsection 19-17(1).

Deleted: 97 to 121

⁵ [Omitted.]

⁶ [Omitted.]

⁷ [Omitted.]

⁸ [Omitted.]

⁹ [Omitted.]

^{9A} [Omitted.]

^{9B} Subsection 19-5(1). Note that these requirements are subject to transitional rules as explained in paragraphs 61AAB to 61AAY of this Ruling.

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immediately prior to crushing (or immediately prior to fermentation in the case of mead and sake)

- at the time of the assessable dealing, the rebatable wine was in retail packaging of 5 litres or less (51 litres for cider or perry), and
- was branded by a trade mark owned by you (or an associated entity) that identifies you or can be readily associated with you.

Rebatable wine

15. [Omitted.]

16. Rebatable wine¹¹ means grape wine, grape wine products, fruit or vegetable wine, cider or perry, mead or sake.¹²

17. 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

18. You are entitled to a producer rebate for rebatable wine only if you are the 'producer' of the wine.¹³

19. 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.^{14A}

20. [Omitted.]

21. [Omitted.]

22. [Omitted.]

23. [Omitted.]

24. [Omitted.]

25. [Omitted.]

¹⁰ [Omitted.]

¹¹ As defined in section 33-1.

¹² Sections 31-1, 31-2, 31-3, 31-4, 31-5, 31-6 and 31-7. See also WET Regulations 31-2.01, 31-3.01, 31-4.01 and 31-6.01.

¹³ Subsection 19-5(1).

¹⁴ [Omitted.]

^{14A} 'Source product' is a defined term in the WET Act and is discussed in paragraphs 43E and 43F of this Ruling.

¹⁵ [Omitted.]

Deleted: Producers of rebatable wine may be entitled to a producer rebate.

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Deleted: An entity is

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Deleted: Producer (of rebatable wine) is defined in section 33-1 and means an entity that:¹¹ manufactures the wine or supplies to another entity the grapes, other fruit, vegetable or honey from which the wine is manufactured.

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Deleted: in section 33-1. Firstly, in broad terms, an entity is

Deleted: if it manufactures the wine from the base constituents (for example grapes for grape wine, fruit or vegetables for fruit or vegetable wine, honey for mead or rice for sake or grape wine for grape wine products).

Deleted: Secondly an entity (the first entity) is also the producer of rebatable wine if it supplies another entity with the base constituents (that is grapes, fruit or vegetables or honey) from which the wine is manufactured.

Deleted: Although rice is not specifically mentioned in the definition of producer of rebatable wine, the Commissioner considers rice falls within the meaning of fruit or vegetable.

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Deleted: Therefore, an entity that supplies rice to another entity to manufacture sake will also be a producer of the rebatable wine.

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Deleted: The meaning of producer as defined in section 33-1 refers to an entity that supplies the raw materials such as fruit or vegetables from which wine is manufactured. As specified in section 33-1 the term 'supply' in the WET Act takes its meaning from the definition of supply in *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Deleted: The term 'supply' is defined very broadly in the GST Act and, in the context of the WET Act, includes a sale of grapes, fruit or vegetables or honey. Therefore an entity that provides another entity with the base constituents (fruit or vegetables) from which wine is manufactured is a producer of rebatable wine. However, to be entitled to a producer rebate an entity not only has to be the producer of rebatable wine but also:¹¹ <#>must be liable for wine tax for a taxable dealing in the wine during the financial year; or¹¹ would have been liable for wine tax for a dealing in the wine during the financial year had the purchaser not quoted for the sale at or before the time of sale.

Deleted: The sale of fruit or vegetables to a manufacturer of wine is not a taxable dealing in wine. Therefore an entity that sells the grapes, fruit or vegetables or honey to a wine manufacturer will not be entitled to a producer rebate.

Deleted: However an entity that provides grapes, fruit or vegetables or honey to another entity to make wine on their behalf, and subsequently has a dealing in the wine for which they are liable to wine tax, or would have been liable to wine tax had the purchaser not quoted for the sale, is a producer of rebatable wine and is entitled to a producer rebate.

Deleted: Subsection 19-5(1).

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Deleted: In the context of the wine industry fruit or vegetable wine includes wine made from the complete or partial fermentation of fruit, vegetable, grains and/or cereals. S (...)

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Manufacture of wine

26. Manufacture is defined¹⁶ 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 treatment to foodstuffs as a process in preparing them for human consumption.^{16A}

27. The definition of manufacture is inclusive not exhaustive, and extends the ordinary meaning of manufacture.

27A. 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.^{18A}

27B. Whether or not certain processes that are carried out constitute manufacture is a matter of fact and degree in each case.

Example 1 – manufacture from grapes

27C. Wine Co grows Merlot grapes in its vineyard. It crushes the grapes and carries out primary and secondary fermentation, filtration and stabilisation. The resulting merlot wine is packaged in 750ml bottles ready for retail sale.

27D. As the wine is a commercially distinct product from its inputs, Wine Co has manufactured the wine.

Example 2 – manufacturing and bottling

27E. Bottle Co purchases bulk Chardonnay wine from Chard Pty Ltd in isotankers. The Chardonnay is pumped from the isotanker into a storage tank at Bottle 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.

27F. 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.

¹⁶ Section 33-1.

^{16A} 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.

¹⁷ [Omitted.]

¹⁸ [Omitted.]

^{18A} *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 section 3 of the *Sales Tax Assessment Act (No. 1) 1930*, Murray J stated in *Deputy Commissioner of Taxation v. Cohn's Industries Pty Ltd*

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I am quite unable to see anything which should lead me to the view that the word 'includes' is intended to be, insofar as it is followed by para. (b) exhaustive. It seems to me that para. (a), (b) and (c) of the definition can all be fairly read as intended to extend the ordinary meaning of the term 'manufacture'.

Deleted: (1978) 9 ATR 479; 79 ATC 4025

Deleted: (1978) 9 ATR 479 at 480; 79 ATC 4025 at page 4027.

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28. [Omitted.]

29. [Omitted.]

30. [Omitted.]

31. [Omitted.]

32. [Omitted.]

33. [Omitted.]

34. [Omitted.]

35. [Omitted.]

36. [Omitted.]

37. [Omitted.]

38. [Omitted.]

39. [Omitted.]

Blending as manufacture

40. 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 wine in the blend having individual characteristics that, when combined result in a wine with its own commercially distinct characteristics.

40A. Where you combine different wines to produce wine with its own characteristics that are distinct from the individual blended wines, you manufacture wine.

Example 3 – manufacture by blending own wine with purchased wine

41. NH Wines Pty 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.

42. NH Wines Pty Ltd manufactures the Cabernet Merlot wine.

Example 4 – blending wine with grape juice concentrate

43. Blend Co purchases bulk Grenache wine from BB Wine. To increase the sweetness of the wine, Blend Co blends the Grenache

Deleted: 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.

Deleted: In *McNichol and Anor v. Pinch* ¹⁹ Darling J stated at page 361:¶

Deleted: This statement was quoted with approval in *Federal Commissioner of Taxation v. Jack Zinader Pty Ltd.* ²¹ In that case it was held that articles which resul

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Deleted: Whether or not the processes carried out by a particular entity constitute manufacture will be a matter of fact and degree. An entity that makes, from the base constituents, for example grapes, fruit or vegetables, honey or rice, a beverage (this includes raw wine)

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Deleted: that satisfies the meaning of wine in section 31-1 manufactures wine. However, an entity that purchases bottled wine or bulk wine for bottling does not manufacture that wine and is not eligible for the producer rebate in relation to that wine.

Deleted: The first limb of the extended meaning of manufacture in section 33-1 refers to production.

Deleted: *The Australian Oxford Dictionary*, 2004, Second Edition, Oxford University Press, Melbourne relevantly defines 'production' as:

Deleted: 1. the act or instance of producing; the process of being produced.¶ Produce is relevantly defined as:

Deleted: <#>2. manufacture (goods) from raw materials etc.¶

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Deleted: Some winemakers purchase raw wine (wine that has undergone primary fermentation) and finish the wine by stabilising, fining and filtering, secondary fermentation (malolactic fermentation) if needed, maturation and racking to clarify the wine by removing unwanted solids. The Commissioner's view is that these are processes in the production of wine and that entities that carry out all these processes manufacture wine. However, an entity that carries out only one or some of the above mentioned processes may not be considered to manufacture wine.

Deleted: Whether a particular process, or combination of processes that an entity conducts in relation to wine constitutes production, and therefore manufacture, requires examination of the relevant facts and circumstances. However filtering wine as part of the bottling process on its own would not be the manufacture of the wine.

Deleted: The second limb of the extended meaning of manufacture in section 33-1

Deleted: The mixing together of two or more different wines (the inputs) to produce

Deleted: In the wine industry it is a normal part of winemaking to blend wines. In

Deleted: of the other blended wine results in a wine with its own commercially distir

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Deleted: [1906] 2 KB 352.

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Deleted: (1949) 78 CLR 336 at page 345.

Deleted: See paragraphs 37 to 43 of WETR 2009/1 for a discussion on beverage in

Deleted: (1935) 53 CLR 69.

Deleted: (1935) 53 CLR 69 at page 78.

¹⁹ [Omitted.]

²⁰ [Omitted.]

²¹ [Omitted.]

²² [Omitted.]

²³ [Omitted.]

²⁴ [Omitted.]

²⁵ [Omitted.]

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

43A. The addition of the grape 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.

43B. 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.^{25A}

'Producer' of wine – contract manufacture

43C. 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).

43D. Under the second limb, you will be the 'producer'^{25B} 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

43E. 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, and
- sake – rice.

43F. 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 to mean that you must have good title to the source product before it is crushed or, where relevant, ferments.^{25C}

44. [Omitted.]

45. [Omitted.]

^{25A} See paragraphs 61C to 61AAY of this Ruling.

^{25B} Section 33-1 paragraph (b) of the definition of 'producer'.

^{25C} Paragraph 1.15 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

Deleted: Feekle Wines Pty Ltd manufactures their port style wine.

Deleted: The mixing of wine with other substances to produce another wine, for example a beverage that meets the requirements of a grape wine product, will also meet the second limb of the definition of manufacture.

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46. [Omitted.]

47. [Omitted.]

48. [Omitted.]

49. [Omitted.]

50. [Omitted.]

51. [Omitted.]

52. [Omitted.]

53. [Omitted.]

54. [Omitted.]

55. [Omitted.]

Eligible sales and applications to own use

56. Before you can claim a producer rebate for an assessable dealing with rebatable wine during the financial year, one of the following must apply:

- you are liable for WET on the assessable dealing; or
- you would have been liable for WET on the assessable dealing had the purchaser not quoted, and the purchaser's quote states that it intends to have an assessable dealing with the wine for which it will have a WET liability.²⁹

Example 5 – liability for WET

57. Tim's Tasty Wines Pty Ltd makes Chardonnay. Tim's Tasty Wines is registered for GST and sells the Chardonnay at its cellar door.

58. Tim's Tasty Wines is liable for WET on its sales and therefore satisfies this requirement.

Example 6 – sold under quote where subsequent dealing is taxable

59. Vino Pty Ltd is the producer of Cabernet Sauvignon wine. Grace's Gourmet Produce Pty Ltd, a food retailer, purchases Cabernet Sauvignon wine from Vino. Grace's Gourmet Produce quotes for the purchase from Vino and states that it intends to make a taxable dealing in the wine.

²⁶ [Omitted.]²⁷ [Omitted.]²⁸ [Omitted.]²⁹ Subsection 19-5(1).**Deleted:** Example 3 – manufacturing a grape wine product[¶]**Deleted:** Good Drinks Pty Ltd makes a beverage that meets the definition of grape wine product. The beverage consists of 85% white wine, 10% lemonade and 5% orange flavour. Good Drinks Pty Ltd purchases the white wine from other wine makers and combines the ingredients to make the grape wine product.**Deleted:** Good Drinks Pty Ltd is the manufacturer of the grape wine product.**Deleted:** The Commissioner also considers that an entity manufactures wine when it engages a contract wine maker who makes the wine on behalf of the entity, provided that the grapes, other fruit, vegetable or honey and the resulting wine remains the property of the entity. The owner does not physically manufacture the wine, however the owner provides the requisite materials (the grapes, other fruit, vegetable or honey) and specifications for wine to be manufactured, and the engagement of the contract winemaker is akin to engaging an employee to undertake the physical tasks of manufacture.**Deleted:** Although the entity that owns the wine does not carry out any of the physical processes of manufacture personally, by causing the wine to be manufactured on their behalf, the owner has undertaken the manufacture of the wine. In these circumstances the owner of the wine is the producer of that rebatable wine for the purposes of Division 19.**Deleted:** Having regard to the views expressed in paragraphs 48 and 49 of this Ruling the Commissioner considers that an owner of grape wine that provides to a contract winemaker the grape wine and other materials and specifications to make a beverage that meets the definition of grape wine product, manufactures the grape wine product as defined in section 33-1. Therefore the owner of the grape wine is the producer of that rebatable wine for the purposes Division 19.**Deleted:** The third limb of the extended meaning of manufacture in section 33-1 refers to applying treatment to foodstuffs as a process in preparing them for human consumption.**Deleted:** 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.**Deleted:** While 'food' is defined in the WET Act by reference to the GST Act, 'foodstuffs' is not defined in the WET Act. Therefore the term 'foodstuffs' takes its**Deleted:** any substance suitable as food.[¶]**Formatted****Deleted:** Therefore the ordinary meaning of 'foodstuff' does not extend to drinks or**Deleted:** The third limb of the extended definition of manufacture in section 33-1 ma**Formatted:** Font color: White**Deleted:** for an assessable dealing because they will use the wine in manufacture of**Formatted:** Font color: White**Deleted:** For example sherry may be used in the manufacture of cakes.**Deleted:** To be eligible to claim a producer rebate for an assessable dealing with**Deleted:** You are be liable for WETwine tax on the assessable taxable**Deleted:** You would have been liable for WET on the assessablesell wine in**Deleted:** 4...– liability for WETincur wine tax**Deleted:** c...ardonnay. Tim s Tasty Wines is registered for GST and sells the**Deleted:** incurs wine tax...on itsthose...sales and therefore satisfies thisthe produce**Deleted:** 5...– sold under quote where subsequent dealing is taxablewould have**Deleted:** Winemaker A...is the producer of Cabemet Sauvignon wine. Grace s**Deleted:** The definition of food in The Australian Oxford Dictionary relevantly include**Deleted:** See paragraphs 177 to 182 of WETR 2009/1 for a discussion of eligibility**Deleted:** Paragraph 13-5(1)(c).**Deleted:** Subsection 19-5(1).

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60. As Vinq, would have incurred WET, if Grace's Gourmet Produce had not quoted, and the quote states that Grace's Gourmet Produce will have a liability for WET on its dealing with the wine. Vinq, satisfies this producer rebate requirement for the dealing.

Exceptions

61. You are not entitled to the producer rebate if:

- the purchaser quotes for the sale and indicates that it will not have a taxable dealing with the wine, by stating that it intends to:^{30A}
 - make a GST-free supply of wine,
 - sell the wine under quote, or
 - use the wine as a material in manufacture or other treatment or processing, or
 - you have claimed a WET credit^{31A}, or a WET credit subsequently arises for you (other than a producer rebate), for the dealing with the wine.

Example 7 – sold under quote where purchaser's dealing is not taxable

61A. Good Guy Wines is a producer of Sauvignon Blanc wine. Fancy Wines Pty Ltd purchases the Sauvignon Blanc wine from Good Guy Wines. Fancy Wines quotes for the purchase from Good Guy Wines. In its quote, Fancy Wines states that it intends making a GST-free supply of the Sauvignon Blanc (and therefore will not have a taxable dealing with the wine).

61B. Good Guy Wines would have incurred WET if Fancy Wines had not quoted. However, as Fancy Wines stated in its quote that it does not intend making a taxable dealing with the wine. Good Guy Wines cannot claim a producer rebate for this assessable dealing.

Source product - 85% ownership rule

61C. 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 owned by you.^{31B}

61D. Whether the 85% ownership of source product rule for wine is satisfied will be determined on the facts of each case.

³⁰ [Omitted.]

^{30A} Paragraph 19-5(1)(c).

³¹ [Omitted.]

^{31A} See paragraphs 189B to 199C of WETR 2009/1 for a discussion of 'wine tax credits'.

^{31B} Paragraph 19-5(1)(e).

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Deleted: notifies the entity at or before the time of the sale that they intend to make a GST-free supply of the wine; or

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Deleted: or a wine tax credit subsequently arises for the entity (other than a producer rebate), for the dealing with the wine.

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61E. Paragraph 43E of this Ruling sets out the source products for various types of wine.

61F. 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 61AAZ to 61ABY of this Ruling.^{31C}

61G. 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 61AAZ to 61ABY of this Ruling.^{31D}

Example 8 – ownership of source product at all times

61H. Winery Wines Co has a grape supply contract 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.

61I. Winery Wines Co pays for the grapes in instalments paid both before and after the time that legal title passes.

61J. Winery Wines Co has a grape crushing and wine processing contract in place with another entity. The grapes owned by Winery Wines Co are 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.

61K. 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.

61L. Winery Wine Co has maintained ownership of the grapes and resultant wine at all relevant times throughout the winemaking process.

Example 9 – retention of title clause

61M. Winery Co has a grape supply contract with Grapes Co. Under the contract, Winery Co pays for the grapes in three separate instalments.

^{31C} Paragraph 1.16 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

^{31D} Paragraph 1.16 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

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61N. 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.

61O. The grapes are delivered to Wine Co at the weighbridge and the grapes are crushed before the final instalment is paid.

61P. As Wine Co 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

61Q. 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.^{31E} These ingredients are:

- grape spirit
- brandy
- alcohol used in preparing vegetable extracts (including spices, herbs and grasses)
- ethyl alcohol from a source specified in the regulations^{31E}
- water
- grape juice concentrate^{31G}, provided the grape juice concentrate does not comprise more than 10% of the total volume of the wine; and
- any other substance^{31H}, provided that substance (or that substance together with similar substances) does not comprise more than 1% of the total volume of the wine.

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.

61R. Grape juice concentrate is deemed be a source product that satisfies the ownership test if it comprises no more than 10% of the wine. Where grape juice concentrate comprises more than 10% of the

^{31E} Subsections 19-5(5) and 19-5(6).

^{31F} Refer paragraphs 31-4(b), 31-5(b), 31-6(b) and 31-7(b).

^{31G} For the purposes of clarity, this includes grape juice concentrate that you have caused to be added to the wine where you have wine made under contract on your behalf

^{31H} 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.

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total volume of the wine, then none of the grape juice concentrate is considered source product for that wine.³¹¹

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

61S. 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
- 200mls of purchased grape juice concentrate.

61T. As the grape juice concentrate comprises more than 10% of the total volume of the wine, no part of the grape juice concentrate is deemed to be source product that satisfies the ownership test for the purposes of determining whether the 85% source product ownership rule is satisfied.

61U. Wine-ing Co does not satisfy the 85% source product ownership rule and is not eligible for a producer rebate.

Example 11 – purchased grape pulp does not satisfy the ownership of source product test

61V. 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.

61W. Of the total volume of the packaged and labelled wine, 45% originates from the grape pulp and 45% originates from the grape juice.

61X. Because Purple Wine Co did not own the fresh grapes from which the grape pulp and grape juice were produced, Purple Wine Co does not satisfy the 85% source product ownership rule.

61Y. 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.³¹¹

³¹¹ Table 1.2 in Explanatory Memorandum to Treasury Laws Amendment (2017 Measures No.4) Act 2017.

³¹¹ Paragraph 1.21 of Explanatory Memorandum to Treasury Laws Amendment (2017 Measures No.4) Act 2017.

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61Z. 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.^{31K} 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.

61AA. 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.

61AB. 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.

61AC. Substances are considered to be similar where they resemble one another in character, function and purpose, without being identical.^{31L}

61AD. 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.

61AE. However, yeast and sulphur dioxide for example are considered to be different substances. This is because yeast is added to wine to convert 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.

61AF. Whether substances added to wine are similar to each other will be a question of fact in each case.

Example 12 – any other substances – not similar

61AG. 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.

61AH. 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

^{31K} Refer to Appendix 1 of this Ruling.

^{31L} Refer to GSTR 2003/5.

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all taken to be source product for the purpose of determining whether the 85% source product ownership rule is satisfied.

Example 13 - any other substances – similar

61AI. 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 purchased unfermented Grenache grape juice
- 10ml is purchased unfermented Shiraz grape juice
- 8ml is purchased unfermented Mouvedre grape juice
- 2ml is preservative.

61AJ. 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.

61AK. 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.

61AL. You must convert solid or gaseous additives to a volumetric measure to determine whether a wine satisfies the 85% source product ownership rule.^{31M}

Example 14 – 85% source product ownership rule satisfied

61AM. 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

^{31M} Paragraph 1.20 of Explanatory Memorandum to Treasury Laws Amendment (2017 Measures No.4) Act 2017.

wine pass from WeFortify Ltd. Each 1 litre bottle of fortified grape wine is comprised of the following:

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

61AN. Fifty per cent 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.

61AO. The brandy, grape juice concentrate (no more than 10% of the total volume of the wine) water, and the additives (which each comprise 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 350mls (35%) of the total volume of the wine and are taken to be source product owned by WeFortify Ltd at all relevant times.

61AP. 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 15 – 85% source product ownership rule not satisfied

61AQ. OwnGrape Pty Ltd grows its own grapes, which it uses to make Sauvignon Blanc wine. OwnGrape Pty Ltd maintains ownership of the grapes throughout the winemaking process, up to and including bottling. Each 1 litre bottle of wine comprises:

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

61AR. 700mls (70%) of the total volume of the end product originated from source product owned by OwnGrape Pty Ltd at all relevant times. A further 100mls (10%), being the water, grape juice concentrate and additives, are deemed to be source product that satisfies the ownership test.

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61AS. 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 200mls (20%) is purchased wine (a substance other than source product).

Example 16 – Beverage that falls under the grape wine product definition – 85% ownership of source product rule not satisfied.

61AT. GWP Ltd manufactures an alcoholic beverage 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 700mls of grape wine per litre (70% grape wine).

61AU. 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.

61AV. 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).

61AW. 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 17 - Grape wine product – 85% source product ownership rule not satisfied

61AX. 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
- 2ml preservatives

61AY. Of the grape wine used to make the grape wine product, 750ml was made from whole unprocessed grapes.

61AZ. The remaining 200ml is purchased grape wine.

61AAA. 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.

WETR 2009/2**Transitional rules****2018 vintage wine**

61AAB. 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.

61AAC. 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.^{31N}

2017 and earlier wine - 85% source product ownership rule

61AAD. In some circumstances, if you have owned at least partially manufactured wine before 1 January 2018, and had an assessable dealing with it 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.^{31O}

61AAE. However, you still need to meet all the other eligibility requirements to claim a producer rebate for the wine.

2017 and earlier wine

61AAF. The 85% source product ownership rule for wine is deemed to be satisfied if you meet **all** of the following requirements:^{31P}

- the wine was 2017 or earlier wine – that is more than 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 2018, and
- you owned the wine immediately before 1 January 2018 and maintain ownership of it until the time of an assessable dealing, and
- you have an assessable dealing with the wine before 1 July 2023, and
- either:
 - the wine was in a container^{31Q} before 1 July 2018, or

^{31N} 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.

^{31O} Subsection 20(1) *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

^{31P} Section 20 *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

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- at the time of the assessable dealing, the wine is labelled with the vintage year of the wine.

61AAG. All product derived from source product (for example, purchased wine or purchased juice) is taken into account for these rules.^{31R}

61AAH. Where you have an assessable dealing with 2017 or earlier wine on or after 1 July 2018 and all of these requirements are not met, you will need to meet the 85% source product ownership rules to claim the rebate. However, you will still need to meet all of the other requirements.

61AAI. 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.^{31S}

Example 18 – 85% source product ownership rule deemed to be satisfied for 2017 vintage wine

61AAJ. *In January 2017, PT Wines Co purchased bulk 2017 vintage Riesling. In February 2017, PT Wines blended the purchased Riesling with purchased grape concentrate.*

61AAK. *PT Wines was holding the Riesling in bulk storage on 30 June 2018. 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. PT Wines sold the 2017 vintage Riesling wine in its final packaged form in September 2018.*

61AAL. *More than 50% of the Riesling originated from source product 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 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 Riesling.*

61AAM. *PT Wines can claim a rebate if it meets all of the other eligibility criteria. It will also have to account for any earlier rebates for the purchased wine when determining the amount of the rebate it can claim.*

^{31Q} We consider a container in these circumstances to be a container that meets the packaging and branding requirements explained at paragraphs 61AAZ to 61ABY of this Ruling.

^{31R} Paragraph 1.68 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

^{31S} 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/>.

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2017 year and earlier fortified wine

61AAN. 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*^{31T}. Specifically, fortified wine must contain no less than 150mls of ethanol per litre, and no more than 220mls of ethanol per litre.

61AAO. You are taken to have satisfied the 85% ownership of source product rule to claim a producer rebate for fortified wine if you meet **all** of the following requirements:^{31U}

- more than 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 2018, and
- you owned the wine immediately before 1 January 2018 and maintain ownership of it until the time of an assessable dealing; and
- 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.

61AAP. 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'.^{31V}

61AAQ. This transitional provision deems a producer to have satisfied the 85% source product ownership requirement for the wine provided it is sold before 1 July 2025.

61AAR. 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;

^{31T} 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*.

^{31U} Section 21 *Treasury Laws Amendment (2017 Measures No.4) Act 2017*.

^{31V} Refer to paragraph 1.75 of the *Explanatory Memorandum to the Treasury Laws Amendment (2017 Measures No. 4) Act 2017*.

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- 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.

61AAS. This transitional rule applies regardless of when your assessable dealing occurs. You will be deemed to have owned 100% of the source product used to make the stored wine that satisfies the above tests from the point of crushing. However you will still be required to satisfy the 85% source product ownership rule – so at least 85% of your final fortified wine must consist of stored wine that meets the above tests and source product that meets the ownership requirement (or inputs that are deemed to be source product that are taken to have met the ownership requirement).

61AAS. 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.^{31W}

Example 19 - Fortified wine made from blending wines stored immediately prior to 1 January 2018

61AAT. 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 20 - Blend of stored wine, wine produced by the producer after 1 January 2018 and purchased wine

61AAU. 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.

^{31W} 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/>.

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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.^{31X}

Example 21 – Fortified wine in a solera system

61AAV. 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.

61AAW. 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.

61AAX. Over the following years, Strong Co bottles and sells wine from the tanks and barrels 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).

61AAY. 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.^{31Y}

Container for retail sale

61AAZ. You are entitled to claim a producer rebate for an assessable dealing with rebatable wine only if the wine is packaged in

^{31X} Subsection 21(3). *Treasury Laws Amendment (2017 Measures No.4) Act 2017.*

^{31Y} 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/>.

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a container suitable for retail sale with a capacity of 5 litres or less.^{31Z} The exception to this rule is cider and perry, which may be packaged in containers (such as kegs) of 51 litres or less.^{31AA} This exception recognises that cider and perry are often sold on tap at retail premises.

61ABA. We consider that a retail sale of wine is a sale to the end consumer^{31AB}. 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 requirements)^{31AC} and being branded with a trade mark (see paragraphs 61ABE to 61ABY of this Ruling).

61ABB. 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.

Example 22 – Container for retail sale – rule satisfied

61ABC. WineCo is the producer of a Semillon Sauvignon wine. The wine is packaged in 750ml glass bottles. WineCo sells the wine in individual bottles, in cases of 12 bottles and by the pallet. Each bottle is labelled with WineCo's registered trade mark. The label also sets out:

- the volume of the wine (750ml)
- the designation and country of origin (wine of Australia)
- 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)
- region – (Geographical Indicator)

61ABD. WineCo's bottled Semillon Sauvignon meets the producer rebate eligibility requirement that wine must be packaged in

^{31Z} Subsection 19-5(7).

^{31AA} Subsection 19-5(7).

^{31AB} Refer to the definition of 'retail sale' in section 33-1.

^{31AC} 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*.

a container with a capacity not exceeding 5 litres in a form that is suitable for retail sale.

Branded with a trade mark

61ABE. 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:^{31AD}

- identifies or can be readily associated with you as the producer of the wine; and
- is owned by you or an entity associated with you, and
- is a trade mark within the meaning of the *Trade Marks Act 1995*, and
- satisfies any one of the following requirements:
 - is a registered trade mark within the meaning of the *Trade Marks Act 1995*
 - an application to register the trade mark has been made under the *Trade Marks Act 1995* 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.

61ABF. 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.

What is a trade mark?

61ABG. Your trade mark must be a 'trade mark' within the meaning of the *Trade Marks Act 1995*. The term 'trade mark' is defined in section 6 of the *Trade Marks Act 1995* as having the meaning given by section 17 of that Act. Section 17 of that Act provides that

A trade mark is a sign used, or intended to be used, to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person.

^{31AD} Paragraphs 19-7(b)-(f) inclusive.

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61ABF. Under section 6 of the *Trade Marks Act 1995*, a ‘sign’:
...includes the following or any combination of the following,
namely, any letter, word, name, name signature, numeral,
device, brand, heading, label, ticket, aspect of packaging,
shape, colour, sound, or scent.

‘Identifies’ or ‘readily associated with’ you

61ABG. The trade mark on the retail container must ‘identify’ or
be ‘readily associated with’ you as the producer of the wine.^{31AE}

61ABH. 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.

61ABI. 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 23 – trade mark that identifies the producer

61ABJ. Golden Vines is a producer of wine and has registered the
imprint of a golden vine and its name as a trade mark.

61ABK. Golden Vines sells three different ranges of wine,
catering to different markets. Golden Vines has a budget range, a
mid-tier range, and a premium range. The ranges are called Stringy
Vine, Australis 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.

61ABL. Golden Vines affixes the imprint of the golden vine
(registered trade mark) to each bottle of wine it sells in all of its
ranges. Because the imprint identifies Golden Vines as the producer
of each bottle of wine it sells, it meets the trade mark requirement and
it is not required to register trade marks in respect of each range.

Ownership of the trade mark

61ABM. You, or an entity associated with you, must own the trade
mark.^{31AF}

^{31AE} Paragraph 19-5(7)(c).

^{31AF} Paragraph 19-5(7)(d).

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61ABN. 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 the WET Act.^{31G}

61ABO. 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 IP Australia;
- 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

61ABP. A trade mark is registered if it is registered under the Trade Marks Act 1995 with IP Australia.^{31H}

Application pending

61ABQ. An application for an Australian trade mark is pending from the time it is filed until any of the following occurs:^{31I}

- it lapses, or is withdrawn or rejected;
- the Registrar of Trade Marks refuses to register the trade mark and either:
 - there is no appeal against the decision and the period allowed for the appeal has ended; or
 - the decision is appealed and the decision to refuse registration is upheld, or
- the trade mark is registered under the Trade Marks Act 1995 with IP Australia.

In use since 1 July 2015

61ABR. You will meet the trade mark requirement where you can show that you have used the trade mark throughout the period

^{31G} Refer to paragraph 66 of this Ruling.

^{31H} For further information refer to www.ipaustralia.gov.au/trade-marks.

^{31I} Paragraph 1.37 of Explanatory Memorandum to *Treasury Laws Amendment (2017 Measures No. 4) Act 2017*.

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beginning 1 July 2015, and ending at the time of the assessable dealing. Whether you have used a qualifying trade mark during that time will be a question of fact in each case.

61ABS. This type of trade mark includes a common law trade mark. A common law trade mark is a trade mark that has been recognised by an Australian Court or the Registrar of Trade Marks as a common law trade mark in Australia.

Example 24 – Common law trade mark

61ABT. Comon Wines Ltd has been producing wine and selling it under its brand Whinedy Road on an ongoing basis since 1 January 2015.

61ABU. In February 2016, another wine producer commenced legal proceedings against Comon Wines Ltd alleging that the Whinedy Road brand infringed a trade mark owned by them and that Comon Wines Ltd was 'passing off' its wine as the other producer's product.

61ABV. The other producer's claim was dismissed by the court which, in doing so, recognised Whinedy Road as a trade mark belonging to Comon Wines Ltd.

61ABW. In placing the Whinedy Road trade mark on the labels affixed to 750ml bottles and 2 litre casks of wine it has produced, Comon Wines meets the trade mark requirements.

61ABX. You may meet the trade mark requirements if you have applied an unregistered trade mark to your wine that is not a common law trade mark since 1 July 2015. The following factors may be indicative of whether you have used a qualifying 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,
- whether there has been any confusion or dispute in relation to the trade mark and how it was resolved.

61ABY. Note however that even an unregistered trade mark that has been used by the producer since 1 July 2015 to the time of the assessable dealing, must be 'owned' by the producer (or an associate). It is accepted that trade marks that you have used since 1

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July 2015 are 'owned' by you provided no-one else owns that trade mark.

62. [Omitted.]

63. [Omitted.]

Calculating the amount of rebate

63A. The amount of any producer rebate you may be entitled to claim is calculated as follows:^{33A}

- for wholesale sales – 29% of the price (excluding WET and GST) for which the wine was sold, and
- for retail sales and applications to own use – 29% of the notional wholesale selling price of the wine.

63B. For 2017 and earlier wine that has been manufactured using purchased wine, the amount of producer rebate for an assessable dealing with the wine may need to be reduced by any earlier rebate amounts.^{33B}

63C. 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.^{33C}

64. [Omitted.]

65. [Omitted.]

65A. [Omitted.]

65B. [Omitted.]

65C. [Omitted.]

65D. [Omitted.]

65E. [Omitted.]

65F. [Omitted.]

65G. [Omitted.]

65H. [Omitted.]

³² [Omitted.]

³³ [Omitted.]

^{33A} Section 19-15.

^{33B} Sections 19, 20 and 21 of *Treasury Laws Amendment (2017 Measures No. 4) Act 2017*. 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/>.

^{33C} Subsections 19-15(2) and (3). Refer to paragraphs 66 to 66C of this Ruling for a discussion about when producers will be associated.

³⁴ [Omitted.]

^{34A} [Omitted.]

^{34B} [Omitted.]

^{34C} [Omitted.]

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Deleted: has provision for the purchaser to notify a producer that the purchaser intends to make a GST-free supply of the wine. This is not the only way in which the purchaser can notify a producer that the purchaser intends to make a GST-free supply of the wine. It is sufficient that they provide the producer with the information necessary to conclude that they will make a GST-free supply. For example, exporting wine is a GST-free supply, therefore, if a purchaser provides the producer with information that the wine will be exported they have notified the producer that they intend to make a GST-free supply.

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65I. [Omitted.]

65J. [Omitted.]

65K. [Omitted.]

65L. [Omitted.]^{34E}

65M. [Omitted.]

65N. [Omitted.]^{34F}

65O. [Omitted.]

65P. [Omitted.]

65Q. [Omitted.]

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65S. [Omitted.]

65T. [Omitted.]

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65V. [Omitted.]

65W. [Omitted.]

65X. [Omitted.]

65Y. [Omitted.]

65Z. [Omitted.]

65AA. [Omitted.]

65AB. [Omitted.]

65AC. [Omitted.]

65AD. [Omitted.]

65AE. [Omitted.]

65AF. [Omitted.]

Associated producers

66. From 1 July 2018, you are an associated producer of another producer for a financial year if, at any time during the financial year:³⁵^{35A}

^{34D} [Omitted.]^{34E} [Omitted.]^{34F} [Omitted.]^{34G} [Omitted.]^{34H} [Omitted.]^{34I} [Omitted.]^{34J} [Omitted.]^{34K} [Omitted.]^{34L} [Omitted.]³⁵ Subsection 19-20(1).

Deleted: the name and ABN of the wine supplier or, for New Zealand wine suppliers who do not have an ABN, the name and address of the wine supplier and the Company Number (if applicable)[¶]
the name and ABN of the wine recipient[¶]
a description of the wine being supplied (including the quantity and the price)[¶] ...

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- 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 omitted³⁶, or
- 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 their financial affairs.^{36A}

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66A. You are an associated 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.^{36B}

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66B. 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, to act in accordance with the directions, instructions or wishes of the second producer in relation to their financial affairs.^{36C}

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66C. 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).^{36D}

^{35A} 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 association tests set out in paragraphs 66 to 66C.

³⁶ Paragraph 19-20(1)(a).

^{36A} Paragraph 19-20(1)(b).

^{36B} Subsection 19-20(2).

^{36C} Subsection 19-20(3).

^{36D} *SJ Buller Pty Ltd and Commissioner of Taxation* [2013] AATA 617

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Date of effect

66D. 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

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Your comments

66E. [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: [Naomi Schell](#)

Email address: wetnewmeasures@ato.gov.au

Telephone: [\(08\) 8218 9226](tel:(08)82189226)

Appendix 1

Rebatable Wines

Set out below are the definitions of products for the purposes of the WET Act.^{36E} The definitions incorporate the requirements of the regulations set out in the WET Regulations. The wine tax 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
<p>Grape wine</p> <p><i>Grape wine is a beverage that:</i></p> <ul style="list-style-type: none"> 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. <p><i>Note: 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.</i></p>	<p>Grape wine includes:</p> <ul style="list-style-type: none"> table wines (red, white and rosé) sparkling wines fortified wines, and dessert wines.
<ul style="list-style-type: none"> Grape wine products A grape wine product is a beverage that: contains at least 70% grape wine 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) where the alcohol: is only used to extract flavours from vegetable matter; is essential to the extraction process, and 	<p>Grape wine products include:</p> <ul style="list-style-type: none"> 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 than wine) whether the flavour is natural or artificial

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Grape wine includes:¶
 <#>table wines (red, white and rosé);¶
 <#>sparkling wines;¶
 <#>fortified wines; and¶
 dessert wines.

Deleted: 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.¶
 Note: 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.

^{36E} Refer to paragraphs 10 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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Definitions	Examples
<ul style="list-style-type: none"> • <u>adds no more than one percentage point to the overall alcoholic strength by volume of the beverage.</u> • <u>has not had added to it the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial, and</u> • <u>contains between 8% and 22% (inclusive) of ethyl alcohol by volume.</u> 	<p><u>but only where they satisfy the requirements in the column on the left.</u></p> <p><u>Grape wine products do not include:</u></p> <ul style="list-style-type: none"> • <u>wine coolers (unless they satisfy the requirements in the column on the left)</u> • <u>ready to drink (RTD) or designer drinks that contain a wine base (unless they satisfy the requirements in the column on the left)</u> • <u>RTDs or designer drinks that contain spirits (other than grape spirit), and</u> • <u>Spirit based (other than grape spirit) cocktails, creams and liqueurs.</u>
<p><u>Fruit or vegetable wine</u></p> <p><u>Fruit or vegetable wine is a beverage that:</u></p> <ul style="list-style-type: none"> • <u>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</u> • <u>has not had added to it any ethyl alcohol from any other source except grape spirit or neutral spirit</u> • <u>has not had added to it any liquor or substance that gives colour or flavour except grape spirit or neutral spirit, and</u> <p><u>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 (Note: 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).</u></p>	<p><u>Fruit or vegetable wines include:</u></p> <ul style="list-style-type: none"> • <u>table wine</u> • <u>sparkling wine, and</u> • <u>fortified wine.</u> <p><u>Fruit or vegetable wines do not include:</u></p> <ul style="list-style-type: none"> • <u>RTD or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges, et cetera, (unless they satisfy the requirements in the column on the left).</u>

Deleted: *Grape wine products*¶
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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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.

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<#>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¶

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<#>contains at least 70% grape wine;¶
<#>has not had added to it any ethyl alcohol from any other source, except¶
<#>grape spirit; or¶
<#>alcohol used in preparing vegetable extracts (including spice...

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Definitions	Examples
<p>Cider and Perry</p> <p><u>Cider or perry is a beverage that:</u></p> <ul style="list-style-type: none"> <u>is the product of the complete or partial fermentation of the juice or must of apples or pears</u> <u>has not had added to it any ethyl alcohol from any other source, and</u> <u>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.</u> 	<p><u>Cider and perry include:</u></p> <ul style="list-style-type: none"> <u>traditional cider and perry</u> <u>draught cider and perry</u> <u>dry cider and perry, and</u> <u>sweet cider and perry.</u> <p><u>Cider and perry do not include:</u></p> <ul style="list-style-type: none"> <u>cider or perry that has had lemon, black currant or other fruit flavourings added, and</u> <u>cider or perry that has had cola or other flavourings added.</u>
<p>Mead</p> <p><u>Mead is a beverage that:</u></p> <ul style="list-style-type: none"> <u>is the product of the complete or partial fermentation of honey, and</u> <u>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit, and</u> <u>has not had added to it any liquor or substance that gives colour or flavour other than:</u> <ul style="list-style-type: none"> <u>grape spirit or neutral spirit</u> <u>honey, herbs and spices, all of which can be added at any time</u> <u>caramel, provided it is added after the fermentation process is complete, or</u> <u>fruit or product derived entirely from fruit, provided:</u> <ul style="list-style-type: none"> <u>the fruit or product has not been fermented</u> <u>the fruit or product is added to the mead before fermentation of the mead, and</u> <u>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, and</u> <u>if fruit or product is added the mead contains between 8% and 22% (inclusive) of ethyl alcohol by volume, and</u> <u>if grape spirit or neutral spirit has been added contains between 15% and 22% (inclusive) of ethyl alcohol</u> 	<p><u>Mead includes:</u></p> <ul style="list-style-type: none"> <u>honey mead</u> <u>fortified mead</u> <u>liqueur mead, and</u> <u>spiced mead.</u>

Deleted: 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 (Note: 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).

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Fruit or vegetable wines include:¶

<#>table wine;¶
<#>sparkling wine; and¶
<#>fortified wine.¶

Fruit or vegetable wines do not include:¶

<#>ready to drink (RTD) or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges, et cetera. (unless they satisfy the requirements in the column on the left).¶

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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.

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Up to and including 8 June 2005, mead includes:¶

<#>honey mead;¶
<#>fortified mead; and¶
liqueur mead.

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Definitions	Examples
<p><u>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.</u></p> <ul style="list-style-type: none"> <u>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.</u> 	
<p>Sake</p> <p><u>Sake is a beverage that:</u></p> <ul style="list-style-type: none"> <u>is the product of the complete or partial fermentation of rice</u> <u>has not had added to it any ethyl alcohol from any other source, and</u> <u>has not had added to it any liquor or substance that gives colour or flavour.</u> 	<p>Sake includes:</p> <ul style="list-style-type: none"> <u>fermented sake, and</u> <u>rice wine.</u> <p><u>Distilled sake does not satisfy the definition and is not included.</u></p>
<p>Fruit or vegetable wine</p> <p><u>Fruit or vegetable wine is a beverage that:</u></p> <ul style="list-style-type: none"> <u>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</u> <u>has not had added to it any ethyl alcohol from any other source except grape spirit or neutral spirit</u> <u>has not had added to it any liquor or substance that gives colour or flavour except grape spirit or neutral spirit, and</u> <u>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 (Note: 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).</u> 	<p><u>Fruit or vegetable wines include:</u></p> <ul style="list-style-type: none"> <u>table wine</u> <u>sparkling wine, and</u> <u>fortified wine.</u> <p><u>Fruit or vegetable wines do not include:</u></p> <ul style="list-style-type: none"> <u>RTD or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges, et cetera, (unless they satisfy the requirements in the column on the left).</u>

Deleted: 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.

Deleted: Mead¶

Up to and including 8 June 2005, mead is a beverage that:¶
 is the product of the complete or partial fermentation of honey and;

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 has not had added any liquor or substance (other than honey, grape spirit or neutral spirit) that gives colour or flavour.

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 <#>honey mead;¶
 <#>fortified mead;¶
 <#>liqueur mead; and¶
 spiced mead.

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 <#>is the product of the complete or partial fermentation of honey; and¶
 <#>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit; and¶
 <#>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; or¶
 <#>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; and¶
 <#>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; and¶
 <#>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 15% and 22% (inclusive) of ethyl alcohol by

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Definitions	Examples
<p>Cider and perry</p> <p><u>Cider or perry is a beverage that:</u></p> <ul style="list-style-type: none"> <u>is the product of the complete or partial fermentation of the juice or must of apples or pears</u> <u>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.</u> 	<p><u>Cider and perry include:</u></p> <ul style="list-style-type: none"> <u>traditional cider and perry</u> <u>draught cider and perry</u> <u>dry cider and perry, and</u> <u>sweet cider and perry.</u> <p><u>Cider and perry do not include:</u></p> <ul style="list-style-type: none"> <u>cider or perry that has had lemon, black currant or other fruit flavourings added, and</u> <u>cider or perry that has had cola or other flavourings added.</u>
<p>Mead</p> <p><u>Mead is a beverage that:</u></p> <ul style="list-style-type: none"> <u>is the product of the complete or partial fermentation of honey, and</u> <u>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit, and</u> <u>has not had added to it any liquor or substance that gives colour or flavour other than:</u> <ul style="list-style-type: none"> <u>grape spirit or neutral spirit</u> <u>honey, herbs and spices, all of which can be added at any time;</u> <u>caramel, provided it is added after the fermentation process is complete, or</u> <u>fruit or product derived entirely from fruit, provided:</u> <ul style="list-style-type: none"> <u>the fruit or product has not been fermented</u> <u>the fruit or product is added to the mead before fermentation of the mead, and</u> <u>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, and</u> <u>if fruit or product is added the mead contains between 8% and 22% (inclusive) of ethyl alcohol by volume, and</u> <u>if grape spirit or neutral spirit has been added contains between 15% and 22% (inclusive) of ethyl alcohol</u> 	<p><u>Mead includes:</u></p> <ul style="list-style-type: none"> <u>honey mead</u> <u>fortified mead</u> <u>liqueur mead, and</u> <u>spiced mead.</u>

Deleted: 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.

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Sake includes:¶
<#>fermented sake; and¶
<#>rice wine.¶
Distilled sake does not satisfy the definition and is not included.

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Definitions	Examples
<u>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.</u>	

Deleted: 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.

Deleted: Appendix B[¶]**Examples relating to earlier producer rebates[¶]**

Example A – an example to illustrate factoring in earlier rebate amounts.¶

¶
 Example B – an example to illustrate what happens when the producer who supplies the wine has exhausted their producer rebate limit.¶

¶
 Example C – an example to illustrate how to deal with losses before manufacturing and top ups.

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¶
 Example D – an example to illustrate how to deal with production losses in the course of manufacturing and top ups.

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¶
 Example E – an example to illustrate how to deal with production losses in the course of manufacturing.¶

¶
 Example F – an example to illustrate 'unit costing' to take into account earlier rebate amounts: the example uses the cents per litre method.¶

¶

...

Appendix 2 – Compliance approach

Claiming the producer rebate

67. You can claim any producer rebate you are eligible for in the activity statement for the tax period to which the WET on the dealing is attributed.³⁷ For dealings on which a purchaser quotes and indicates that they will have a taxable dealing it is the tax period in which WET would have been payable if the purchaser had not quoted. The producer rebate is claimed by adding the rebate in the total amount of WET credits claimed and entering this total amount against Label 1D (wine equalisation tax refundable).

68. Any subsidy payable by the States or Territories, or grant payable by another Federal Government agency (including payments under the Wine Tourism Cellar Door grant scheme) is claimable from the relevant department or authority. It must not be claimed on the activity statement.

68A. [Omitted.]

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

Not entitled to the producer rebate

68B. If you have claimed a rebate to which you are not entitled in whole or in part, amend your net amount for that tax period. Circumstances where an entity is not entitled to a rebate include the following:

- you are not the producer of the wine^{37C}
- of the total volume of the wine, you did not own at least 85% as source product^{37CA}
- you are not liable to WET for a taxable dealing or would not have been liable to WET for a taxable dealing even if the purchaser had not quoted^{37D}

³⁷ Subsection 17-10(1), read in conjunction with the fourth column in the Wine Tax Credit Table, in section 17-5, in relation to CR9 and with section 21-15, indicates that producer rebates are claimed in the final tax period for the year. However, subsection 19-25(1) seems to contemplate (and arguably would otherwise be otiose) that producer rebates are claimed progressively throughout the year in the activity statement for each tax period. Accordingly, the Commissioner accepts that producer rebates may be claimed in the activity statement for the tax period to which the wine tax on the dealing is attributed. Where the entitlement for the producer rebate arises because you would have incurred wine tax if the purchaser had not quoted for the sale then the producer rebate is claimed in the period in which it would have been attributable if the purchaser had not quoted.

^{37A} [Omitted.]

^{37B} [Omitted.]

^{37C} Paragraph 19-5(1)(a).

^{37CA} Paragraph 19-5(1)(d).

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Timing of notification of earlier rebate amount¶

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Where the notice of an earlier rebate is provided before the end of the financial year in which the producer made the reduced rebate claim, any additional rebate entitlement resulting from the notice can be claimed in the activity statement for the tax period in which the notice was provided.

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Where the notice of an earlier rebate is provided after the end of the financial year in which the producer made the reduced rebate claim, the last activity statement for the financial year in which the producer made the reduced rebate claim must be amended to reflect any additional rebate amount resulting from the provision of the notice. (Note the producer of the blended or further manufactured wine can only claim the addition(...

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- you sold the wine under quote and the purchaser stated in its quote that it intended making a GST-free supply of the wine, selling the wine under quote or using the wine as a material in manufacture or other treatment or processing^{37DA}
- the wine was not packaged in a container fit for retail sale that met the container size and branding requirements^{37DB}
- you calculated the amount of producer rebate incorrectly^{37E}
- you are not entitled because one of the exceptions in section 19-10 applies.^{37F}

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Example 25 – entity not a producer of wine

68C. *Wisdom Company lodged quarterly returns in the 2018/2019 financial year claiming producer rebates totalling \$350,000 in the following tax periods: Quarter 1 September 2018 - \$100,000; Quarter 2 December 2018 - \$125,000; Quarter 3 March 2019 - \$100,000; Quarter 4 June 2019, \$25,000.*

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68D. *Wisdom Company was not a producer of the wine in any of the tax periods and therefore not entitled to the producer rebate in any of those tax periods.*

68E. *Therefore Wisdom Company's assessed net amounts for each of Quarters 1, 2, 3, and 4 would be amended to disallow the rebates claimed.*

68F. This Ruling does not deal with the imposition of penalties. However it is important to note that in these circumstances the Commissioner will consider whether an administrative penalty is applicable^{37G} by reference to each of the relevant tax periods in which an amendment is made. The Commissioner will also determine the general interest charge (GIC) that applies less any remission by reference to those tax periods.

68G. Given the penalty and interest outcomes discussed in the paragraph above, it is prudent that you do not claim rebates to which you are not entitled. If you do, you should correct the claim as soon as possible.

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^{37D} Paragraph 19-5(1)(b).^{37DA} Paragraph 19-5(1)(c).^{37DB} Paragraph 19-5(1)(e).^{37E} Section 19-5.^{37F} Section 19-5.^{37G} Section 284-75 of Schedule 1 to the TAA and section 298-20 of Schedule 1 to the TAA.

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WETR 2009/2**What happens if the producer rebate is over-claimed****'Excess claim – single producer'**

69. If you claim amounts of producer rebate to which you are entitled under subsection 19-5(1), 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 an amount equal to that excess.³⁸ The amount payable is treated as if it is WET payable and is attributable to the last tax period of the financial year in which the excess claim was made.³⁹

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69A. Therefore where you are not an associated producer, you can correct an excess claim by attributing the amount payable as WET payable to the last tax period of the financial year in which the excess claim was made.^{39A}

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69B. The WET law clearly sets out the maximum entitlement for a single producer^{39B} and the producer rebate may be claimed in the tax period to which the WET on the dealing is attributed.^{39C} Therefore, if the Commissioner discovers the excess claim (for example through compliance activity) and you have not corrected the claim, then the Commissioner will amend your assessed net amount for each of the tax periods to the extent of the excess claim.^{39D}

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69C. This Ruling does not deal with the imposition of penalties. However it is important to note that in these circumstances the Commissioner will determine any administrative penalty applicable^{39E} by reference to each of the relevant tax periods in which an amendment is made. The Commissioner will also determine the GIC that applies less any remission by reference to those tax periods.^{39F}

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69D. Given the penalty and interest outcomes discussed in the paragraph above, it is prudent that you ensure that you do not exceed your maximum entitlement. If you do, you should correct the excess claim as soon as possible.

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Example 26 – single producer excess claim

69E. Montes Company lodged quarterly returns in the 2018/2019 financial year claiming the producer rebate in the following tax periods: Quarter 1 September 2018 - \$100,000; Quarter 2 December

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³⁸ Subsection 19-25(1).

³⁹ Subsection 19-25(4).

^{39A} Subsection 19-25(1).

^{39B} Subsection 9-15(2).

^{39C} Refer to paragraph 67 of this Ruling.

^{39D} The Commissioner will identify the earliest tax period in the financial year in which the producer rebates have been claimed for that financial year where the total claim for the year has exceeded the maximum, and amend that tax period and all subsequent tax periods (where relevant).

^{39E} Section 284-75 of Schedule 1 to the TAA.

^{39F} Section 298-20 of Schedule 1 to the TAA.

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2018 - \$100,000; Quarter 3 March 2019 - \$155,000; Quarter 4 June 2019, \$50,000.

69F. In August 2019, Montes Company discovers that due to a software error they had over claimed the producer rebate by \$55,000 in the 2018/2019 financial year (\$405,000 claimed less \$350,000 maximum entitlement). They can correct the excess claim by attributing \$55,000 as WET payable at label 1C of the activity statement in Q4 (that is, the tax period ending June 2019 tax period).

69G. If Montes Company does not correct the excess claim and the Commissioner discovers it through compliance activity, the Commissioner would amend Montes Company's assessed net amounts in Q4 by \$50,000 and in Q3 by \$5,000.

69H. The Commissioner would determine any administrative penalty and general interest charge less any applicable remission for the Q3 and Q4 tax periods.

'Excess claim – associated producer'

70. 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.⁴⁰ However, you will not be liable to pay an amount that exceeds the sum of the amounts of producer rebates that you claimed for the financial year.⁴¹

70A. Therefore, if you are an associated producer of one or more other producers for a financial year, 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, and
- you or any other member of the group have not corrected the excess claim in the last tax period of the financial year in which the excess claim was made,^{41B}

then the Commissioner will:

- amend your net amount to include the WET payable in the last tax period of the financial year in which the excess claim was made^{41C}
- 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

⁴⁰ Subsections 19-25(2) and 19-25(3).

⁴¹ Subsection 19-25(3).

^{41A} [Omitted.]

^{41B} Subsection 19-25(4).

^{41C} Subsection 19-25(4).

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claim,^{41D} by amending those entities' net amounts in accordance with section 19-25 to include the WET, payable, and

- ensure each of the entities assessed net amounts are not amended for more than the total amount of rebate they individually claimed during the financial year.^{41E}

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Example 27 – associated producer during the year - excess claim

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70B. In Quarter 1 of 2019, Hill Company claimed a producer rebate of \$350,000. In Quarter 3, Flat Company claimed a producer rebate of \$300,000. The Commissioner determines that Hill Company is an associated producer of Flat Company for the financial year ending 30 June 2020.

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70C. The maximum rebate Flat Company and Hill Company are entitled to as a group is \$350,000. Therefore they are jointly and severally liable to pay the excess claim of \$300,000 (\$650,000 claimed less \$350,000 maximum).

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70D. The Commissioner will amend Hill Company's assessed net amount under section 19-25 to include \$300,000 WET, payable in Quarter 4. The Commissioner will also amend Flat Company's assessed net amount under section 19-25 to include \$300,000 WET, payable in Quarter 4. The Commissioner will not collect more than \$300,000 (the sum of the excess claim) from the group.

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Example 28 – associated producer, producer rebate claimed less than excess claim

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70E. In Quarter 1, Charles Company claimed a rebate of \$350,000. In Quarter 2, Miranda Company claimed a rebate of \$350,000. In Quarter 3, Stanley Company claimed a rebate of \$200,000.

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70F. The Commissioner determines that Charles Company, Miranda Company and Stanley Company are associated producers for the financial year. The maximum rebate to which they are entitled as a group is \$350,000. Charles Company, Miranda Company and Stanley Company are jointly and severally liable to pay the excess claim of \$550,000 (\$900,000 total of rebates claimed less \$350,000 maximum entitlement).

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70G. The liability of each producer cannot exceed the total amount of producer rebate claimed by that producer for the financial year. Since two of the producers only claimed \$350,000 and the third

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^{41D} Subsection 19-25(3).

^{41E} Subsection 19-25(3). The Commissioner will ensure the aggregate amount recovered from the group of associated producers does not exceed the excess claim of the group.

^{41F} [Omitted.]

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producer only claimed \$200,000, the Commissioner can only seek to recover \$350,000 of the total \$550,000 over-claim from each of Charles Company and Miranda Company and \$200,000 from Stanley Company. The Commissioner will not collect more than \$550,000 (the sum of the excess claim) from the group.

70H. This Ruling does not deal with the imposition of penalties. However, it is important to note that in these circumstances the Commissioner will consider whether administrative penalties are applicable.^{41G} The Commissioner will also determine any GIC that applies less any remission, by reference to those tax period(s).

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Impact of volume rebates and discounts

71. If you allowed volume rebates or discounts which effectively reduce the price for which your wine is sold (see 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.

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72. Consistent with other claims to which you are not entitled,^{41H} in these circumstances, an amendment should be made to the your assessed net amount for the tax period in which the incorrect amount was claimed.

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^{41G} By reference to the amount payable by each entity under section 19-25 and in accordance with sections 284-75 and 298-20 of Schedule 1 to the TAA.

^{41H} Refer to paragraph 68B of this Ruling.

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WETR 2009/2**Appendix 3 - Detailed contents list**

73. Below is a detailed contents list for this Ruling:

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wine is not purchased under quote (WET inclusive) .
and no notification is received . 65Y¶*
Earlier rebate for New Zealand wine . 65AC¶

WETR 2009/2**Appendix 1** **page 32****Rebatable Wines** **page 32****Appendix 2 – Compliance approach** **67**Claiming the producer rebate **67****What happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed** **68B***Not entitled to the producer rebate* **68B***Example 25 – entity not a producer of wine* **68C****What happens if the producer rebate is over-claimed** **69****'Excess claim – single producer'** **69***Example 26 – single producer excess claim* **69E****'Excess claim – associated producer'** **70***Example 27 – associated producer during the year – excess claim* **70B***Example 28 – associated producer, producer rebate claimed less than excess claim* **70E**Impact of volume rebates and discounts **71****Appendix 3 - Detailed contents list** **73**

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