Australian Government
Australian Taxation Office

Practical Compliance Guideline

PCG 2019/3

Wine equalisation tax: attribution and retention of title clauses

Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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What this Guideline is about

1. This Guideline explains when the Commissioner will allow you to attribute wine equalisation tax (WET) where you sell wine under a contract that includes an effective retention of title clause. It replaces Law Administration Practice Statement

PS LA 2013/1 (GA) *Attribution of wine equalisation tax (WET) where contracts include a retention of title clause and the purchaser sells or otherwise uses the wine before title passes* which has been withdrawn from the date of publication of this Guideline.

2. This Guideline should be read with Wine Equalisation Tax Ruling WETR 2009/1 *Wine equalisation tax: the operation of the wine equalisation tax system*.

3. All legislative references in this Guideline are to the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) unless otherwise indicated.

Date of effect

4. This Guideline applies from 17 April 2019.

Administering the attribution rules

5. The attribution rules for WET are specified in section 21-10. The general rule is that WET and goods and services tax (GST) are attributable to the same tax period.

6. For wine sold subject to a retention of title clause, the transfer of title is postponed until the earlier of when the goods are sold by the purchaser or paid for in full. In this situation, the GST would commonly be attributed to the tax period the invoice was issued whereas the WET would not become payable until the transfer of title occurs.

7. If the purchaser uses the wine before title passes, section 5-10 brings forward the time of sale to when the purchaser first uses the wine (which includes on-selling the wine).

8. You can simplify the attribution of WET from sales of wine made under a contract of sale containing a retention of title clause if you meet all of the following conditions:

- you must have sold the wine under a sale contract that contains an ‘effective’ retention of title clause
- you have practical difficulties in determining when the wine is first used by the purchaser
- on average, you receive full payment for your sales of wine at least one month after the invoice date, and
- on average, your major customers on-sell the wine at least one month after the invoice date.

9. If you satisfy **all four** of these conditions and:

- lodge your activity statement **monthly**, you may choose to attribute the WET payable in the month after the wine is attributed for GST purposes, or
- lodge your activity statement **quarterly**, you can attribute the WET payable to the next tax period only if the wine is supplied in the last month of the quarter.

10. If you do not satisfy the conditions, you need to do **one** of the following:

- establish which of the following events occurs first, and attribute the WET payable accordingly
  - the time when title passes to the purchaser under the contract
  - the time when the purchaser first uses the wine
  - the time when the purchaser on-sells the wine, or

- attribute and report the WET payable in the same tax period in which the GST is attributable.[1]

The four conditions

11. The purpose of this Guideline is to enable you to take a practical compliance approach to the attribution of WET. In determining whether you satisfy the four conditions, we envisage that your approach will be in accordance with that underlying principle.

Condition 1 – effective retention of title clause

12. To have an 'effective' retention of title clause, you must have evidence that the clause is part of the contract of sale between you and the purchaser. The clause must have a legal effect and be binding on both parties to the contract. In addition, you must not be aware of any reason why the clause would not operate in practice according to its terms.

13. The characteristics of an effective retention of title clause include that:

- the contract of sale clearly states that property in the goods does not pass to the purchaser until the goods are paid for in full
- after delivery, the purchaser must keep the goods separate and sufficiently identifiable from their other stock to enable repossession where full payment is not made within the required time, and
- where the goods are not kept separate, the purchaser forfeits ownership of the stock, and title reverts to them only when they have paid for the goods in full.

<u>Example 1 – effective retention of title clause</u>

14. *Good Wines Winery Ltd sells wine to a number of wholesale distributors. The contract of sale between Good Wines Winery Ltd and each distributor contains a retention of title clause. The clause provides that where a credit arrangement is entered into between Good Wines Winery Ltd and the purchaser, title to the wine doesn't pass to the purchaser unless, and until, the final instalment is paid to Good Wines Winery Ltd under the credit arrangement.*

15. *The retention of title clause is also printed on the invoices issued to customers who purchase wine on credit terms. Good Wines Winery Ltd has successfully used the clause to repossess unpaid goods in the past. The clause is legally effective and satisfies the first condition.*

Condition 2 – practical difficulties in determining first use

16. For the simplified WET attribution option to apply, you must experience practical difficulties in establishing when the purchaser uses the wine, if the use takes place before title passes under the contract.

[1] If there is a statutory increase (or decrease) in the rate of WET, the Commissioner may require you to make an additional payment (or allow a credit) to adjust for the change.

Example 2 – difficulties in determining when the wine is first used by the purchaser

17. *The Fairly Good Wine Distribution Company sells wine to various independent retailers who sell the wine in-store and online. The retailers also use the wine for in-store tastings.*

18. *The variety of ways its customers sell and use the wine makes it difficult for The Fairly Good Wine Distribution Company to determine when it was first used by the purchaser. Therefore, the Fairly Good Wine Distribution Company has met the second condition.*

Condition 3 – payment usually received more than a month after invoicing

19. If, on average, invoicing and payment occur in different tax periods, the third condition is considered to be met. However, if invoices issued at the beginning of the month are paid, on average, before the end of the month, the third condition is not met.

20. You must retain details and evidence of the date of issue for each invoice for each sale of wine for a particular month. From this you can determine the average invoice date.

21. You must also have documents to show when payment was received for each invoice. This might include a debtor account, payment collection account, or aged debtor list. From this information, you should be able to determine the average settlement date of each debtor. That is, how many days between issuing the invoice and receiving payment.

22. Use this information to determine the average time between the issue date of an invoice and the settlement date of the debt.

Example 3 – receiving full payment for the sale at least one month after the invoice date

23. *Specialty Gifts Pty Ltd sells wine by wholesale on 60-day payment terms. It issues all invoices and tracks payments received through their accounting system.*

24. *An aged debtor report generated from the system shows that on average Specialty Gifts Pty Ltd receives payment from its customers more than one month after the date of invoice, consistent with their 60-day payment terms. Therefore, Speciality Gifts Pty Ltd satisfies the third condition.*

Condition 4 – major customers usually on-sell more than a month after invoicing

25. To meet the fourth condition, you must also have information about the stock turnover of your major customers to establish when the wine is usually on-sold to the next purchaser.

26. It is for you to determine who your major customers are, but you should base your decision on the quantity and dollar value of your sales.

27. You need to obtain and keep information from your major customers about the average number of days until they on-sell the wine. This information should indicate whether or not the wine is, on average, on-sold in the same tax period you issued the invoice.

28. If, on average, the wine is on-sold in the same tax period that you issued the invoice, the fourth condition will not be met.

Example 4 – major customers on-sell the wine more than one month after the invoice date

29. *Vineyard Wholesalers sells wine to a number of retailers. Based on their sales records, two of their customers account for 60% of their sales of wine. From their inventory records and stock turnover data both customers are able to provide information that shows they average a 45-day turnover of stock, meaning that for Vineyard Wholesalers, the fourth condition is met.*

Explanation

Retention of title clauses and attribution in the WET system

30. When you make a wholesale sale of wine, WET is payable at the time of sale.[2] The term 'time of sale' is not defined in the WET Act and therefore takes its ordinary meaning, subject to statutory context and applicable rules of interpretation.[3]

31. For WET, the Commissioner considers that the time of sale is when title to the wine transfers from one person (seller) to another (purchaser) for a 'price'.[4] When wine is sold under an effective retention of title clause, title generally passes when the purchaser pays for the wine.

32. The rules for when the WET payable is attributable are specified in section 21-10. Without an effective retention of title clause, the general rule is that the WET and GST are attributable to the same tax period.

Retention of title clauses and attribution

33. Wine wholesalers may use retention of title clauses, which postpone the transfer of title until the earlier of when the goods are sold by the purchaser or paid for in full.[5]

34. Wholesalers that account on a non-cash basis attribute GST to the tax period in which they issue an invoice for the supply, or receive any consideration for it, whichever is earlier. However, if property in the wine does not pass to the purchaser until a later tax period, the WET does not become payable until that later period.

35. To determine the time of sale where the sales contract includes a retention of title clause, you must be able to establish which of the following events occurs first, and account for the WET accordingly:

- the time when title passes to the purchaser under the contract
- the time when the purchaser first uses the wine, or
- the time when the purchaser on-sells the wine.

36. This imposes administrative difficulties and compliance costs on the wholesaler, which may lessen the commercial benefits of using retention of title clauses because:

- you need to maintain systems that trace all payments from purchasers, and allocate them to sales invoices
- additional difficulties arise when part payments are made, as you must then allocate the payment to part of the invoiced wine. This is even more difficult if the invoice includes a combination of wine and other alcoholic beverages, and

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[2] Under paragraph 5-5(2)(c), WET becomes payable at the time of the dealing set out in column 4 of the Assessable Dealings Table.
[3] See sections 15AA and 15AB of the *Acts Interpretation Act 1901*.
[4] See paragraphs 97 to 103 of WETR 2009/1.
[5] *Hardy Wine Company Limited v Tasman Liquor Traders Pty Ltd (in liq)* [2006] SASC 168.

- practical difficulties arise in determining the time when each purchaser uses the wine.

37. WETR 2009/1 states that, if the time of the dealing occurs after the end of the tax period that the GST is attributable, the WET payable may be attributed to the tax period in which the dealing occurs.[6] Accordingly, wine wholesalers who sell under a retention of title clause may account for their WET liabilities in the same period as the GST on the taxable supply is attributable or in the tax period in which the sale occurs.

38. As mentioned in paragraph 7 of this Guideline, section 5-10 brings forward the time of sale if the purchaser uses the wine before title passes to the time when the purchaser first uses the wine. The term 'use' is not defined in the WET Act but the Commissioner considers that 'use' includes the on-selling of the wine by a purchaser.

Commissioner of Taxation
17 April 2019

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[6] This position was originally published in Wine Equalisation Tax Ruling WETR 2002/2 *The operation of the wine equalisation tax system* (now withdrawn) at paragraph 115 and then in paragraph 119 in Wine Equalisation Tax Ruling WETR 2004/1 *Wine equalisation tax: the operation of the wine equalisation tax system* (also now withdrawn). WETR 2004/1 has been replaced by WETR 2009/1.

References

Previous draft:

Not previously issued as a draft

ATOlaw topics	Excise ~~ Wine equalisation tax ~~ Other
Legislative references	ANTS(WET)A 1999 ANTS(WET)A 1999 5-5(2)(c) ANTS(WET)A 1999 5-10 ANTS(WET)A 1999 21-10 Acts Interpretation Act 1901 Acts Interpretation Act 1901 15AA Acts Interpretation Act 1901 15AB
Related Rulings/Determinations	WETR 2009/1
Case references	Hardy Wine Company Limited v Tasman Liquor Traders Pty Ltd (in liq) [2006] SASC 168; (2006) 95 SASR 21
Other references	PS LA 2013/1 (GA)
ATO reference	1-DMJGBJS
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