Ruling Compendium – WETR 2009/1

This is a compendium of comments to the issues raised by external parties to draft WETR 2008/D1 – Wine equalisation tax: the operation of the wine equalisation tax system

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
1.	The history of regularly rewriting the WET ruling commits the reader to the difficult task of comparing the old to the new. Recommend that a more convenient approach is to issue addenda.	The comments are noted and will be taken into consideration when considering future issues relating to wine equalisation tax (WET).
2.	The draft ruling does not discuss the meaning of 'beverage' and specifically whether 'raw wine' is a beverage.	Agreed. New paragraphs 37 to 43 have been added to clarify what is a beverage for the purposes of the WET Act.
3.	Whether a sale from stock in a retail store to make up for a temporary shortage of stock of the purchaser is limited to wine of the same type. Concern that the example in paragraphs 54 to 55 of the draft Ruling implies that the wine must be the same type.	The relevant Example at paragraphs 60 to 61 of the Ruling (paragraphs 54 to 55 of WETR 2008/D1) has been amended so that it no longer implies that the purchased wine must be the same type of wine.
4.	The fourth dot point of paragraph 57 of the draft Ruling gives the impression that all sales by grape growers are 'untaxed (retail) sales'. Suggest that the ruling be amended to make it clear that 'retailers' make wholesale sales when they make sales to entities that intend to resell the wine.	Agreed. Paragraph 63 of the Ruling (paragraph 57 of WETR 2008/D1) has been amended to clarify this.

Issue No.	Issue raised	Tax Office Response/Action taken
5.	Whether a sale by a distributor to a restaurant is a wholesale sale. The submission notes that the European Court of Justice found that a supply of prepared food and drink for immediate consumption was a supply of services not a supply of goods (*Faaborg-Gelting Linian A/S v. Finanzamt Flensburg [1996] EUECJ C-231/94 (2 May 1996)*). If applied this would mean that a sale from a distributor to a restaurant would not be a wholesale sale.	The case that is referred to required a consideration of whether the restaurant meal was a supply of a service or goods, and is not relevant in the context of the WET Act. There has been no change made to the Ruling in this regard.
6.	The draft Ruling does not address whether the indirect marketing provisions apply to a retailer that sells slow moving stock through a public auctioneer or an on-line agent.	Paragraph 65 of the Ruling has been amended to address circumstances where auctioneers are acting as agents for a seller.
7.	Paragraphs 60 to 64 of the draft Ruling examine consignment sales. Footnote 28 refers to an examination of 'relevant documentation'. Recommend that reference is made to agreements made under Division 153B of the *A New Tax System (Goods and Services Tax) Act 1999.*	Agreed. Footnote 30 of the Ruling (Footnote 28 of WETR 2008/D1) has been amended accordingly.
8.	Paragraphs 86 to 90 of the draft Ruling discuss the extended meaning of 'sale'. Suggest including discussion similar to that at paragraphs 84 to 92 of GSTR 2008/D3 and at paragraph 36 of *Sterling Guardian Pty Ltd v. Commissioner of Taxation [2005] FCA 116*	The term 'sale' is defined in the WET Act to include barter or exchange. The Commissioner considers that the discussion in the Ruling is adequate to give taxpayers certainty in what is a sale for the purposes of the WET Act. There has been no change to the Ruling in this regard.
9.	Recommend that the broad generalisations of the type found in paragraphs 88 and 90 of the draft Ruling should be balanced by including a comment that sale and application to own use are mutually exclusive concepts.	Agreed. Footnote 56 has been added to the Ruling to clarify the distinction between sale and application to own use.

Issue No.	Issue raised	Tax Office Response/Action taken
10.	Examples of applications to own use might include wine given at no additional charge to business class airline passengers and complimentary wine given to guests on arrival in a hotel.	The Commissioner considers that to include these examples would confuse taxpayers. These examples, while technically meeting the definition of application to own use (AOU), are unlikely to result in an assessable dealing. The entities mentioned would not generally be liable to WET on these events as the assessable dealings for AOUs apply to: • untaxed AOUs (defined in section 5-25 and excludes an AOU for wine that was obtained under quote or wine that has previously passed through a taxing point) (AD3a & AD13a); • AOUs by the entity that manufactured the wine; (AD3b) or • AOU by an entity that did not manufacture the wine but obtained the wine under quote (AD3c & AD13c). The airline and hotel industry are unlikely to be in involved in these dealings.
11.	It is considered that the terms of the contract and the need to pay any additional charges to obtain title to the wine are generally relevant to the determination of the price of the wine. These factors should therefore be included in the discussion in paragraphs 91 to 93 of the draft Ruling in such a way that they apply to the specific examples discussed in paragraphs 98 to 122.	Further changes to the Ruling in this regard are not considered necessary. Paragraphs 89 to 91 of the Ruling (paragraphs 83 to 85 of WETR 2008/D1) discuss the taxable value and state the general principle that '… the phrase 'the price for which the wine is sold' means the total amount that the buyer promises, expressly or tacitly, to pay to get good title to the wine.' The application of this general principle is then demonstrated in the specific examples relating to various additional charges etc., set out at paragraphs 104 to 128 of the Ruling.
12.	Paragraphs 126 to 130 discuss apportionment and suggest that apportionment using the regular wholesale price is an acceptable method. Concern is that the regular wholesale price is not always known and that these paragraphs suggest apportionment is based on the respective cost of the products or alternatively providing a safe harbour.	The suggested apportionment using the regular wholesale price is only one example of what may constitute an acceptable apportionment method. The Commissioner accepts that undertaking apportionment on the basis of cost price, in cases where the regular wholesale price is not known would also be an acceptable method of apportionment. An additional example, Example 14, has been added at paragraph 136 of the Ruling.