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Public advice and guidance compendium – WETR 2009/1

This is a compendium of responses to the issues raised by external parties to draft WETR 2009/1 *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 have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	Example 17 does not accurately reflect the operation of the law.	Example 17 corrected. Dan's Dynamic Distributors can accept Jose's Wholesalers quote but will still be liable for WET on the dealing. However, Dan's Dynamic Distributors can choose not to accept the quote.
2	Requests a statement in the Summary section regarding when the old and new measures apply, for example, 'This Ruling reflects changes made to the WET Act by <i>Treasury Laws Amendment (2017 Measures No. 4) Act 2017</i> '.	Agreed – see paragraph 7A.
3	Requests an example of the treatment of sales by retailers to entities which are clearly resellers (eg restaurants/cafes) and which are not covered by the exclusion in paragraph 59.	No change made. We consider that paragraphs 57 and 58 of WETR 2009/1 clearly set out when a sale will be a wholesale sale versus a retail sale. Paragraph 59 of WETR 2009/1 refers to the exception to this rule.
4	Request the word 'free' be added before the word 'tastings' in paragraphs 80 and 139 to clarify it is only an application to own use (AOU) when the wine is provided as part of a tasting when that tasting is free.	No change made. In some circumstances tasting fees will be charged where the fee is not considered to constitute a fee for the wine itself, but a fee for the tasting experience. This may be determined on a case by case basis.
5	Remove 'considered to be' from line 2 at paragraph 82.	Agreed.
6	Requests goods that would fall within the scope of the defined term 'container' be excluded from the meaning of 'other goods' in paragraphs 32 and 133. The term	Agreed. In some circumstances, these items may meet the definition of 'container'. Example 13 amended to include items that are clearly not intended and reasonably necessary to allow or

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	'container' includes <i>'ancillary items that are packed or secured with the contents and are intended, and reasonably necessary, to allow or facilitate the use of the contents'</i> . Therefore a wine glass or corkscrew could meet this definition, but an ice bucket would not.	facilitate the use of the contents (eg key ring, pen).
7	Requests changes to the Commissioner's view on the way the average wholesale price method is able to be calculated. Suggests: a) a monthly reporter be able to refresh their average pricing calculations at least every 6 months (rather than monthly), or b) the Commissioner accepts a taxable value for retails sales based on the average wholesale price of individual SKUs instead of the average wholesale price of <i>'all sales of grape wine that is the same vintage as the grape wine to which the dealings relates and is produced from the same grape varieties, or the same blend of grape varieties, as the grape wine to which the dealing relates'</i> .	No change made. Section 9-40 requires the average wholesale price method to be determined in respect of a 'tax period'. This is a legislative requirement and not one in relation to which the Commissioner is able to exercise discretion. Section 9-40 provides an example of how the method may be used.
8	Paragraph 179 refers to grounds for quoting if 'you purchase' wine for the purposes of applying it to own use. Requests the words 'or import' be added.	Agreed.
9	Paragraph 184 outlines the new quoting rules – request cross referencing paragraph 182B with paragraph 184.	Agreed.
10	Request practical examples of how the operation of the new quoting system will operate – specifically in relation to the circumstance outlined in paragraph 193A (intention to on sell under quote or tax paid).	Refer to Example 17 for an example of how this will operate in practice/be administered.

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11	Suggest revising paragraph 198 (who can sign a quotation) to include companies and corporate trustees.	Agreed. Paragraph 198 amended to state that quotes may be signed by a person authorised by the entity.
12	Footnote 125A needs to be amended to paragraphs 199B to 199E.	Agreed.
13	Does not consider the scenario at paragraph 199E is correct (half retail price method where wine is purchased from a retailer and sold via wholesale). Suggested that the amount of WET is embedded in the purchase price and calculated as 29/129 of 10/11 of the actual GST-inclusive purchase price. Considers that it should be treated as a wholesale sale by an entity that is not the manufacturer (AD1B and AD11B).	No change made. This agreement only applies where the purchaser does not know the amount of WET included in the purchase price. It is accepted that in some circumstances a retailer will not know at the time of the sale that the purchaser intends on-selling the wine. In these cases it is unreasonable to assume the retailer should have known it was making a wholesale sale. Where a purchaser knows and can substantiate the amount of WET included in the purchase price (eg amount of WET specified on a tax invoice for a wholesale sale), this amount should be claimed by the purchaser as the credit.
14	Requests a credit agreement with Commissioner in circumstances where a private person (who is neither registered nor required to be registered) sells to a wine trader who on sells to a wine retailer. Requests the wine trader be eligible to a credit as WET would have been paid by the private person 'some years ago'. Request a credit of 7.5% of the sale price between the private seller and the trader.	No change made. The ATO has concerns that specifying this agreement in a public ruling might present opportunities for WET credit manipulation. The Commissioner may consider entering into arrangements with individuals under section 17-40 of the WET Act (agreement with the Commissioner regarding wine tax credits) in respect of specific circumstances.