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## **Ruling Compendium – WETR 2014/1**

This is a compendium of responses to the issues raised by external parties to Draft Wine Equalisation Tax Ruling WETR 2013/D1 *Wine equalisation tax: arrangements of the kind described in Taxpayer Alert TA 2013/2 Wine equalisation tax (WET) producer rebate schemes*.

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

All references are to *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) unless otherwise stated.

### **Summary of issues raised and responses**

<b>Issue No.</b>	<b>Issue raised</b>	<b>ATO Response/Action taken</b>
1	Support the Commissioner's initiatives to deter participation in contrived arrangements designed to create additional WET producer rebate entitlements involving non-commercial dealings.  Contrived arrangements create market distortions, competitively disadvantage legitimate wine industry participants and threaten the future of the producer rebate itself.	Noted.

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Issue No.	Issue raised	ATO Response/Action taken
2	<p>Division 165 may not be the perfect vehicle through which to attack WET schemes as it appears to have been designed primarily for GST schemes and is applied by determining the impact of the scheme on a taxpayer's 'net amount' pursuant to the GST Act. This was highlighted when the Commissioner conducted an investigation of the facts surrounding the scheme outlined in Taxpayer Alert TA 2009/6 (and WETD 2010/1), whereby third party suppliers who did not share in the 'commercial WET benefit' but whose net amounts were reduced as a result of the scheme, were investigated by the Commissioner.</p>	<p>Division 165 applies to schemes where an entity gets a 'GST benefit' – that term is defined by reference to the net amount. As observed in a submission, section 21-5 of the WET Act requires the WET payable to be added to the net amount and section 21-15 requires WET credits to be subtracted from the net amount.</p> <p>It should be noted that the Commissioner considers that Division 165 is likely to apply to the extent that the associated producer provisions do not operate to reduce an entity's entitlement.</p> <p>The concerns about the operation of Division 165 to certain other arrangements are noted. However, the Commissioner considers that the application of Division 165 to the WET producer rebate arrangements identified in TA 2013/2 and this Ruling results in the appropriate entities' net amounts being adjusted.</p>
3	<p>Quoting an ABN is an election that the purchaser makes, If the purchaser chooses not to quote, the GST benefit will shift from the interposed entity to the non-quoting purchaser. The interposed entity's net amount will be unaffected when compared with its net amount pre-scheme because the WET liability on sale will be matched by the WET producer rebate. Suggest that the potential for this relatively minor scheme variation should be flagged in the Draft Ruling.</p>	<p>We agree that if the purchaser does not quote its ABN the GST benefit will shift to the non-quoting purchaser. We have not extended the Ruling as suggested because we have not, in practice, seen a pattern of schemes involving this feature. The application of Division 165 to such an arrangement would need to be considered in light of all the relevant facts and circumstances.</p>
4	<p>There is some uncertainty as to the meaning of the term 'tax benefit'. Presumably the term is intended to refer to the commercial WET benefit as opposed to the GST benefit achieved for the purposes of Division 165. Further clarification would be useful.</p>	<p>We have replaced the term 'tax benefit' with 'GST benefit' in accordance with the text of Division 165.</p>

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<b>Issue No.</b>	<b>Issue raised</b>	<b>ATO Response/Action taken</b>
5	<p>The GST benefit is created in the interposed entity as a direct consequence of selling the wine under quotation of an ABN. Where quoting is a choice, there is usually a WET credit available to the person who chooses to not quote. Section 13-5 of the <i>A New Tax System (Wine Equalisation Tax) Act 1999</i> (WET Act) gives the taxpayer an entitlement to quote their ABN.</p> <p>As choosing not to sell under ABN quote potentially changes the identity of the recipient of the GST benefit, suggest some explanation of why the exclusion does not apply would be useful.</p>	<p>While the purchaser choosing to quote its ABN for a dealing with wine is a choice provided for in the WET Act, the benefit is not attributable to that choice.</p> <p>As the High Court found in <i>Commissioner of Taxation v. Unit Trend</i> [2013] HCA 16, the phrase 'not attributable to' in paragraph 165-5(1)(b) is 'concerned with whether the GST benefit in question, which (ex hypothesi) has been got from the scheme, is not one to which the exercise of a statutory choice has entitled the taxpayer'.<sup>1</sup> The benefit obtained in these arrangements is not something to which the interposed entity is entitled as a matter of the exercise of any statutory choice. The benefit is comprised of an entitlement to producer rebate in conjunction with the absence of a corresponding WET liability. The choice of the purchaser to quote its ABN does not, of itself, give the interposed entity an entitlement to the producer rebate. Rather, the benefit is attributable to the sequence of steps that make up the relevant scheme.</p> <p>Footnote 11 has been amended to briefly explain why paragraph 165-5(1)(b) does not apply to these arrangements.</p>

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<sup>1</sup> At [50].