

WETR 2008/D1 - Wine equalisation tax: the operation of the wine equalisation tax system

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Draft Wine Equalisation Tax Ruling

Wine equalisation tax: the operation of the wine equalisation tax system

Contents	Para
What this Ruling is about	1
Date of effect	5
Background	7
Previous Rulings	8
Ruling and Explanation	9
Your comments	214
Detailed contents list	216

Preamble

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way the law applies. It is not a public ruling or advice for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

You can rely on this publication to provide you with protection from interest and penalties as follows. If a statement in this publication is later found to be incorrect or misleading and you make a mistake as a result of relying on this publication, you will not have to pay a penalty. In addition, if you have relied on this publication reasonably and in good faith you will not have to pay interest charges. However, you will still have to pay the correct amount of tax, provided the time limits under the law allow it.

What this Ruling is about

1. The *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) deals with 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 the wine tax although it is also known as the wine equalisation tax.
2. This draft Ruling explains how the wine tax system operates and which alcoholic products are covered by the wine tax.
3. This draft Ruling, when finalised, will replace Wine Equalisation Tax Ruling WETR 2004/1 Wine equalisation tax: the operation of the wine equalisation tax system.
4. Unless otherwise stated, all legislative references in this draft Ruling are to the WET Act and all references to the WET Regulations are to the *A New Tax System (Wine Equalisation Tax) Regulations 2000* (WET Regulations).

Date of effect

5. This draft Ruling represents the preliminary, though considered view of the Commissioner. This draft Ruling may not be relied on by taxpayers or practitioners. When the final Ruling is officially released, it will explain the Commissioner's view of the law as it applies both before and after its date of issue.

WETR 2008/D1

6. The final Ruling will be a public ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) and may be relied upon, after it is issued, by any entity to which it applies. Wine Equalisation Tax Ruling WETR 2002/1 explains the wine equalisation tax (WET) rulings system and the Commissioner's view of when you can rely on our interpretation of the law in WET public and private rulings.

Background

7. The operation of the wine equalisation tax system has been explained in WETR 2004/1. This ruling expands on, and further explains concepts and issues addressed in WETR 2004/1. This ruling does not discuss the operation of the producer rebate. The operation of the producer rebate in relation to New Zealand participants is addressed in WETR 2006/1, and for other than New Zealand participants is addressed in WETR 2008/D2.

Previous Rulings

8. The operation of the wine equalisation tax has previously been addressed in WETR 2004/1. WETR 2004/1 will be withdrawn upon finalisation of this draft Ruling. Until such time as WETR 2004/1 is withdrawn you will be protected under section 105-60 of the TAA to the extent that you have relied on views expressed in WETR 2004/1 to calculate your WET liability.

Ruling and Explanation

Which alcoholic products are affected?

9. Wine tax applies to the following alcoholic beverages provided they contain more than 1.15% by volume of ethyl alcohol:¹

- grape wine;
- grape wine products;
- fruit wines or vegetable wines;
- cider or perry;
- mead; and
- sake.

10. In this draft Ruling all of the above are commonly referred to as *wine*. However, in some circumstances, *grape wine* is treated differently, in which case it is referred to separately in this draft Ruling.

¹ Section 31-1.

Grape wine²

11. 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% by volume of ethyl alcohol.

12. 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. In other words, fortified wines can still meet the requirements of grape wine.

13. Grape wine includes:

- table wines (red, white and rose);
- sparkling wines;
- fortified wines; and
- dessert wines.

Grape wine products³

14. Section 31-3 defines grape wine product as a beverage that contains at least 70% grape wine and:

- has not had added any ethyl alcohol from any other source, except grape spirit or alcohol used in preparing vegetable extracts (including spices, herbs and grasses); and
- contains between 8% and 22 % (inclusive) by volume of ethyl alcohol.

15. The exclusion in section 31-3 of the addition of ethyl alcohol from any other source means that if ethyl alcohol other than grape spirit or alcohol used in preparing vegetable extracts is added to grape wine then the resulting beverage is not a grape wine product.

16. The Commissioner considers that the reference to 'alcohol used in preparing vegetable extracts' in section 31-3 is limited to alcohol that is used in the process of making flavour from vegetable matter and that has become an intrinsic part of the extract. The Commissioner does not consider that it extends to alcohol that has been used as a carrying medium for flavours made from vegetable extracts.

² Section 31-2 and regulation 31-2.01.

³ Section 31-3.

WETR 2008/D1

17. According to the Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999 (the EM) that inserted the definition of 'grape wine product' the types of beverage covered by the definition⁴ include grape wine products such as wine cocktails, flavoured wines and Irish style cream drinks. The EM also explains that the definition includes a minimum and maximum alcohol band to prevent low strength spirits from accessing the WET.

18. It is inherent in the definition of grape wine product in section 31-3, and the further explanation in the EM, that for the purposes of the WET Act grape wine products be limited to beverages where the alcohol content is attributable to grape wine and/or grape spirit. The allowance of alcohol used in preparing vegetable extracts is a recognition that in making flavours from vegetable matter alcohol is often used in the process. For example, in the manufacture of flavour infused wine products, such as vermouth, herbs, spices or other vegetable matter may be added to the wine base as an infusion or they may be macerated and steeped in alcohol. When the alcohol is sufficiently flavoured it is then added to the wine.

19. When flavour made from vegetable matter is added to beverages in the above manner, the alcohol used to make the flavour is incidentally added to the beverage as part of the flavouring process and its addition to the wine will not preclude the beverage from being a grape wine product as defined in section 31-3.

20. In contrast to the flavouring process described above, concentrated flavours may be made from vegetable matter. Prior to being added to the wine, these concentrated flavours are combined with additional ethyl alcohol which acts as a carrying medium for the flavour. The combined flavour and additional ethyl alcohol is then added to the wine. In these circumstances if the ethyl alcohol with which the flavour is combined, before being added to the wine, is not grape spirit the resulting beverage will not be a grape wine product as defined in section 31-3. The additional ethyl alcohol into which the flavour was incorporated was not used in the process of preparing the vegetable extract.

21. Examples of grape wine products are:

- vermouth, marsala and green ginger wine;
- wine based cocktails and creams that satisfy the requirements above; and
- wine based imitation liqueurs.

⁴ See paragraphs 1.231 and 1.237 of the Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999.

22. Grape wine products do not include:

- wine coolers (unless they satisfy the requirements in paragraph 14 of this draft Ruling);
- ready to drink (RTD) or designer drinks that include a wine base (unless they satisfy the requirements in paragraph 14 of this draft Ruling);
- RTDs or designer drinks that contain spirits (other than grape spirit). RTDs or designer drinks containing grape spirit must also satisfy the requirements in paragraph 14 of this draft Ruling; and
- spirit based cocktails, creams and liqueurs.

Fruit or vegetable wine⁵

23. 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 any ethyl alcohol from any other source except grape spirit or neutral spirit;
- has not had added any liquor or substance that gives colour or flavour (other than 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) by volume of ethyl alcohol. Grape spirit or neutral spirit can be added to fruit or vegetable wine, therefore the beverage must meet the definition of fruit or vegetable wine before the spirit is added. This means that the beverage must contain at least 8% by volume of ethyl alcohol before the grape spirit or neutral spirit is added.

24. Fruit or vegetable wines include:

- table wine;
- sparkling wine; and
- fortified wine.

25. Fruit or vegetable wines do not include RTDs or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges, et cetera (unless they satisfy the requirements in paragraph 23 of this draft Ruling).

⁵ Section 31-4 and regulation 31-4.01.

Cider and Perry⁶

26. 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 any ethyl alcohol from any other source; and
- has not had added any liquor or substance (other than water or the juice or must of apples or pears) that gives colour or flavour.

27. Traditionally cider has referred to fermented apple juice and perry has referred to fermented pear juice, however, the structure of the definition allows for cider to contain pear juice and perry to contain apple juice.⁷

28. Cider and perry include:

- traditional cider and perry;
- draught cider and perry;
- dry cider and perry; and
- sweet cider and perry.

29. 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.

Mead⁸

30. Up to and including 8 June 2005, mead, for WET purposes, is a beverage that:

- is the product of the complete or partial fermentation of honey;
- has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit;
- has not had added any liquor or substance (other than honey, grape spirit or neutral spirit) that gives colour or flavour; and
- if grape spirit or neutral spirit has been added contains between 15% and 22% (inclusive) by volume of ethyl alcohol.

⁶ Section 31-5.

⁷ This is consistent with the definitions of cider and perry in Standard 2.7.3 of the Australia New Zealand Food Standards Code.

⁸ Section 31-6 and regulation 31-6.01.

31. From 9 June 2005, mead for WET purposes is a beverage that:

- is the product of the complete or partial fermentation of honey;
- has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit;
- has not had added any liquor or substance that gives colour or flavour other than:
 - grape spirit or neutral spirit;
 - honey, herbs and spices, which can be added at any time;
 - caramel, provided it is added after the fermentation process is complete; and
 - 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;
- if fruit or product is added the mead contains between 8% and 22% (inclusive) by volume of ethyl alcohol; and
- if grape spirit or neutral spirit has been added contains between 15% and 22% (inclusive) by volume of ethyl alcohol. 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. This means that if the beverage has had added to it fruit or product derived entirely from fruit then it must contain at least 8% by volume of ethyl alcohol before the grape spirit or neutral spirit is added.

32. 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.

33. Up to and including 8 June 2005, Mead includes:

- honey mead;
- fortified mead; and
- liqueur mead.

WETR 2008/D1

34. From 9 June 2005, Mead includes:

- honey mead;
- fortified mead;
- liqueur mead; and
- spiced mead.

Sake⁹

35. Sake is a beverage that:

- is the product of the complete or partial fermentation of rice;
- has not had added any ethyl alcohol from any other source; and
- has not had added any liquor or substance that gives colour or flavour.

36. A beverage that consists of distilled sake is not wine for the purposes of the WET Act.

37. Sake includes:

- fermented sake; and
- rice wine.

Rate of wine tax

38. The amount of tax is worked out by multiplying the taxable value¹⁰ of the assessable dealing by 29%.¹¹

How does the wine tax work?

39. The broad aim of the WET Act is to impose wine tax on dealings with wine in Australia. Dealings which attract wine tax are called assessable dealings and can include selling wine, using wine, or making a local entry of imported wine at the customs barrier.

⁹ Section 31-7.

¹⁰ See paragraphs 82 to 153 for discussion on taxable value.

¹¹ Section 5-5.

40. The wine tax is normally a once only tax designed to fall on the last wholesale sale. Where wine is sold by wholesale to a retailer, for example, to a distributor, bottle shop, hotel or restaurant, wine tax is calculated on the selling price of the wine (excluding wine tax and GST).¹² If wine is not the subject of a wholesale sale, for example, it 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.

41. Wine tax is imposed on assessable dealings with wine, unless an exemption applies. If the dealing is taxable, wine tax is calculated on the taxable value of the dealing. If the wine, or some part of the wine, has already been subject to a taxable dealing,¹³ then a credit for that earlier tax may be claimed as an offset against the tax payable on the later dealing.

42. Assessable dealings (other than a customs dealing) will only be taxable if the entity which has the dealing is registered or is required to be registered for GST.

43. With the exception of some applications to own use, GST applies to all taxable assessable dealings with wine. The most common assessable dealing is a wholesale sale and for this type of dealing the taxable value is the selling price (exclusive of wine tax and GST). In this case, GST is calculated on the selling price of the wine including the wine tax.

44. An assessable dealing may be exempted from wine tax because the purchaser has grounds for quoting and has made a quote (see paragraphs 170 to 175 and Appendix A of this draft Ruling). The purchaser's Australian Business Number (ABN) is used for quoting.

45. Normally, wine tax is included in the price for which retailers (including bottle shops, hotels, restaurants and cafes) purchase the wine. Most retailers are not entitled to a credit for wine tax included in the purchase price of the wine. The system is designed so that wine tax is built into the retailers' cost base and is then effectively passed on in the price of the wine to the end consumer. This does not affect the entitlement of the retailer to claim an input tax credit for GST.

46. **Appendix B** sets out a schematic diagram showing the basics of how the wine tax works in relation to the more common assessable dealings with wine.

¹² The amount on which the wine tax is calculated may be increased in certain circumstances, for example, where the transaction is not at arm's length or to include the value of royalties or containers.

¹³ Taxable dealing means a dealing in the Assessable Dealings Table in section 5-5 for which no exemption under Division 7 is available.

When does the wine tax apply from?

47. In most cases if the time of a taxable dealing with wine is on or after 1 July 2000, the wine tax applies to the dealing. An exception to this is a sale of wine by a retailer, for example a bottle shop, that purchased bulk wine at a price which included wine tax and then placed the wine in bottles or other containers on or after 31 August 2004. See the final dot point of paragraph 57 of this draft Ruling.

Does an entity need to register for wine tax?

48. There is no separate registration requirement under the WET Act. Registration relates to registration under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

49. An entity does not have a liability to pay wine tax on any assessable dealing with wine (other than a *customs dealing*) unless they are registered or are required to be registered for GST.¹⁴

50. A customs dealing occurs when either:

- a person who is a passenger or crew on an international flight or voyage takes wine, purchased from an inwards duty-free store, from a customs clearance area at an airport or port; or
- a transaction listed in the Local Entry Table in section 5-30 occurs.

What are assessable dealings?

Wholesale sales

51. The most common assessable dealing is a wholesale sale. A wholesale sale is a sale to an entity which purchases the wine for the purposes of resale.¹⁵ A wholesale sale of wine is taxable¹⁶ even if the wine has been taxed previously (although there is a credit¹⁷ for the earlier tax). This ensures that tax is imposed on the final wholesale sale.

52. Some examples of the most common wholesale sales are:

- a sale of wine by a winery to a retailer, for example, a bottle shop, hotel or restaurant;
- sale of wine by a winery to a distributor; and
- a sale of wine by a distributor to a retailer, for example, a bottle shop, hotel or restaurant.

¹⁴ Subsection 5-5(2).

¹⁵ Section 33-1.

¹⁶ Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.

¹⁷ Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

53. A sale of wine from stock in a retail store (or retail section of a store) to make up for a temporary shortage of stock of the purchaser is not a wholesale sale if the wine is of a kind that:

- is usually manufactured by the purchaser; or
- is usually purchased by the purchaser for resale.¹⁸

Example 1 – sale of wine that is not a wholesale sale

54. *Restaurant A sells a small quantity of wine to a nearby restaurant, Restaurant B, which is experiencing a temporary shortage of stock of that particular wine. Restaurant B usually purchases its supplies of wine from a wholesaler but on this occasion needs the wine immediately.*

55. *The sale by Restaurant A to Restaurant B is not a wholesale sale.*

Retail sales

56. A retail sale¹⁹ is any sale that is not a wholesale sale (see paragraphs 51 to 55 of this draft Ruling). There are a number of situations where retail sales of wine are assessable dealings.

57. The following are examples of the most common situations where retail sales of wine are assessable dealings:

- cellar door sales by the winery which produced the wine;²⁰
- sales of wine which was obtained by the seller wine tax free under quotation of the seller's ABN;²¹
- sales of wine by a retailer, for example, a bottle shop, hotel or restaurant, which purchased the wine from a winery which was not registered and was not required to be registered for GST and did not include wine tax in the price to the retailer. These sales by the retailer are referred to as untaxed sales.²² If the winery is not registered and not required to be registered for GST, it is not liable for wine tax or GST and therefore does not include wine tax or GST in the price to the retailer. Where the retailer is registered or is required to be registered for GST, it is liable for wine tax on the untaxed sales. The retailer is also liable for GST on the sale of the wine;

¹⁸ Section 33-1.

¹⁹ Section 33-1.

²⁰ Assessable Dealing AD2a in the Assessable Dealings Table in section 5-5.

²¹ Assessable Dealings AD2b and AD12b in the Assessable Dealings Table in section 5-5. If the sale is an *indirect marketing sale* (see paragraph 58 of this draft Ruling) assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5.

²² Assessable Dealings AD2e and AD12e in the Assessable Dealings Table in section 5-5.

WETR 2008/D1

- sales by a grape grower of wine produced by a contract winemaker from grapes supplied by the grape grower to the contract winemaker. These sales by the grape grower are also referred to as untaxed sales.²³ Where the grape grower is registered or is required to be registered for GST the grape grower is liable for wine tax on the untaxed sales. The supply of the services of the contract winemaker to the grape grower is not an assessable dealing as the charge is for the services provided by the contract winemaker and not for the sale of wine. The charge by the contract winemaker to the grape grower is not subject to wine tax, but is subject to GST if the contract winemaker is registered or is required to be registered for GST; and
- sales of wine by a retailer, for example, a bottle shop, that purchased bulk wine at a price which included wine tax and then placed the wine in bottles or other containers on or after 31 August 2004²⁴ (this does not include the situation where the retailer places packaged wine into a paper bag, carry bag or similar container at the time of the retail sale or places unpackaged wine into a container supplied by a customer).

Indirect marketing sales

58. Indirect marketing sales²⁵ are a type of retail sale that are assessable dealings even though the purchaser of the wine may have borne wine tax. These arrangements are assessable dealings to ensure that the wine is taxed on the full wholesale value.²⁶ In accordance with section 5-20 there is an indirect marketing sale²⁷ if the sale is a retail sale by an entity which is not the manufacturer of the wine and the sale occurs in either of the following circumstances:

- the sale is made by the seller through another entity, other than an employee of the seller, who is acting for the seller under an arrangement to that effect; or
- the sale is made from premises that are:
 - used by an entity, other than the seller, mainly for making retail sales of wine; and
 - are held out to be premises of, or premises used by the other entity or entities.

²³ Assessable Dealing AD2e in the Assessable Dealings Table in section 5-5; section 5-25.

²⁴ Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.

²⁵ Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5; section 5-20.

²⁶ See paragraphs 3.19 and 3.20 of the Explanatory Memorandum to the A New Tax System (Wine Equalisation Tax) Bill 1999.

²⁷ Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5; section 5-20.

(a) Retail sales made through another entity

59. The first category of indirect marketing sales referred to in section 5-20 of the WET Act are retail sales made under an arrangement where an entity is authorised to sell wine on behalf of another entity (which is not the manufacturer of the wine). Examples of arrangements under which the sales made would be indirect marketing sales include:

- wine sold on consignment where a retailer sells wine on behalf of the owner of the wine as an agent;²⁸ and
- door-to-door sales, party-plan sales of wine or internet sales of wine where the entities that conduct the sales are not employees of the seller.

Example 2 – Consignment sale where retailer sells wine as agent for the owner of the wine.

60. *WineCellars, a wine retailer, agrees to sell certain varieties of wine through its retail outlet on behalf of RedGrape, a wine wholesaler. The price for which the wine is to be sold to retail customers is as per a price list provided by RedGrape. RedGrape has agreed to pay a commission to WineCellars equal to 5% of the retail selling price of the wine. At the end of each week WineCellars notifies RedGrape of the wine sales that it has made on its behalf and pays an amount to RedGrape equal to the retail selling price of the wine sold, less the 5% commission payable by RedGrape to WineCellars.*

61. *WineCellars is acting as RedGrape's agent. The wine sales made by RedGrape through its agent WineCellars are indirect marketing sales for the purposes of section 5-20.*

62. Consignment sales undertaken on a 'sale or return' basis will not be indirect marketing sales. 'Sale or return' arrangements occur where wine is consigned by the original seller to a reseller but no sale takes place until a buyer is found at which time two sales occur; the first from the original seller to the reseller and the second from the reseller to the final buyer. The first sale by the original seller is a wholesale sale that will be an assessable dealing²⁹ and the original seller will be liable for WET on the sale. The second sale is a retail sale by the reseller.

²⁸ Whether or not a retailer is acting as an agent of the owner of the wine will require an examination of the facts and circumstances in each case. General principles of agency are relevant, and in most cases, relevant documentation about the business relationship, the description used by the parties and the conduct of the parties will determine whether or not an agency arrangement exists. See GSTR 2000/37 Goods and services tax: agency relationships and the application of the law for a discussion on general principles of agency arrangements.

²⁹ Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.

WETR 2008/D1

Example 3 – Consignment sale undertaken on a ‘sale or return’ basis

63. *Sparkles Pty Ltd operates a wine retail outlet. Sparkles Pty Ltd enters into an agreement with GreenGrape Wholesalers to sell some rare, specialty wines provided by GreenGrape Wholesalers. Under the arrangement with GreenGrape Wholesalers, Sparkles Pty Ltd stocks the specialty wines in its retail outlet and agrees to purchase the wine from GreenGrape Wholesalers when they find a buyer. The amount that Sparkles Pty Ltd pays GreenGrape Wholesalers for the wine when a buyer is found is pre-agreed and Sparkles Pty Ltd is not required to disclose the final selling price obtained for the wine to GreenGrape Wholesalers.*

64. *Under the arrangement with GreenGrape Wholesalers, Sparkles Pty Ltd is purchasing the wine from GreenGrape Wholesalers and selling the wine to customers in its own right. The sales of wine by Sparkles Pty Ltd are not indirect marketing sales for the purposes of section 5-20.*

(b) Sales made from another entity’s retail premises

65. The second category of indirect marketing sales referred to in section 5-20 are retail sales that are made by an entity from premises held out to be another entity’s retail premises. The retail outlet permits an entity, the ‘indirect marketer’, to conduct business from floor space within its premises, charging the ‘indirect marketer’ a fee equivalent to rent for the floor space. The retail outlet may provide the majority of the staff and facilities necessary to sell the goods, or alternatively, the ‘indirect marketer’ may utilise its own staff to undertake the sale of the wine from the other entity’s retail premises.

Example 4 – indirect marketing sale

66. *SweetGrape is a wine wholesaler. SweetGrape wishes to introduce some new wine varieties that it has sourced from a local manufacturer into the retail market. SweetGrape enters into an arrangement with RoseWine Pty Ltd whereby SweetGrape rents some floor space in RoseWine’s retail outlet. SweetGrape uses the rented floor space in RoseWine’s retail outlet to display and sell the new varieties of wine. RoseWine provides staff to assist SweetGrape with the undertaking of the sales of its wine. SweetGrape pays RoseWine a monthly rental of \$330 per month for rental of the floor space and services provided by RoseWine’s staff. SweetGrape receives the entire proceeds from the sale of its wine made from RoseWine’s premises.*

67. *The wine sales made by SweetGrape, from RoseWine’s premises, are indirect marketing sales for the purposes of section 5-20.*

Royalty-inclusive sales

68. Royalty-inclusive sales³⁰ are another category of retail sales that are assessable dealings even though the purchaser of the wine may have borne wine tax. Royalties paid before the last assessable dealing with wine will be covered by the special taxable value rules for royalty payments (see paragraph 123 of this draft Ruling). If the royalty payment is made after that time, then the amount of the royalty will be included in the value of any retail sale.³¹

69. Royalty³² is defined as any amount which is paid or payable for the following things (or the right to do those things):

- doing anything that would be an infringement of copyright if done without permission of the copyright owner (as those terms are used in the *Copyright Act 1968*);
- making, using, exercising or vending an invention (as these terms are used in the *Patents Act 1990*);
- using a design that is of a kind capable of being registered under the *Designs Act 2003* (whether or not the particular design is registered under that Act or any other law);
- using a trade mark that is of a kind that is capable of being registered under the *Trade Marks Act 1995* (whether or not the particular trade mark is registered under that Act or any other law) but excluding a mark that relates to a service;
- using confidential information;
- using machinery, implements, apparatus or other equipment;
- supplying scientific, technical, industrial, commercial or other knowledge or information;
- supplying assistance that is ancillary to and is supplied as a means to enable the application or enjoyment of any of the points above; and
- total or partial forbearance in respect of any of the points above.

70. A royalty-inclusive sale occurs if the following conditions are met:

- the sale is a retail sale;
- the sale occurs in the course of a business;
- the sale is not covered by another category of assessable dealing;

³⁰ Assessable Dealings AD2c and AD12c in the Assessable Dealings Table in section 5-5; section 5-15.

³¹ See paragraph 3.17 of the Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999.

³² Section 9-70.

WETR 2008/D1

- the seller incurs a royalty, that is paid or payable, in connection with the wine; and
- the seller incurs a royalty at or before the time of the sale, or might reasonably be expected to incur such royalty after that time. Alternatively, the royalty is incurred by an associate of the seller or by an entity (except the manufacturer of the wine) under an arrangement with either the seller or an associate of the seller.³³

71. The taxable value for an assessable dealing that is a royalty-inclusive sale is the amount that would be the notional wholesale purchase price if the manufacturer had incurred the royalty.³⁴ The notional wholesale purchase price³⁵ is the price, excluding GST and wine tax, for which it is reasonably expected that the wine could be purchased by wholesale in an arms-length transaction. In other words, for a royalty-inclusive sale the amount of the royalty is factored into the taxable value of the wine.

Example 5 – Royalty-inclusive sale

72. *World famous sportsman, Joe Great, has entered into an agreement with Good Sports Bottle Shops Pty Ltd which allows them to put his image and name on the label of bottles of wine. For every bottle of wine Good Sports sells, they must pay Joe Great \$1.00.*

73. *Good Sports buys wine by wholesale for \$10 per bottle. Good Sports sells the wine by retail for \$18.00 per bottle. The taxable value for the royalty-inclusive sale is therefore \$11 (the wholesale purchase price (\$10) plus the royalty (\$1)).*

Application to own use

74. The most common examples of wine being applied to own use are:

- wine used for cellar door tastings;
- wine used for tastings at exhibitions;
- wine used for wine shows;
- wine used for promotions;
- wine donated to charity;
- wine given to retailers, restaurants and so on, as samples;
- wine given to staff; and
- wine taken for personal consumption.

³³ Section 5-15.

³⁴ Assessable dealings AD2c AD12c in the Assessable Dealings Table in section 5-5.

³⁵ Section 33-1.

75. The definition of application to own use³⁶ excludes a sale of wine, consigning wine for sale on consignment and anything done with imported wine after importation but before it is locally entered. Application to own use also excludes using the wine as part of the process of manufacture or other treatment or processing of wine or other goods. This means that no liability to wine tax arises where wine, which has not previously been taxed, is used in this way. Examples of wine being used as part of the process of manufacture or other treatment or processing are where it is used for:

- blending with other wine;
- analysis and comparison;
- testing and checking in the manufacturing process (including maturation); and
- quality control in the manufacturing process (including maturation).

76. Wine included as bonus wine with the sale of other wine as part of a contract of sale is not considered to be applied to the seller's own use. The bonus wine is sold with the other wine and the price attributable to the bonus wine is accepted as being included in the sale price of the wine. An example of this is where a bonus bottle of wine is included with the sale of a dozen bottles. In this case it is accepted that 13 bottles of wine are sold for what is otherwise the price of 12 bottles.

77. The following entities, if they are registered or are required to be registered for GST purposes, will have a liability to wine tax on wine which they apply to their own use:

- the manufacturer of the wine;³⁷
- a person who obtained the wine under quote (see paragraphs 167 to 192 of this draft Ruling);³⁸ or
- a person who obtained the wine as untaxed wine (for example purchased wine from a manufacturer who is not registered and is not required to be registered for GST).³⁹

³⁶ Section 33-1.

³⁷ Assessable Dealings AD3b, in the Assessable Dealings Table in section 5-5.

³⁸ Assessable Dealings AD3c, AD13c in the Assessable Dealings Table in section 5-5; section 31-15.

³⁹ Assessable Dealings AD3a and AD13a in the Assessable Dealings Table in section 5-5; section 5-25.

Royalty-inclusive application to own use

78. An application to own use of wine may be an assessable dealing even though someone has already borne wine tax on that particular wine. An example of this is a royalty-inclusive application to own use.⁴⁰ The reason for taxing this assessable dealing is to ensure that wine is taxed on the full wholesale value. In this circumstance, there is a credit available for the tax previously borne on the wine by the entity that applied the wine to its own use (the applier).⁴¹

79. A royalty-inclusive application to own use occurs if the following conditions are met by the applier:

- the application to own use occurs in the course of a business;
- the application to own use is not covered by another category of assessable dealing;
- the applier incurs a royalty, that is paid or payable, in connection with the wine; and
- the applier incurs a royalty at or before the time of the application to own use, or might reasonably be expected to incur such royalty after that time. Alternatively, the royalty is incurred by an associate of the applier or by an entity (except the manufacturer of the wine) under an arrangement with either the applier or an associate of the applier.⁴²

Local entry

80. The WET Act sets out the situations that are assessable dealings with imported wine.⁴³ The term used in the WET Act to cover the situation of imported wine is 'local entry'. This applies whether or not a formal customs entry is required. Some of the common situations that amount to a local entry are:

- commercial shipment of wine that requires a formal customs entry;
- wine delivered from a customs warehouse; and
- a personal shipment of wine via international mail that does not require a formal customs entry.

⁴⁰ Assessable Dealings AD3d and AD13d in the Assessable Dealings Table in section 5-5; section 5-15.

⁴¹ Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

⁴² Section 5-15.

⁴³ Assessable Dealing AD10 in the Assessable Dealings Table in section 5-5; section 5-30.

Removal from a customs clearance area

81. Removal, from the customs clearance area, of wine purchased by a relevant traveller⁴⁴ from an inwards duty free shop is an assessable dealing.⁴⁵ A relevant traveller means a person (whether passenger or crew member) who has alighted from an international flight.

What value is used to calculate the wine tax?

82. Wine tax is calculated by multiplying the taxable value of a taxable dealing by 29%.⁴⁶ The discussion below refers to the normal taxable values which apply to arm's length transactions. These normal taxable values may be increased, for example, where the transaction is not at arm's length⁴⁷ or to include the value of royalties or containers.⁴⁸

Taxable value of wholesale sales

83. For a taxable dealing with wine that is a wholesale sale the taxable value is the price for which the wine is sold (excluding wine tax and GST).⁴⁹ Taking into consideration the ordinary legal meaning of 'sale', the extension to the ordinary meaning of sale as specified in section 33-1 of the WET Act, and the definition of 'price' in section 33-1 of the WET Act, the Commissioner's view is 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.⁵⁰

84. In the context of the WET Act the total amount that the buyer promises, expressly or tacitly, to pay to get good title to the wine will include both monetary and non-monetary amounts.

85. For the purposes of the WET Act, as a general rule all amounts charged by the seller in relation to the supply of wine up to the point when the property in the wine passes to the buyer, form part of the price for which the wine was sold.

⁴⁴ Section 33-1 and section 96B of the *Customs Act 1901*.

⁴⁵ Assessable Dealings AD4b and AD14b in the Assessable Dealings Table in section 5-5.

⁴⁶ Subsection 5-5(3).

⁴⁷ See paragraphs 151 to 153 of this draft Ruling.

⁴⁸ See paragraphs 69 and 123 of this draft Ruling.

⁴⁹ Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.

⁵⁰ See the comments of Windeyer J in *E.M.I. (Australia) Ltd. v. FC of T* 71 (1971) 45 ALJR 349 at 4118 ; ATC 4112 at 4118; (1971) 2 ATR 325 at 330.

WETR 2008/D1

Meaning of 'sale'

86. The word 'sale' is not defined in the WET Act except to specify that it includes barter or exchange.⁵¹

87. The technical legal meaning usually given to the term 'sale' is the transfer by mutual consent of the ownership of a thing from one person to another for a money price.⁵² However, in some contexts, as a matter of ordinary non-technical English usage, 'sale' is capable of extending to the transfer of property for any valuable consideration.⁵³

88. The definition of 'sale' in section 33-1 of the WET Act extends the meaning of 'sale' for the purposes of the WET Act to include barter or exchange. Therefore, for the purposes of the WET Act, 'sale' includes the transfer of the ownership of wine for both monetary and non-monetary amounts.

89. All the States and Territories have in place sale of goods legislation which governs the sale of goods. In accordance with State and Territory sale of goods legislation, for a sale to have taken place the property in the goods must be transferred from the seller to the purchaser.

90. In broad terms, a sale of wine occurs for the purposes of the WET Act when ownership is transferred from one person (the seller) to another (the purchaser) for a 'price'.

Meaning of 'price'

91. Section 33-1 of the WET Act specifies that the word 'price' is to take the meaning given by section 9-75 of the GST Act which defines 'price' as the sum of:

- (a) so far as the *consideration for the supply is consideration expressed as an amount of *money – the amount (without any discount for the amount of GST (if any) payable on the supply); and
- (b) so far as the consideration is not consideration expressed as an amount of money – the *GST inclusive market value of that consideration.

⁵¹ Section 33-1.

⁵² *Halsbury's Law of England*, 1983, vol. 41, 4th edn, Butterworths, London, paragraph 601.

⁵³ *The Collins Concise Dictionary* 1990, Harper Collins, New York, defines 'sell' as 'to dispose of or transfer ... to a purchaser in exchange for money **or other consideration**' [emphasis added]. In *The Australian Oxford Dictionary* 2004, Second Edition, Oxford University Press, Melbourne, the first sense of 'sale' given is 'the exchange of a commodity for money **etc.**' [emphasis added] which indicates that it can be money or other consideration.'

92. Consideration is defined under section 9-15 of the GST Act as including:

- (a) any payment, or any act or forbearance, in connection with a supply of anything; and
- (b) any payment, or any act or forbearance, in response to or for the inducement of a supply of anything.

93. Therefore, for the purposes of wine equalisation tax 'price' means any payment or act or forbearance for the wine whether expressed in monetary or non-monetary terms.

Judicial approach

94. The WET Act replaced, for wine, the wholesale sales tax applicable under the *Sales Tax Assessment Act 1992* and is applicable on and from 1 July 2000. The Explanatory Memorandum for the A New Tax System (Wine Equalisation Tax) Bill 1999 stated:

12.6 The tax is levied at the wholesale level, with tax being paid on the value of the goods at the last wholesale sale. Levying the tax on the wholesale value achieves the relative price impacts on cask and bottled wine outlined in ANTS.

12.7 The WET policy objectives can only be implemented by carrying across the appropriate liability provisions of the WST as they are applicable to wine. This will ensure that the principles underlying the WET are familiar and concepts underlying the legislation well accepted.

95. Although wine is now taxed under the WET Act, the basis on which wine is taxed is drawn from the sales tax system. Under the sales tax system, the normal taxable value for a wholesale sale (AD1a, AD1b and AD11b, in the Assessable Dealings Table in section 5-5) was the price (excluding sales tax) for which the goods were sold.⁵⁴ This is the same wording as used in the WET Act (except that the exclusion now refers to wine tax and GST).

96. In *E.M.I. (Australia) Limited v. FC of T*⁵⁵ (EMI case) Windeyer J said:

... 'the amount' for which a thing is sold means I consider the sum total of all moneys that the buyer promises, expressly or tacitly, to pay to, or for, the seller in order that he, the buyer, may get a good title to goods that he has agreed to buy.⁵⁶

⁵⁴ Table 1 in Schedule 1 of the *Sales Tax Assessment Act 1992*.

⁵⁵ 71 ATC 4112 at 4118.

⁵⁶ 71 ATC 4112 at 4118 at page 4118.

WETR 2008/D1

97. It is acknowledged that the decision in the EMI case was based upon the *Sales Tax Assessment Act (No 1) 1930* which referred to 'the amount for which the goods were sold', as opposed to the *Sales Tax Assessment Act 1992* and the WET Act which refers to 'the price for which the goods were sold'. In the EMI case, Windeyer J raised doubt over whether the same conclusion would have been reached if the words 'price' or 'consideration' had been used instead of 'amount'. However, the Commissioner considers that the decision is still relevant in the context of the WET Act. The reference to 'price' in the WET Act is not a reference to the ordinary legal meaning of 'price' but refers to the meaning of 'price' as defined in section 9-75 of the GST Act. This in turn refers to 'consideration' which is defined very broadly to include any payment, act or forbearance, in connection with a supply of anything.

Delivery charges

98. The price for which the goods are sold will include delivery charges such as freight, postage or insurance where goods are sold under a contract that provides that the sale price includes delivery. If the payment for delivery for the wine must occur for the purchaser to obtain good title to the wine, then the delivery charges form part of the taxable value.⁵⁷ Therefore, where wine is sold under a contract with a sale price that includes delivery, the amount for which the wine is sold will include all the costs incurred up to the point of delivery.

99. However, where delivery is the subject of a separate contract, delivery charges for freight, postage or insurance will not usually form part of the sale price. It will be clear that charges for freight, postage or insurance will not form part of the sale price when:

- the parties to the contract of sale genuinely intend property in the wine to pass without delivery at the price stated (for example, there are no additional charges to customers who arrange for their own delivery and reasonable access is provided for them to collect the wine themselves); and
- the amount for delivery is a competitive commercial charge, rather than reflecting a reduction in the price of the wine. That is, the charge does not exceed the amount that would have been charged to the buyer by an independent carrier (taking into account all the circumstances surrounding the transaction, including the buyer's ability to negotiate discounts).

⁵⁷ In these circumstances the charges for freight, postage or insurance are included in the retail selling price when calculating the notional wholesale selling price for retail sales of the wine using the half retail price method. Similarly, the wholesale price on which the average wholesale price method is based includes charges for freight, postage and insurance where these charges form part of the wholesale selling price of the wine.

100. The views set out in paragraphs 98 and 99 of this draft Ruling are supported by the decision in *Commonwealth Quarries (Footscray) Pty Ltd v. Federal Commissioner of Taxation*⁵⁸ (Commonwealth Quarries case) which examined whether or not delivery charges formed part of the amount for which goods were sold in a sales tax context. In the Commonwealth Quarries case the sale contracts were for a single charge for goods to be sold and delivered at a particular place. The High Court considered what was supplied under the contracts was delivered goods as title did not pass until the goods were delivered.

Example 6 – sale price includes delivery

101. A customer of Vineyard Wholesalers places an order for a dozen cases of wine. Vineyard Wholesalers supplies the wine to the customer's premises for a price of \$220 per case.

102. In these circumstances the sale price includes delivery and title in the wine passes at the time the wine is delivered. Therefore, charges for delivery, including freight, postage and insurance will form part of the price for which the wine is sold and will be included in the taxable value of the wine.

Example 7 – separate contract for delivery of wine

103. A customer of RedWine Wholesalers places a phone order for two dozen cases of wine. The price of the wine is \$180 per carton. The customer can make their own arrangements for the wine to be collected from RedWine Wholesaler's premises. Alternatively, RedWine Wholesalers can arrange for delivery of the wine for an additional charge of \$33. The customer agrees to pay the additional \$33 charge for RedWine to arrange delivery of the wine. The title in the wine passes to the customer at the time the wine leaves RedWine Wholesaler's premises.

104. In these circumstances the charge for delivery is under a separate contractual arrangement to the sale of the wine. The additional \$33 charge will not form part of the price for which the wine was sold and will not be included in the taxable value.

Finance charges

105. Some contracts include a finance charge, expressed as a percentage of the price of the wine, for late payment of the amount invoiced and due. Whether finance charges form part of the taxable value of the wine will depend on the terms of the contract entered into between the parties.

⁵⁸ (1938) 59 CLR 111.

WETR 2008/D1

106. If the finance charge must be paid to get good title to the wine, it will form part of the price for which the wine was sold and, therefore, be part of the taxable value. On the other hand, if the finance charge operates merely as a deterrent to late payment for the wine, beyond the vendor's usual trading terms, it will not comprise a part of the price for which the wine was sold.

Example 8 – deterrent to late payment

107. *Wine Wholesalers Pty Ltd sells wine for \$200 per case. Wine Wholesalers Pty Ltd's usual trading terms allows 30 days for payment. If a customer does not pay within the 30 day term, an additional 1.5% surcharge per case applies. This additional surcharge will not form part of the price for which the goods were sold because it is simply a deterrent to late payment for the goods.*

108. Some sellers charge their purchasers an additional fee for use of a credit card. In these cases the taxable value includes the additional fee as that is the amount for which the wine is sold.

Example 9 – surcharge for payment by credit card

109. *Wine Sellers Pty Ltd offers wine for \$240 a case. If purchasers pay by credit card there is a 1% surcharge. John buys 10 cases of wine and pays by credit card. He is charged:*

<i>\$240 x 10 =</i>	<i>\$2,400</i>
<i>Plus 1% of \$2,400 =</i>	<i>\$24</i>
<i>Taxable value =</i>	<i>\$2,424</i>

110. Some sellers of wine offer an option of time to pay and charge a fee if the buyer utilises this option. In these circumstances the amount that the purchaser is bound to pay for the wine includes the additional fee and, therefore, it is included in the taxable value of the wine.

Example 10 – optional time to pay

111. *GoodWine Wholesalers sells wine for \$199 per case. Customers have the option of paying cash on delivery or deferring payment for 30 days. In both cases title in the wine passes on delivery of the wine. If a customer chooses to defer payment an additional 2% surcharge per case applies. Where a customer opts for deferred payment, the additional 2% surcharge will form part of the sale price for which the wine is sold as it is included in the amount that the customer has agreed to pay to obtain good title to the wine.*

Trade incentives

112. Trade incentives are allowed by suppliers to their customers in many different circumstances. Some of these incentives affect the price for which the wine is sold and hence the taxable value on which wine tax is payable, while others do not. Examples of trade incentive payments are trade discounts, settlement discounts, volume rebates, promotional rebates, co-operative advertising allowances and deferred credits.

113. In order to reduce the taxable value, the trade incentive must relate to the sale and the selling price of the wine, so as to bring about a reduction in that price. Factors relevant to determining whether or not an incentive reduces the sale price of the wine include:

- the circumstances surrounding the provision of the incentive;
- the accounting treatment of the incentive in the financial records of both the supplier and the customer;
- the terms of trading between the parties and other sales documentation, such as invoices, incentive claim forms and credit notes; and
- an objective assessment of the intention of the parties.

114. Examples of incentives which reduce the sale price of wine include:

- trade discounts – these are discounts allowed to trade customers;
- volume rebates and deferred credits – these are rebates that relate directly and solely to the volume or value of the wine sold and are calculated accordingly; and
- settlement discounts – these are discounts which relate to the value of the wine provided by the supplier and are allowed because payment is made in cash or is made promptly.

115. However, incentives that are provided to subsidise, compensate, reimburse, or reward a customer for carrying out activities or performing services for the supplier do not reduce the selling price of the wine. This will be the case even if they are based on volume or value and however they may be described.

116. Examples of payments which do not usually reduce the sale price of wine include:

- promotional rebates, advertising rebates and cooperative advertising rebates – these are payments to purchasers to subsidise, compensate or reimburse them for advertising expenditure incurred in marketing the supplier's product; and

WETR 2008/D1

- gondola end payments – these are payments made by the supplier for the retailer to provide end-of-aisle display space to promote the supplier's wine.

Commission agents

117. Some sellers use commission agents to facilitate the sale of their wine. The commission agent may deduct a fee from the proceeds of sale. However this fee does not reduce the price for which the wine was sold and cannot be deducted from the taxable value of the wine.

Example 11– Commission fee

118. *Wine seller XYZ sells wine by using a commission agent who charges 5% of the selling price as fee for the service.*

119. *The agent arranges a wholesale sale of a carton of wine for \$100. The agent retains \$5 and forwards \$95 to XYZ. The price for which the wine was sold is \$100.*

Auctions fees

120. Where wine is sold by auction there are generally fees charged by the auctioneer. The treatment of these fees is as follows:

- sellers fee – where the auctioneer charges the seller a fee as a percentage of the final bid then this is not excluded from the price for which the wine is sold. The price for which the wine is sold is the final bid; and
- buyers fee – if the auctioneer charges the buyer a fee this does not form part of the taxable value. The fee paid by the buyer to the auctioneer is a separate arrangement and is not part of what the buyer pays for the wine.

Container deposit

121. Some States have a container deposit scheme whereby certain beverage containers are subject to a scheme to encourage the recycling of the containers. Effectively the beverage suppliers include a component in their price to cover the deposit which is refunded to consumers who return the container to specified collection points.

122. In relation to wine that is subject to a container deposit scheme, the deposit component forms part of the price that has to be paid to attain good title to the wine and, therefore, forms part of the taxable value.

Additional amounts included in taxable value

123. Sometimes, not all the costs associated with wine are reflected in the taxable value. Where these costs are not already included, the WET Act requires amounts to be specifically added to the taxable value. Royalty payments (see paragraph 69 of this draft Ruling) associated with the wine and the value of the container in which the wine is sold are examples of costs which must be added to the taxable value of the wine where they have not already been included.⁵⁹

Example 12 – value of a container

124. *Specialty Gifts Pty Ltd sells wine by wholesale. They sell wine at \$600 a dozen. They will also sell the wine for \$60 a bottle and for an additional \$60 pack it in individual hand made wooden display cases.*

125. *The taxable value of the wine sold in the display cases is \$120 a bottle.*

Apportionment of amounts where wine and other goods are sold together

126. If wine and other goods are packaged and sold together for one inclusive price, then the other goods will be treated separately for the purpose of calculating the amount for which the wine was sold. The amount for which the wine was sold is the price (excluding wine tax and GST) for which the wine could reasonably have been expected to have sold for separately.⁶⁰

127. Sometimes where wine is packed with other goods and sold together for one inclusive price, that sale price is less than the sum of the individual prices of the goods. Effectively, the individual prices of the goods are discounted by being sold as a package in comparison to what the prices would have been had the items been sold separately. In the absence of evidence to show a different apportionment would be more appropriate, the discount allowed for the package should be applied on a pro rata basis to establish the prices of the individual items.

⁵⁹ Section 9-65; section 9-70.

⁶⁰ Subsection 27-15(1).

WETR 2008/D1

Example 13 – apportionment of amounts where wine and other goods are sold together

128. Good Wines Winery Ltd sells wine with a wholesale price of \$30 (excluding wine tax and GST), a corkscrew with a wholesale price of \$15 (excluding GST) and a glass with a wholesale price of \$5 (excluding GST) by wholesale in a package for \$40 (excluding wine tax and GST). The total of the individual wholesale prices is \$50. This means that Good Wines Winery Ltd gives a discount from the sum of the individual wholesale prices of 20%. This discount is applied to the normal wine price to produce a taxable value of \$24 for calculation of the wine tax on the wholesale sale of the package by Good Wines Winery Ltd.

129. The wine tax and GST payable by Good Wines Winery Ltd is calculated as follows:

Price of package	\$40.00
Wine tax ($29\% \times \$24$)	\$6.96
GST ($10\% \times [\$40 + \$6.96]$)	<u>\$4.70</u>
Total price (including wine tax and GST)	\$51.66

130. As discussed at paragraphs 98 to 104 of this draft Ruling, the price for which wine is sold will include delivery charges where wine is sold under a contract that includes delivery. In these circumstances, when calculating the taxable value of the wine, it is not appropriate to apportion the price between an amount for the wine and an amount for the delivery. The delivery is an integral and ancillary part of the sale of the wine and is not separately identifiable from the sale of the wine. Similarly, a price that comprises a finance charge that is required to be paid in order for a customer to obtain good title to the wine (see paragraphs 105 to 110 of this draft Ruling) should not be apportioned between an amount applicable to the wine and an amount attributable to the finance charge for the purposes of calculating the taxable value of the wine.

Other taxable dealings including retail sales and applications to own use

131. For most other taxable dealings, the taxable value is the notional wholesale selling price.⁶¹ The discussion at paragraphs 83 to 122 of this draft ruling, relating to charges and discounts that affect the price for the purposes of calculating the taxable value of wholesale sales is also applicable for the purposes when calculating the notional wholesale selling price. Alternative methods for determining the notional wholesale selling price are discussed at paragraphs 135 to 144 of this draft Ruling.

⁶¹ Assessable Dealings Table in section 5-5.

132. In the wine industry, retail sales by a wine manufacturer are a regular occurrence. Sales by cellar door and by mail order are the most common retail sales. Wine is also regularly applied to the manufacturer's own use when tastings are given at cellar door or promotional work is undertaken.⁶² The taxable value specified in the WET Act for these dealings with wine is the notional wholesale selling price.⁶³

133. The notional wholesale selling price is also used to determine the taxable value for retail sales which are indirect marketing sales⁶⁴ and retail sales of wine which is placed in containers at a time after wine tax became payable on the wine by a person other than the seller.⁶⁵

134. Where the wine has been purchased free of wine tax under quote and applied to own use the taxable value is the purchase price (excluding GST).⁶⁶ However, where the wine is imported under quote by the applier, the taxable value is the GST importation value.⁶⁷

Notional wholesale selling price for grape wine

135. There are two methods available for working out the notional wholesale selling price for a taxable dealing that is either a retail sale (including an indirect marketing sale and a retail sale of wine that is placed in containers at a time after wine tax became payable on the wine by a person other than the seller) of grape wine or an application to own use which is connected with retail sales of grape wine.⁶⁸ The half retail price method is used unless the average wholesale price method is chosen.⁶⁹

⁶² This would normally be an application to own use connected with retail sales of wines – defined in section 33-1 to mean an application to own use that is constituted by consuming or giving away wine, and is connected with making or attempting to make retail sales of wine.

⁶³ Assessable Dealings Table in section 5-5. A different taxable value applies where the application to own use is not connected with retail sales (see paragraph 74 of this draft Ruling).

⁶⁴ Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5.

⁶⁵ Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.

⁶⁶ Assessable Dealings AD3c and AD13c in the Assessable Dealings Table in section 5-5.

⁶⁷ Assessable Dealing AD13c in the Assessable Dealings Table in section 5-5. See paragraph 149 of this draft Ruling for an explanation of 'GST importation value'.

⁶⁸ Section 9-25.

⁶⁹ Subsection 9-25(2).

The half retail price method

136. Under this method, the notional wholesale selling price:

- for retail sales of grape wine, is 50% of the price (including wine tax and GST) of those sales;⁷⁰ and
- for applications to own use connected with retail sales of grape wine, is 50% of the price (including wine tax and GST) for which the entity would normally have sold the wine if the sale were a retail sale.⁷¹

Example 14 – wine tax and GST payable under half retail price method

137. *Good Wines Winery Ltd sells a bottle of grape wine at the cellar door to a retail customer for \$22 (including wine tax and GST). The winery uses the half retail price method to calculate the notional wholesale selling price for its retail sales.*

138. *Wine tax payable by the winery is:*

$$(50\% \times \$22) \times 29\% = \$3.19$$

GST payable by the winery is:

$$\$22.00 \div 11 = \$2.00$$

The average wholesale price method

139. An entity can only choose to use this method if, during the tax period in respect of which the liability to pay wine tax arises, at least 10% by value of all sales of grape wine that:

- is of the same vintage as the grape wine to which the dealing 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,

are wholesale sales.⁷²

140. The average wholesale price is worked out using the weighted average of the prices (excluding wine tax and GST) for wholesale sales (including exports) of grape wine that fall into the above category for the tax period.⁷³ See paragraphs 83 to 122 of this draft Ruling for a discussion of wholesale sales and price. When calculating the average wholesale price an entity is able to take into account any discounts, incentives, rebates and other payments that reduce the price for which the wine is sold.

⁷⁰ Paragraphs 91 to 122 of this draft Ruling discuss what forms part of the price for a wholesale sale. The same considerations apply for retail sales.

⁷¹ Section 9-35.

⁷² Subsection 9-25(3).

⁷³ Section 9-40.

Example 15 – wine tax and GST payable under average wholesale price method

141. Good Wines Winery Ltd sells 1 dozen bottles of grape wine at the cellar door to a retail customer for \$190 (including wine tax and GST). During the same tax period more than 10% of the winery's sales of wine of the same vintage and produced from the same grape varieties are wholesale sales. The winery chooses to use the average wholesale price method to calculate the notional wholesale selling price for its retail sales.

142. Good Wines Winery Ltd calculates that during the tax period 70% of wholesale sales of the same wine are at \$80 per dozen (excluding wine tax and GST), and the remaining 30% are at \$90 per dozen (excluding wine tax and GST). On this basis, the weighted average of the wholesale prices for wholesale sales made by the winery during the tax period is:

$$(70\% \times \$80) + (30\% \times \$90) = \$83 \text{ per dozen}$$

143. The wine tax payable by the winery under the average wholesale price method on the cellar door retail sale of 1 dozen bottles is:

$$29\% \times \$83 = \$24.07$$

144. The GST payable on the cellar door sale is:

$$\$190 \div 11 = \$17.27$$

Grape wine sold by the glass

145. A wine producer who sells grape wine by the glass at:

- the cellar door;
- a winery restaurant; or
- wine shows and festivals and so on,

can calculate the taxable value of the wine:

- using the half retail price method: the taxable value of a glass of wine is 50% of the price (including wine tax and GST) for which the wine is sold by the glass; or
- using the average wholesale price method: ascertain the number of bottles used to sell wine by the glass and use a taxable value per bottle equal to the average wholesale price for a bottle of the same wine (that is, of the same vintage and produced from the same grape varieties or blend of grape varieties). Note: An entity can only use this method if they satisfy the requirements set out in paragraphs 139 and 140 of this draft Ruling.

Notional wholesale selling price for wine other than grape wine

146. The half retail price method must be used as the notional wholesale selling price for a taxable dealing that is either a retail sale of wine that is not grape wine or an application to own use connected with retail sales of wine that is not grape wine.⁷⁴

Wine other than grape wine sold by the glass

147. A producer of wine that is not grape wine and who sells that wine by the glass at:

- the cellar door;
- a winery restaurant; or
- wine shows and festivals and so on,

must calculate the wine tax using a taxable value of 50% of the price (including wine tax and GST) of the glass of wine.

Notional wholesale selling prices for other dealings

148. The notional wholesale selling price for a taxable dealing with wine that is neither a retail sale of wine, nor an application to own use connected with retail sales of wine, is the price (excluding wine tax and GST) for which the wine could reasonably have been expected to be sold by wholesale under an arm's length transaction.⁷⁵

Imported wine

149. An assessable dealing with wine which is taxable at the customs barrier, that is a local entry, has a taxable value equal to the GST importation value of the wine.⁷⁶ The GST importation value is the customs value plus the costs of transport, insurance and duty.⁷⁷

Royalty-inclusive sales and royalty-inclusive applications to own use

150. The taxable value for royalty-inclusive sales and royalty-inclusive applications to own use is the amount that would be the price (excluding wine tax and GST) for which the entity could reasonably have been expected to purchase the wine by wholesale under an arm's length transaction if the manufacturer or importer of the wine had incurred the royalty costs.⁷⁸

⁷⁴ Section 9-30.

⁷⁵ Section 9-45.

⁷⁶ Assessable Dealing AD10 in the Assessable Dealings Table in section 5-5.

⁷⁷ Section 33-1; section 195-1 of the GST Act; section 13-20 of the GST Act.

⁷⁸ Assessable Dealings AD2c, AD3d, AD12c and AD13d in the Assessable Dealings Table in section 5-5.

Non-arm's length transactions (including staff sales, shareholder sales and sales to grape growers)

151. The wine tax liability on a non-arm's length transaction must be at least equal to the amount it would have been if the transaction had been an arm's length equivalent transaction.⁷⁹

152. Sales to staff, shareholders and grape growers at discounted prices are considered to be non-arm's length sales. Accordingly, wine tax for these sales is required to be paid based on prices that would be used in a similar arm's length transaction. For example, staff may be charged \$100 (including wine tax and GST) per dozen for a quantity of wine while the normal retail price for the same wine sold in the same quantity is \$150 (including wine tax and GST) per dozen. Wine tax on the staff sale should be calculated by reference to the normal retail price of \$150 per dozen (wine tax payable is \$21.75 per dozen using the half retail price method).

153. Sales to related companies or other related entities are also non-arm's length transaction.

Does an entity need to specify the amount of wine tax on invoices?

154. Where an entity sells wine by wholesale for a price that includes wine tax, they must specify the amount of the wine tax on the invoice given to the purchaser.⁸⁰ The wine tax can be specified as a separate amount for each item of taxable wine on the invoice on a line by line basis or as a total amount for all the taxable wine on the invoice.

155. An entity does not have to specify the amount of wine tax where they sell the wine by retail, that is, to the end user, even if wine tax is payable on that transaction.

What exemptions can apply?

156. In some circumstances an assessable dealing with wine is exempt from wine tax. There are five categories of exemption:

- the dealing is a supply that is GST-free⁸¹ or is a local entry that is a non-taxable importation for the purposes of the GST Act;⁸²
- there is a quote given in respect of the dealing (see paragraphs 167 to 192 of this draft Ruling);⁸³

⁷⁹ Section 27-10.

⁸⁰ Section 27-5.

⁸¹ Other than because of Subdivision 38-D (child care) of the GST Act.

⁸² Section 7-5.

⁸³ Section 7-10.

WETR 2008/D1

- the dealing is a customs dealing covered by certain specified items in Schedule 4 to the *Customs Tariff Act 1995*;⁸⁴
- there is a local entry of wine that has been taxed while in bond or under the control of Customs;⁸⁵ and
- there is a local entry of wine which was exported from Australia and is subsequently returned to Australia in an unaltered condition.⁸⁶ This exemption applies where the importer has not previously received a refund of wine tax related to the export of the wine under the tourist refund scheme and is either the manufacturer of the wine or has previously paid wine tax when the wine was purchased or imported.⁸⁷

157. If an exemption applies to an assessable dealing, then that dealing is not taxable and is therefore not subject to wine tax.⁸⁸

Are sales to overseas travellers exempt?

158. Sales to overseas travellers who take delivery of the wine in Australia are subject to wine tax and GST⁸⁹ unless all of the following conditions are met:

- the purchaser is not registered or required to be registered for GST;
- the purchaser exports the wine from Australia;
- the wine has been entered for export within the meaning of section 113 of the *Customs Act 1901*;
- since the supply to the purchaser, the wine has not been altered or used in any way, except to the extent (if any) necessary to prepare it for export;
- the supplier has sufficient documentary evidence to show that the wine was exported; and
- the wine is exported within 60 days (or such further period as the Commissioner allows) after the earlier of:
 - the day on which the seller of the wine receives consideration for supply of the wine; or
 - the day on which the seller gives an invoice for the supply of the wine.⁹⁰

⁸⁴ Section 7-15. The specified items in Schedule 4 to the *Customs Tariff Act 1995* are items 4, 8, 15, 18A, 18B, 18C, 21, 21A, 24 and 33B.

⁸⁵ Section 7-20.

⁸⁶ That is, without having been subject to any treatment, industrial processing, alteration or any other process since its export.

⁸⁷ Section 7-25.

⁸⁸ Division 7.

⁸⁹ Unless the wine is supplied under the sealed bag system.

159. Overseas travellers may be entitled to a refund of the wine tax and GST under the Tourist Refund Scheme at the point of departure from Australia if they still have the wine with them.⁹¹ The Tourist Refund Scheme is administered by the Australian Customs Service.

160. An overseas traveller may be eligible for a refund under the Tourist Refund Scheme if they:

- have borne wine tax on the wine;⁹²
- purchase at least \$300 (including wine tax and GST) of eligible goods from the one registered person (the purchase does not have to be entirely of wine);⁹³
- hold a single tax invoice for the goods;⁹⁴
- export the goods as accompanied baggage within 30 days after the day on which they were acquired;⁹⁵ and
- leave Australia at an airport or seaport that has a Tourist Refund Scheme facility.⁹⁶

161. A refund under the Tourist Refund Scheme is not available if the wine has been partly consumed.⁹⁷ A refund is also not available where the purchaser is leaving Australia in the course of their employment as either the person in charge or command of an aircraft or ship, or as a member of the crew of an aircraft or ship.⁹⁸

162. The amount of wine tax to be refunded under the Tourist Refund Scheme is calculated as 29% of half the purchase price of the wine (including wine tax and GST).⁹⁹ For example, if wine is purchased by the overseas traveller for \$320 including wine tax and GST the amount of wine tax to be refunded is calculated as follows:

$$29\% \times (\$320 \div 2) = \$46.40$$

⁹⁰ The wine is exempt from WET under section 7-5 because it is GST-free under subsections 38-185(1) and (3) of the GST Act. See GSTR 2002/6 Goods and Services Tax: Exports of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999* for how this operates.

⁹¹ Section 25-5; Division 25 of the WET Regulations; Division 168 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (the GST Regulations).

⁹² Paragraph 25-5(1)(a) of the WET Act.

⁹³ Paragraph 25-5(1)(b) of the WET Act; Regulation 168-5.04 of the GST Regulations.

⁹⁴ Regulation 168-5.05 of the GST Regulations. In the 2008 Budget the Government announced this requirement will be repealed. This will be reflected in the final ruling if the proposed amendments are enacted before the issue of the final ruling.

⁹⁵ Regulation 168-5.09 of the GST Regulations. In the 2008 Budget the Government announced this requirement would change to 60 days. This will be reflected in the final Ruling if the proposed amendments are enacted before the issue of the final Ruling.

⁹⁶ Regulation 168-5.09 of the GST Regulations.

⁹⁷ Paragraph 25-5.02(1)(b) of the WET Regulations; regulation 168-5.07 of the GST Regulations.

⁹⁸ Sub-regulation 25-5.02(2) of the WET Regulations.

⁹⁹ Paragraph 25-5.02(1)(b) of the WET Regulations; regulation 168-5.06 of the GST Regulations.

⁹⁹ Regulation 25-5.03 of the WET Regulations.

WETR 2008/D1

163. Overseas travellers can purchase wine from a Duty Free Store free of wine tax and GST under the sealed bag system.¹⁰⁰

Is a sale of wine taxable where an entity exports the wine on behalf of the purchaser?

164. Where an entity exports the wine on behalf of the purchaser (including overseas travellers) and the entity does not reimport the wine, exemption from wine tax and GST applies provided the entity exports the wine within 60 days¹⁰¹ after the earlier of:

- the day on which the entity receives any consideration for the supply of the wine; or
- the day the entity gives an invoice for the supply of the wine.¹⁰²

165. Where the consideration is provided in instalments, exemption from wine tax and GST applies provided the entity does not re-import the wine and the entity exports the wine within 60 days¹⁰³ after the earlier of:

- the day on which the entity receive any of the final instalment of the consideration for the supply of the wine; or
- the day the entity gives an invoice for the final instalment for the supply of the wine.¹⁰⁴

166. The entity should retain evidence of the export in their records to support treating the wine as exempt.

What is quoting?

167. Quoting is a mechanism to relieve or defer wine tax on wine to a later assessable dealing or to give effect to exemption from wine tax for a particular supply of wine.¹⁰⁵

168. If a quote is made in respect of an assessable dealing, then that dealing is exempt from wine tax. A quote for a sale must be made at or before the time of the sale, and for a customs dealing at or before the time of the dealing. In each case the quote is only effective if made in the form approved by the Commissioner.

¹⁰⁰ Section 7-5 of the WET Act; item 7 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act; regulation 38-185.01 and Schedule 5 of the GST Regulations.

¹⁰¹ The Commissioner may allow a further period.

¹⁰² Section 7-5; item 1 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act.

¹⁰³ The Commissioner may allow a further period.

¹⁰⁴ Section 7-5 of the WET Act; item 2 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act.

¹⁰⁵ Sections 7-10 and 13-5.

169. The only form of quotation is the quotation by an entity registered for GST of their ABN. Although quoting an ABN enables wine to be supplied without wine tax being payable, the supply may still be subject to GST.

Grounds for quoting

170. There are four standard grounds for quoting an ABN. There is a quoting ground if, at the time of quoting, the quoter intends to:

- sell the wine by wholesale or indirect marketing sale while the wine is in Australia;
- sell the wine by any kind of sale while it is in Australia and the quoter is, at the time of quoting, mainly a wholesaler (see paragraphs 173 and 174 of this draft Ruling for an explanation of when you are mainly a wholesaler);
- use the wine as a material in manufacture or other treatment or processing, whether or not it relates to or results in other wine; or
- make a supply of wine that will be GST-free.¹⁰⁶

However, an entity is not entitled to quote unless they are registered.¹⁰⁷

171. There are no grounds for quoting if the purchaser purchases the wine with the intention of applying the wine to the purchaser's own use. Application to own use does not include using the wine as a material in manufacture or other treatment or processing of wine or other goods. If wine is purchased for these purposes it can still be purchased under quote.¹⁰⁸

172. There are also no grounds for quoting if the purchaser intends to place the wine in containers and sell it by retail, unless the purchaser is mainly a wholesaler.

173. An entity is mainly a wholesaler at the time of quoting only if:¹⁰⁹

- wholesale sales and indirect marketing sales account for more than half the total value of all sales of assessable wine made by the entity during the 12 months ending at the time of quoting; or
- the entity has an expectation (based on reasonable grounds) that wholesale sales and indirect marketing sales will account for more than half of the total value of all sales of assessable wine by the entity during the 12 months starting at the time of quoting.

¹⁰⁶ Subsection 13-5(1).

¹⁰⁷ Subsection 13-5(2).

¹⁰⁸ Section 33-1.

¹⁰⁹ Subsection 13-5(3).

WETR 2008/D1

174. For the purpose of determining whether an entity is mainly a wholesaler, the value of a sale of wine is the price for which the wine is sold (including wine tax and GST).¹¹⁰

175. A registered entity may also quote in special circumstances that fall outside the quoting grounds if the entity has received authorisation from the Commissioner.¹¹¹

Form of quoting

176. A quotation of an ABN must be made in writing, in the approved form, at or before the time of the dealing.¹¹² The quotation can be made on the order for the wine, or any other document that contains definite identification of the wine that is the subject of the quotation and which is kept by the supplier, for example, delivery slip, acknowledgment of receipt, duplicate invoice and so on.

177. From 1 October 2004, an entity purchasing wine from a producer must indicate in the quotation if they intend to make a GST-free supply of the wine they are purchasing. Failure to notify the producer of this is an offence.¹¹³ The entity will not need to notify the producer if they purchase wine into stock and subsequently make a GST-free supply of that wine unless they had the intention at the time of purchase of making a GST-free supply of that particular wine.

178. For example with reference to paragraph 177 of this draft Ruling, the entity may have established local and overseas customers and, although the entity knows that some of the wine they purchase as a common stock for local or export sale as occasion demands will be exported as GST-free supplies, when they purchase the wine they do not know which particular wine will be used to supply the local or the overseas customers. In this situation, they do not need to notify the producer when purchasing the wine for the common stock.

179. An entity that is importing wine and is both entitled and wishing to obtain it free of wine tax under quote, must quote their ABN to Customs. The entity can authorise their Customs Broker to quote their ABN on their behalf.

180. Purchasers who are permitted to quote can quote on each purchase or, where appropriate, give a periodic quote to each supplier to cover their purchases of wine for periods up to one year.¹¹⁴

181. There is no need to ask for approval from the Tax Office before using a periodic quotation. Purchasers and suppliers can agree on any period, not exceeding one year that best suits their needs.¹¹⁵

¹¹⁰ Subsection 13-5(3).

¹¹¹ Section 13-10.

¹¹² Section 13-20.

¹¹³ Section 19-30.

¹¹⁴ Section 13-15.

¹¹⁵ Subsection 13-15(1).

182. A periodic quotation of an ABN can be accepted by any supplier.

183. The forms of quotation of an ABN which should be used from 1 October 2004 are set out in Appendix A of this draft Ruling.

184. If an entity has given their supplier a periodic quotation and then makes a purchase on which they are not entitled to quote, they must notify their supplier that they are not quoting for that purchase.¹¹⁶ Failure to do so is an offence.¹¹⁷

185. If an entity has given a periodic quotation that does not notify the producer that they intend to make a supply of the wine that will be GST-free, and at the time of purchase they do intend to make a supply of the wine that will be GST-free, they must notify the producer accordingly. Failure to do so is an offence.¹¹⁸

186. The notification in each case should be in the form shown in Appendix A of this draft Ruling.

Quoting by telephone, fax and electronic orders

187. The Tax Office will accept a two-stage quoting process when wine is ordered and exemption is claimed over the telephone. This process consists firstly of an oral reference to the ABN when ordering the wine, followed by the written quotation within a reasonable time.

188. In practice, this will allow a purchaser to claim exemption over the telephone, and provide the signed written quotation when paying the account. A single written statement that the wine was bought under quotation can cover all wine quoted for during the whole billing period, either by listing the invoice numbers on the quotation or by referring to the statement which includes the invoice numbers.

189. Where wine is ordered by facsimile, the full form of quotation should be used.

190. Where wine is purchased from a particular supplier by means of electronic data interchange, there is no need for a written quotation of ABN provided the following conditions are satisfied:

- the purchaser indicates on the electronic order that their ABN is being quoted; and
- the supplier agrees to accept an electronic order.

¹¹⁶ Subsection 13-15(3).

¹¹⁷ Subsection 13-15(4).

¹¹⁸ Section 19-30.

Who can sign the quotation?

191. Quotations of ABN should be made by the proprietor of the business or a person authorised to act for the proprietor. Persons authorised must have enough knowledge of the business so that they can speak with authority for the proprietor of the business about how the wine being acquired free of wine tax will be used. It is not necessary to advise the Tax Office who is authorised to sign the quotation but a record must be kept.

Situations where the purchaser is entitled to quote

192. The following are examples of situations where the purchaser is entitled to quote (in all cases it is assumed that the purchaser is registered for GST):¹¹⁹

- The purchaser intends to sell the wine by wholesale.
- The purchaser intends to sell the wine by indirect marketing sales.
- The purchaser is a wine wholesaler (who sells exclusively or mainly by wholesale)¹²⁰ and intends to sell the wine.
- The purchaser is a winemaker who intends to blend the purchased wine with other wine.
- The purchaser is a winemaker who intends to use the wine for analysis and comparison with wine they are manufacturing.
- The purchaser, although selling wine mainly by retail, intends to sell the wine being purchased exclusively by wholesale.
- The purchaser intends to export the wine as a GST-free supply. An example of an export of wine being a GST-free supply is where it is exported (and is not re-imported) within 60 days (or such further period allowed by the Commissioner) after the earlier of the day any of the consideration is received or an invoice is issued for the sale of the wine.
- The purchaser is a Duty Free Store which sells to travellers who export the wine as accompanied baggage and the Duty Free Store operates under the sealed bag system (these sales are GST-free supplies by the Duty Free Store).

¹¹⁹ The standard grounds for quoting are set out in section 13-5.

¹²⁰ Section 13-5(3) and see paragraph 173 and 174 of this draft Ruling.

- The purchaser is a hospital which provides the wine to patients as part of a hospital meal (supply of the wine to patients as part of their meals is a GST-free supply by the hospital as provision of the wine is directly related to hospital treatment).
- The purchaser is a religious organisation which intends to supply the wine as an integral component of a religious service (this is a GST-free supply by the religious organisation).¹²¹ Note: If the supplier is the producer of the wine, the religious organisation must advise the supplier of their intention to make a GST-free supply of the wine.
- The purchaser is a University/TAFE College which will supply the wine to students as part of course materials for a winemaker's course (where the students will consume or transform the wine this is a GST-free supply by the University/TAFE College).¹²² Note: If the supplier is the producer of the wine, the University/TAFE College must advise the supplier of their intention to make a GST-free supply of the wine.

How does an entity pay the wine tax?

193. An entity that engages in taxable dealings with wine (other than the local entry of imported wine) must add the wine tax payable to their net amount under the GST Act.¹²³ This is done by entering the total amount of wine tax payable against Label 1C on the activity statement. The total of any wine tax credits is entered against Label 1D on the activity statement.

194. An entity that imports wine is required to pay the wine tax to Customs at the time of the customs dealing unless they quote their ABN. This is so even where the entity has received approval from the Commissioner to defer the payment of GST on taxable importations.

When does an entity pay the wine tax?

195. For a taxable dealing with wine that is a supply for GST purposes, the wine tax payable is attributable to the same tax period or tax periods as the GST payable on the taxable supply.¹²⁴ However, if the time of the dealing occurs after the end of that tax period or periods, the wine tax payable may be treated as being attributable to the tax period in which the time of the dealing occurs.¹²⁵

¹²¹ Paragraph 13-5(1)(d).

¹²² Paragraph 13-5(1)(d).

¹²³ Section 21-5.

¹²⁴ Section 21-10.

¹²⁵ Paragraph 5-5(2)(c) and section 21-10.

WETR 2008/D1

196. In the case of assessable dealings which are types of sales, the Assessable Dealings Table in section 5-5 specifies that the time of the dealing is the 'time of sale'. As discussed at paragraphs 83 to 90 of this draft Ruling a sale takes place when property passes from the seller to the purchaser. For example a contract for a wholesale sale of wine may be subject to a *Romalpa* or retention of title clause whereby the title in the wine passes when payment is made. In these circumstances, in the case of a taxpayer who does not account for GST on a cash basis, the GST would commonly be attributed to the tax period in which the seller issues an invoice. However the sale, which is the taxable dealing, does not occur until a later period and the wine tax is attributable to the tax period in which the sale occurs.

197. Furthermore, in circumstances where an assessable dealing consists of a sale, if the purchaser uses the wine after the time when the contract is made but before the time when title passes to the purchaser, section 5-10 specifies that it is the time the purchaser uses the wine that is taken to be the time of the sale. In these circumstances the wine tax is attributable to the tax period when the use occurs.

198. The term 'use' is not defined in the WET Act. In addition to the on-selling of wine by a purchaser, the Commissioner considers that 'use' for the purposes of section 5-10 would include:

- consuming the wine;
- giving the wine away;
- transferring the property in the wine under a contract that is not a contract for sale;
- granting another person any right or permission to use the wine; or
- using the wine as part of the manufacturing or processing of other wine or other goods.

199. For a taxable dealing that is not a supply for GST purposes (for example, an application to own use), the wine tax payable is attributable to the tax period in which the time of the dealing occurs.¹²⁶

Wine tax credits

200. There are six broad categories of grounds for wine tax credits available under the WET Act:

- credits for overpaid wine tax;
- credits to avoid wine being taxed twice;
- producer rebates;
- export-related credits;

¹²⁶ Subsection 21-10(2).

- import-related credits; and
- credits for bad debts.¹²⁷

201. Examples of situations where credit claims commonly arise are as follows:

- A wholesaler purchases wine to sell by wholesale and, although satisfying the requirements to quote, the wholesaler forgets to quote its ABN and wine tax is included in the purchase price. The wholesaler is entitled to a credit for the wine tax borne on the wine when it was purchased.¹²⁸
- A wine manufacturer purchases wine to blend with other wine and although satisfying the requirements to quote, the manufacturer forgets to quote its ABN and wine tax is included in the purchase price. The wine manufacturer is entitled to a credit for the wine tax borne on the wine when it was purchased.¹²⁹
- A retailer/wholesaler sells wine by wholesale from stock the retailer/wholesaler purchased at prices which included the wine tax. The retailer/wholesaler is required to pay wine tax on the wine sold by wholesale, but is entitled to a credit for the wine tax borne on the wine when it was purchased by the retailer/wholesaler.¹³⁰
- A retailer with stock which was purchased at prices which included wine tax sells wine to a purchaser who quotes an ABN. The retailer is entitled to a refund of the wine tax borne on the wine when it was purchased, provided the wine tax is excluded from the retailer's sale price.¹³¹
- A wholesaler sells wine by wholesale in taxable circumstances and pays wine tax on the sale. Subsequently the wholesaler allows a settlement discount on the sale. The wholesaler is entitled to a credit for the amount of wine tax included in the discount allowed.¹³²
- A retailer with stocks of wine purchased at prices including wine tax sells wine to a customer overseas and exports the wine to the customer as a GST-free supply. The retailer is entitled to a credit for the amount of the wine tax borne on the exported wine provided the wine tax is excluded from the retailer's sale price.¹³³

¹²⁷ The Wine Tax Credit Table in section 17-5.

¹²⁸ Credit Ground CR2 in the Wine Tax Credit Table in section 17-5.

¹²⁹ Credit Ground CR2 in the Wine Tax Credit Table in section 17-5.

¹³⁰ Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

¹³¹ Credit Ground CR6 in the Wine Tax Credit Table in section 17-5.

¹³² Credit Ground CR1 in the Wine Tax Credit Table in section 17-5.

¹³³ Credit Ground CR11 in the Wine Tax Credit Table in section 17-5.

WETR 2008/D1

- A wholesaler sells wine by wholesale and pays wine tax on the sale. Part of the amount of the sale is later written off as a bad debt. The wholesaler is entitled to a credit for a proportion of the wine tax paid equal to the proportion of the debt written off.¹³⁴
- A retailer purchases bulk wine at a price which includes wine tax, bottles the wine after 31 August 2004 and sells the bottled wine by retail. The retailer has a liability to pay wine tax on the bottled wine when it is sold by retail¹³⁵ and is entitled to a credit of the wine tax previously borne on the wine.¹³⁶

Agreement with Commissioner on amount of credit

202. Section 17-40 provides that the Commissioner may enter into an agreement with an entity regarding the manner of calculating and claiming the wine tax credits to which the entity is entitled. This allows for methods of calculating the amount of credit where the person is not able to or would have difficulty in determining the amount of credit. It does not allow for credits in circumstances other than in those listed in the Wine Tax Credit Table in section 17-5.

203. The Commissioner is aware of the following scenarios where an entity may be unable to establish the amount of credit available. An entity in one of these situations can utilise the method stated. Alternatively they may seek to enter into an agreement with the Commissioner.

- A wine exporter who purchased wine from a person registered for GST at a price which included wine tax sells the wine to a customer overseas and exports the wine as a GST-free supply. The exporter is entitled to a credit of the wine tax they have borne on the exported wine to the extent the wine tax is excluded from the exporter's sale price.¹³⁷ Where the exporter is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:

29% of half the purchase price of the wine (including wine tax and GST) less any wine tax included in the price that has been refunded or credited to the exporter.

¹³⁴ Credit Ground CR15 in the Wine Tax Credit Table in section 17-5.

¹³⁵ Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.

¹³⁶ Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

¹³⁷ Credit Ground CR11 in the Wine Tax Credit Table in section 17-5.

- An entity purchases wine from a wine producer or from a retail bottle shop and exports the wine whilst retaining ownership of the wine. The entity is entitled to a credit of the wine tax they have borne on the exported wine.¹³⁸ Where the entity is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:

29% of half the purchase price (including wine tax and GST) less any wine tax included in the price that has been refunded or credited to the entity.

- An entity purchases wine from a wine retailer and the invoice for the wine purchased does not specify the amount of wine tax borne. The entity then on sells the wine as a wholesale sale. The entity is entitled to a credit of wine tax¹³⁹ for the amount of wine tax borne. Where the entity is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:

29% of half the purchase price (including wine tax and GST) less any wine tax included in the price that has been refunded or credited to the entity.

- An entity (the first entity) who is registered for GST purchases wine from another entity who is not registered for GST and is not a wine retailer or wine producer. The first entity then exports the wine while retaining ownership of the wine. The first entity is entitled to a credit of the WET borne on the wine.¹⁴⁰ Where the first entity is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:

7.5% of the price for which the first entity purchased the wine.

¹³⁸ Credit Ground CR10 in the Wine Tax Credit Table in section 17-5.

¹³⁹ Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

¹⁴⁰ Credit Ground CR10 in the Wine Tax Credit Table in section 17-5.

WETR 2008/D1

- An entity person (the first entity) who is registered for GST purchases wine from an entity who is not registered for GST and is not a wine retailer or wine producer. The first entity sells the wine to a customer overseas and exports the wine as a GST-free supply. The first entity is entitled to a credit for the amount of WET they have borne on the purchase and which they exclude from the price for which they sell the wine.¹⁴¹ Where the first entity is not in a position to know the amount of wine tax they have actually borne on the wine and therefore how much WET to exclude from the price, they may calculate the amount borne as follows:
7.5% of the price that the first entity purchased the wine for.

How does an entity claim wine tax credits?

204. A registered entity, is able to claim wine tax credits as a reduction in their net amounts due under the GST Act.¹⁴² This is done by entering the total amount of wine tax credits being claimed against label 1D on their business activity statement. There is no monetary limit for credits claimed as reductions in a registered entity's GST liability.

205. An entity that is not registered or required to be registered for GST, is able to claim credits as a direct refund from the Tax Office.¹⁴³ Direct refunds are not available for amounts totalling less than \$200.¹⁴⁴ However, individual claims may be aggregated to reach the \$200 minimum amount.

206. In the case of a credit arising in relation to a sale of wine, to be refundable, most of the credit grounds require that the wine tax must not have been passed on to the purchaser or, if passed on, have since been refunded to the purchaser.¹⁴⁵

207. If it would otherwise be greater than the arm's length amount, the wine tax credit on a non-arm's length transaction must be reduced to the amount it would have been if the transaction had been an arm's length transaction.¹⁴⁶

208. For persons registered or required to be registered for GST claims for credits of wine tax must be made within 4 years of the end of the tax period in which the wine tax credit arises.¹⁴⁷

¹⁴¹ Credit Ground CR11 in the Wine Tax Credit Table in section 17-5.

¹⁴² Subsection 17-10(1) and section 21-15.

¹⁴³ Subsection 17-10(2).

¹⁴⁴ Section 17-15.

¹⁴⁵ Credit ground CR5 is an example where there is no requirement that there be a passing on of the wine tax.

¹⁴⁶ Section 27-10.

¹⁴⁷ Subsection 17-10(1) and section 21-15; and subsection 105-55(1) of the TAA.

209. For persons not registered and not required to be registered for GST claims for wine tax credits must be made within 4 years of the time when the wine tax credit arises.¹⁴⁸

What records does an entity need to keep and for how long do they need keep them?

210. An entity that is liable to wine tax on a taxable dealing or is entitled to a wine tax credit, is required to keep records of all transactions that relate to the dealing or credit claim for a period of 5 years after completion of the transactions or acts to which they relate.¹⁴⁹

211. The records must be in English or readily accessible and convertible into English. The wine tax liability must also be able to be readily determined from the entity's records.¹⁵⁰

Are there anti-avoidance provisions for wine tax?

212. Division 165 of the GST Act applies in relation to wine tax in the same way that it applies to GST.

213. This is because:

- Wine tax payable on taxable dealings (other than custom dealings) is included in the net amount under Division 17 of the GST Act.¹⁵¹
- Amounts of wine tax payable on customs dealings are treated as if they were amounts payable under the GST Act.¹⁵²

Your comments

214. You are invited to comment on this draft Ruling. Please forward your comments to the contact officer by the due date.

215. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Tax Office website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

¹⁴⁸ Subsections 17-10(2) and (3).

¹⁴⁹ Section 382-5 of Schedule 1 of the TAA.

¹⁵⁰ Section 382-5 of Schedule 1 of the TAA.

¹⁵¹ Section 21-5.

¹⁵² Section 23-10.

WETR 2008/D1

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Detailed contents list

216. Below is a detailed contents list for this draft Ruling:

	Paragraph
What this Ruling is about	1
Date of effect	5
Background	7
Previous Rulings	8
Ruling and Explanation	9
Which alcoholic products are affected?	9
<i>Grape wine</i>	11
<i>Grape wine products</i>	14
<i>Fruit or vegetable wine</i>	23
<i>Cider and Perry</i>	26
<i>Mead</i>	30
<i>Sake</i>	35
Rate of wine tax	38
How does the wine tax work?	39
When does the wine tax apply from?	47
Does an entity need to register for wine tax?	48
What are assessable dealings?	51
<i>Wholesale sales</i>	51
<i>Example 1 – sale of wine that is not a wholesale sale</i>	54
<i>Retail sales</i>	56
<i>Indirect marketing sales</i>	58
<i>(a) Retail sales made through another entity</i>	59
<i>Example 2 – Consignment sale where retailer sells wine as agent for the owner of the wine.</i>	60

WETR 2008/D1Status: **draft only – for comment**

Page 49 of 59

<i>Example 3 – Consignment sale undertaken on a ‘sale or return’ basis</i>	63
<i>(b) Sales made from another entity’s retail premises</i>	65
<i>Example 4 – indirect marketing sale</i>	66
<i>Royalty-inclusive sales</i>	68
<i>Example 5 – Royalty-inclusive sale</i>	72
<i>Application to own use</i>	74
<i>Royalty-inclusive application to own use</i>	78
<i>Local entry</i>	80
<i>Removal from a customs clearance area</i>	81
<i>What value is used to calculate the wine tax?</i>	82
<i>Taxable value of wholesale sales</i>	83
<i>Meaning of ‘sale’</i>	86
<i>Meaning of ‘price’</i>	91
<i>Judicial approach</i>	94
<i>Delivery charges</i>	98
<i>Example 6 – sale price includes delivery</i>	101
<i>Example 7 – separate contract for delivery of wine</i>	103
<i>Finance charges</i>	105
<i>Example 8 – deterrent to late payment</i>	107
<i>Example 9 – surcharge for payment by credit card</i>	109
<i>Example 10 – optional time to pay</i>	111
<i>Trade incentives</i>	112
<i>Commission agents</i>	117
<i>Example 11– Commission fee</i>	118
<i>Auctions fees</i>	120
<i>Container deposit</i>	121
<i>Additional amounts included in taxable value</i>	123
<i>Example 12 – value of a container</i>	124
<i>Apportionment of amounts where wine and other goods are sold together</i>	126
<i>Example 13 – apportionment of amounts where wine and other goods are sold together</i>	128
<i>Other taxable dealings including retail sales and applications to own use</i>	131
<i>Notional wholesale selling price for grape wine</i>	135

WETR 2008/D1

<i>The half retail price method</i>	136
<i>Example 14 – wine tax and GST payable under half retail price method</i>	137
<i>The average wholesale price method</i>	139
<i>Example 15 – wine tax and GST payable under average wholesale price method</i>	141
<i>Grape wine sold by the glass</i>	145
<i>Notional wholesale selling price for wine other than grape wine</i>	146
<i>Wine other than grape wine sold by the glass</i>	147
<i>Notional wholesale selling prices for other dealings</i>	148
<i>Imported wine</i>	149
<i>Royalty-inclusive sales and royalty-inclusive applications to own use</i>	150
<i>Non-arm's length transactions (including staff sales, shareholder sales and sales to grape growers)</i>	151
<i>Does an entity need to specify the amount of wine tax on invoices?</i>	154
<i>What exemptions can apply?</i>	156
<i>Are sales to overseas travellers exempt?</i>	158
<i>Is a sale of wine taxable where an entity exports the wine on behalf of the purchaser?</i>	164
<i>What is quoting?</i>	167
<i>Grounds for quoting</i>	170
<i>Form of quoting</i>	176
<i>Quoting by telephone, fax and electronic orders</i>	187
<i>Who can sign the quotation?</i>	191
<i>Situations where the purchaser is entitled to quote</i>	192
<i>How does an entity pay the wine tax?</i>	193
<i>When does an entity pay the wine tax?</i>	195
<i>Wine tax credits</i>	200
<i>Agreement with Commissioner on amount of credit</i>	202
<i>How does an entity claim wine tax credits?</i>	204
<i>What records does an entity need to keep and for how long do they need keep them?</i>	210
<i>Are there anti-avoidance provisions for wine tax?</i>	212
Your comments	214
Detailed contents list	216

Commissioner of Taxation

17 December 2008

Previous drafts:

Not previously issued as a draft

Related Rulings/Determinations:

GSTR 1999/1; GSTR 2000/37;

GSTR 2002/6; WETR 2002/1

Previous Rulings/Determinations:

WETR 2004/1

Subject references:

- assessable dealing
- application to own use
- export
- manufacture
- producer rebate
- taxable value
- wholesale sales
- wine

Legislative references:

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WETR 2008/D1

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- Case references:*
- Commonwealth Quarries (Footscray) Pty Ltd v. Federal Commissioner of Taxation (1938) 59 CLR 111
 - EMI (Australia) Ltd v. Federal Commissioner of Taxation (1971) 45 ALJR 349; (1971) 71 ATC 4112; (1971) 2 ATR 325
- Other references:*
- Explanatory Memorandum for the A New Tax System (Wine Equalisation Tax) Bill 1999
 - Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999
 - Australia New Zealand Food Standards Code
 - Halsbury's Law of England, 1983, vol. 41, 4th edn, Butterworths, London
 - The Australian Oxford Dictionary, 2004, Second Edition, Oxford University Press, Melbourne
 - The Collins Concise Dictionary 1990, Harper Collins, New York

ATO references

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ATOlaw topic: Wine Equalisation Tax

Appendix A**A quotation of an ABN should be in the following form:****Quotation under the *A New Tax System (Wine Equalisation Tax) Act 1999*.**

The entity named below hereby quotes Australian Business Number (insert number) _____

The entity hereby notifies you that it **intends/does not intend*** to make a GST-free supply of the wine.

***Cross out whichever is not applicable if the wine is being purchased from a wine producer.**

Name of entity quoting

Name of individual authorised to quote

Signature of individual authorised to quote

Date

WETR 2008/D1

A periodic quotation of an ABN should be in the following form:

Quotation under the *A New Tax System (Wine Equalisation Tax) Act 1999*.

The entity named below hereby quotes Australian Business Number (insert number) _____ in respect of all wine purchased during the period _____ to _____ inclusive, except wine in respect of which the entity notifies you to the contrary at or before the time of the relevant assessable dealing with that wine.

- ☐ The entity declares that at the time of making this periodic quote it does **not intend to make a GST-free supply** of any of the wine it purchases, however, it undertakes to notify you at or before the time of the relevant assessable dealing if this intention changes for a particular purchase.*
- ☐ The entity declares that at the time of making this periodic quote it **intends to make a GST-free supply** of all the wine it purchases, however, it undertakes to notify you at or before the time of the relevant assessable dealing if this intention changes for a particular purchase.*

***If the entity is purchasing the wine from a wine producer it must indicate which of the above is applicable to it by placing a cross in the relevant box. Only one box should be completed.**

Name of entity to whom quote is made

Australian Business Number of entity to whom quote is made

Name of entity making quote

Name of individual authorised to quote

Signature of individual authorised to quote

Date

Note: The maximum period that can be covered by a periodic quotation is one year.

Where an entity has a periodic quotation in place but it is not entitled to quote on a particular transaction it should provide the supplier with a notification in the following form:

Notification for the purposes of subsection 13-15(3) of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

The entity named below hereby notifies you that it is not quoting for the purchase of the following wine:

Description of the wine

Date of transaction

Australian Business Number of entity to whom periodic quote was made

Name of entity which made the periodic quote

Australian Business Number of entity which made the periodic quote

Name of individual authorised to make this declaration

Signature of individual authorised to make this declaration

Date

WETR 2008/D1

Where an entity has a periodic quotation in place with a wine producer indicating that it does not intend to make a GST-free supply of any of the wine it purchases but now intends to make a GST-free supply of the particular wine it is purchasing it should provide the wine producer with a notification in the following form:

Notification for the purposes of section 19-30 of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

The entity named below hereby notifies you that it **intends to make a GST-free supply** of the following wine:

Description of wine

Date of transaction

Australian Business Number of entity to whom periodic quote was made

Name of entity which made the periodic quote

Australian Business Number of entity which made the periodic quote

Name of individual authorised to make this declaration

Signature of individual authorised to make this declaration

Date

Where an entity has a periodic quotation in place with a wine producer indicating that it intends to make a GST-free supply of all the wine it purchases but now does not intend to make a GST-free supply of the particular wine it is purchasing it should provide the wine producer with a notification in the following form:

Notification for the purposes of section 19-30 of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

The entity named below hereby notifies you that it **does not intend to make a GST-free supply** of the following wine:

Description of wine

Date of transaction

Australian Business Number of entity to whom periodic quote was made

Name of entity which made the periodic quote

Australian Business Number of entity which made the periodic quote

Name of individual authorised to make this declaration

Signature of individual authorised to make this declaration

Date

WETR 2008/D1

A quotation to Customs should be in the following form:

Quotation under the *A New Tax System (Wine Equalisation Tax) Act 1999*.

Australian Business Number (insert number) _____ is hereby
quoted in relation to the importation of wine as described above at line
number(s)

(insert relevant line numbers)

Note:

- The Customs Broker **must** enter the client's Australian Business Number in the space provided in the quotation form.
- The Customs Broker **must** specify in writing (in the space provided in the quotation form), the particular wine for which they are quoting their client's Australian Business Number.

Appendix B**How the Wine Tax Works**

Determining Liability

