


STD 98/D2 - Taxable value of wine manufactured and sold by retail

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There is an Erratum notice for this document.

This document has been finalised.

Draft Sales Tax Determinations (STDs) represent the preliminary, though considered, views of the ATO. Draft STDs may not be relied upon; only final STDs are authoritative statements of the ATO.

Draft Sales Tax Determination

Title: Taxable value of wine manufactured and sold by retail

Background

The general scheme of the sales tax legislation is to impose sales tax on the last wholesale sale of goods. A wholesale sale is defined as a sale to a person who purchases for the purpose of resale.

Where a retail sale is made by a manufacturer of goods the sales tax legislation requires sales tax to be paid on a taxable value equivalent to the *notional wholesale selling price* of the goods. The same taxable value applies where a manufacturer applies goods to its own use.

In the wine industry, retail sales by a wine manufacturer (in this Determination referred to as the **winemaker**) are a regular occurrence. Sales by cellar door and by mail order are the most common retail sales. Wine is also regularly applied to a winemaker's own use when tastings are given at cellar door or promotional work is undertaken. Accordingly, many winemakers are required under the sales tax legislation to determine a *notional wholesale selling price*.

This draft Determination sets out some guidelines to provide greater certainty for winemakers and to make their calculation of the *notional wholesale selling price* easier.

The taxable values in this draft Determination may be used for bottled and packaged table, sparkling and fortified wines.

Issue

What options are available to winemakers to enable them to calculate the taxable value of the *notional wholesale selling price*?

Decision

1. Retail sales by a winemaker who does not have any wholesale sales

Three options are available to winemakers in these circumstances:

Option 1

Winemakers may adopt a formula of actual retail selling price (tax inclusive) less 50% for the taxable value of retail sales.

Example: Cellar door sale at \$140 per dozen:

\$140 less 50% = \$70

Taxable value is \$70

\$70 x 41% (current sales tax rate)

= \$28.70 sales tax.

Option 2

Winemakers may adopt the following formula for the taxable value of retail sales:

Manufacturing cost of the wine

PLUS

one third of the difference between that amount and the actual retail selling price (excluding tax).

This option is a calculation of taxable value that is currently available under Safe Harbour 4 of Taxation Ruling SST 6 *Sales Tax: taxable value* (SST 6). The cost of manufacture in the above formula should be calculated using the principles outlined in paragraphs 3.8 and 3.9 of SST 6.

The calculation of manufacturing cost for the above mentioned formula would need to be done on a regular basis, especially if costs changed significantly. In any event, the calculation would need to be reviewed at least on an annual basis.

Under this option, the winemaker is required to determine the cost of manufacture of each grape variety and vintage that is produced.

Example: If a winemaker produces a dozen bottles of wine at a cost of \$60 per dozen and the retail price for that dozen is \$120 (without tax), then the taxable value would be:

\$60 (cost of manufacture)

PLUS

1/3 of (\$120 - \$60).

The taxable value of the dozen bottles of wine in this example would be \$80.

NOTE:

1. For simplicity, the winemaker may convert the result of this calculation to the retail selling price (RSP) less a percentage of that figure. In this example, that would be RSP (without tax) (120) less (40/120 X 100)%, being RSP less 33%.

2. Some winemakers may only have a retail price that includes sales tax and may, therefore, have difficulty in using the previous calculation. If a winemaker knows only the tax inclusive retail selling price and the manufacturing cost of the goods, the taxable value can be calculated as:

$$(2C + RSP) / (3+R)$$

where:

C = the manufacturing cost of the wine
 RSP = tax inclusive retail selling price
 R = the tax rate of the wine divided by 100.

Example: If the selling price of the wine including tax is \$140 and the manufacturing cost is \$60, the taxable value is:

$$2(60) + 140 / (3 + 41/100)$$

$$= 260 / 3.41$$

$$= \$76.25.$$

Option 3

Winemakers may adopt a taxable value for retail sales using the following calculation:

the manufacturing cost of the wine

PLUS

the expenses that would have been associated with selling the goods if they were sold by wholesale (the notional wholesale expenses)

PLUS

a fair wholesale profit.

Refer to the general principles set out in paragraphs 3.4 to 3.10 of SST 6 for an explanation of these terms.

2. Retail sales by a winemaker who sells by wholesale to retailers, or to retailers and wholesalers, for a range of prices

Two options are available to winemakers in these circumstances:

Option 1

Winemakers may adopt a formula of actual retail selling price (tax inclusive) less 50% for the taxable value of retail sales (see page 2 for an example).

Option 2

Winemakers may adopt a ***weighted average*** calculation for sales of wine to retailers, or to wholesalers and retailers (including sales of wine made under quote or exported), as the taxable value for retail sales.

Example: If 70% of the wholesale sales are made to a distributor at \$80 per dozen and the remaining 30% to local hotels and restaurants at \$90 per dozen, the weighted average price of all wholesale sales would be:

$$70/100 \times 80 = \$56$$

PLUS

$$30/100 \times 90 = \$27$$

$$\$56 + \$27 = \$83$$

Weighted average is \$83.

This calculation would need to be made for each grape variety and vintage sold by the winemaker. The percentage of wholesale sales would be based on historical information of the previous year's sales and the wholesale price based on the current pricing structure. The weighted average calculation would need to be reviewed at least annually and following any changes to the winemaker's pricing structure.

3. Retail sales by a winemaker who has wholesale sales at one price only

Winemakers should use this actual wholesale price as the taxable value for wines of the same grape variety and vintage sold by retail **provided** the wholesale sales are a suitable guide for determining the winemaker's *notional wholesale selling price*. The Australian Taxation Office (ATO) considers that, to be a suitable guide, the wholesale sales need to be made to retailers in comparable circumstances to the winemaker's retail sales. For example, sales by the winemaker to a restaurant or hotel in similar quantities to those made at cellar door would usually be regarded as a suitable guide.

Actual wholesale sales will not be a suitable guide to the taxable value of retail sales where:

- the wholesale sales are made to a wholesaler (for example, a wholesale distributor). As these sales are made at an earlier point in the distribution chain they do not represent the last wholesale sale of the wine; or
- the actual wholesale price is not an arm's length price (see Chapter 5 of SST 6).

If a winemaker is unsure whether their actual wholesale sales are a suitable guide to use in determining the taxable value of their retail sales, they should approach the local branch of the ATO for a private ruling.

4. Application to own use by a winemaker

As previously mentioned, winemakers regularly manufacture wine and then apply that wine to their own use, for example, as tastings. The taxable value for these dealings is also the *notional wholesale selling price*.

Accordingly, a winemaker should use the same amount as determined above for the taxable value for retail sales when calculating the taxable value for wine applied to own use.

If this amount is calculated using the formula, actual retail selling price less 50%, then there will be no actual price as the wine has been applied to own use. In these cases, the winemaker should use the retail selling price from their cellar door price list that most closely matches the volume of wine applied to own use.

Date of effect

This draft Determination, when released as a final Determination, will be effective immediately. The Determination replaces the 1993 Taxable Value Agreement that previously existed between the ATO and the Winemakers' Federation of Australia (WFA) and any private rulings to the extent that they are inconsistent with this ruling. As this Determination may result in more tax being paid, any person who has been acting on the basis of any such previous ruling will have three months from the effective date of this Determination to comply with it.

Reasons

Where goods are sold by a manufacturer by retail, the normal taxable value is the price for which the taxpayer could reasonably have been expected to sell the goods by wholesale under an arm's length transaction. This is easy to determine where a manufacturer sells the same type of goods by wholesale in significant quantities in comparable circumstances as the retail sale.

Determining a reasonable wholesale price becomes more difficult when the manufacturer only sells the particular goods by retail, or makes wholesale sales occasionally or on different terms to the retail sale.

In acknowledging the difficulties present in the wine industry in calculating a *notional wholesale selling price*, a formula has been established that winemakers may use, in most circumstances, for determining their tax liabilities for retail sales.

The calculation of the formula, actual retail selling price (tax inclusive) less 50%, is based upon an ATO analysis of the pricing of a range of premium, moderate and low priced wines sold by liquor distributors, retail liquor outlets and wineries through their cellar door.

The formula is supported by figures supplied by the WFA from their own recent analysis of the pricing structure of wine sold by various small, medium and large wineries.

Communication of the Decision

This draft Determination has been made available for publication by the sales tax publishing houses and has been mailed directly to relevant industry associations that are known to the ATO.

Your comments

If you wish to comment on this draft Determination, please send your comments by 11 September 1998 to:

Contact officer: Mark Schmalkuche
Telephone: (08) 8208 3343
Facsimile: (08) 8208 3918
Address: Mr M Schmalkuche
GPO Box 9811
ADELAIDE SA 5001.

Commissioner of Taxation

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FOI index details

Related Determinations: STD 98/D3

Related Rulings: SST 6

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