

# ***WETR 2009/1 - Wine equalisation tax: the operation of the wine equalisation tax system***

! This cover sheet is provided for information only. It does not form part of *WETR 2009/1 - Wine equalisation tax: the operation of the wine equalisation tax system*

! There are Compendiums for this document: **WETR 2009/1EC3** and **WETR 2009/1EC** .

! From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 June 2018*



## Wine Equalisation Tax Ruling

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

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**! This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner’s opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this Ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this Ruling if it turns out that it does not correctly state how the relevant provision applies to you.

**[Note:** This is a consolidated version of this document. Refer to the Legal Database (<http://www.ato.gov.au/law>) to check its currency and to view the details of all changes.]

### Summary – 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 WET.
2. This Ruling explains how the system operates, and which alcoholic products are covered.
3. [Omitted.]
4. Unless otherwise stated, all legislative references in this 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*.
5. [Omitted.]
- 5A. [Omitted.]

<sup>1</sup> [Omitted.]  
<sup>1A</sup> [Omitted.]

## Background

### How does the WET work?

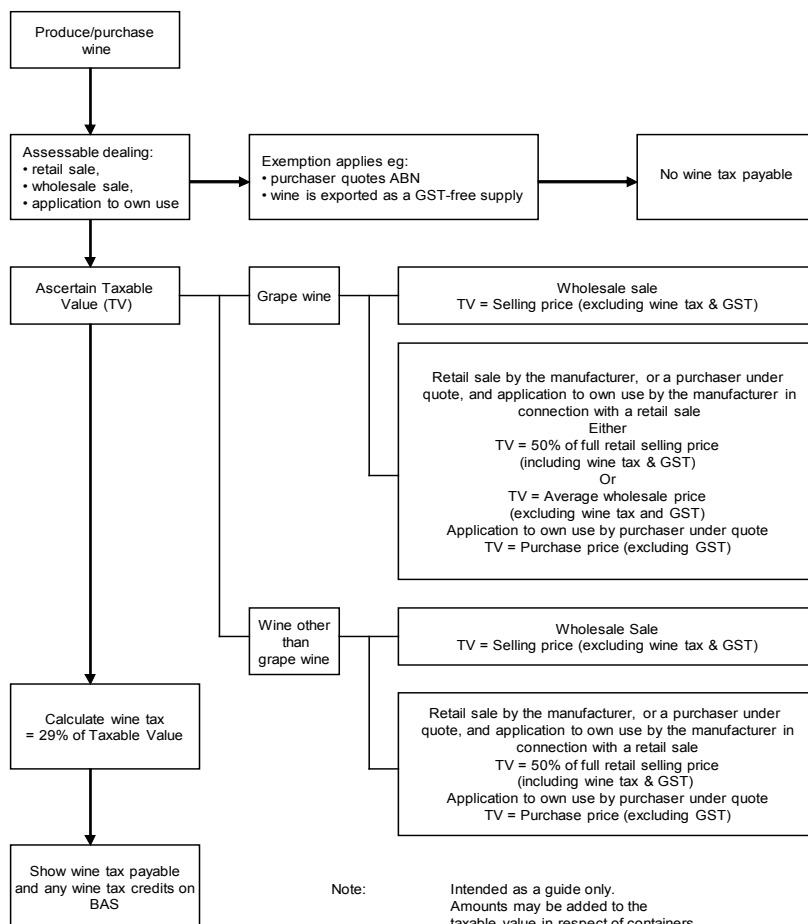
6. The broad aim of the WET Act is to impose WET on dealings with wine in Australia. WET is applied to both Australian produced wine and imported wine. Dealings which attract WET are called assessable dealings and can include selling wine, using wine, or making a local entry of imported wine at the customs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

6A. WET is normally a once only tax designed to fall on the last wholesale sale and is calculated at the rate of 29% of the taxable value of the dealing. To ensure that WET ultimately falls on the last wholesale sale of wine consumed in Australia, WET incorporates a system of quoting and credits.

6B. The path for determining liability for WET is set out in the diagram below:

**How the Wine Tax Works**

Determining Liability



Note: Intended as a guide only. Amounts may be added to the taxable value in respect of containers, royalties and non-arm's length transactions.

## Previous rulings

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7. The operation of the wine equalisation tax system was previously addressed in WETR 2004/1. WETR 2004/1 has been withdrawn with effect from the date of issue of this Ruling.

7A. This Ruling reflects changes made to the WET Act by *Treasury Laws Amendment (2017 Measures No. 4) Act 2017*.

## Ruling

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### Which alcoholic products are affected

8. WET applies to the following alcoholic beverages provided they contain more than 1.15% by volume of ethyl alcohol:<sup>2</sup>

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

9. We refer to all of these as *wine* throughout this Ruling, except when we specify *grape wine*, which is treated differently in some cases, in which case it is referred to separately in this Ruling.

### **Grape wine**<sup>3</sup>

10. 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.

11. 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.

12. Grape wine includes:

- table wines (red, white and rose);

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<sup>2</sup> Section 31-1. Refer also to Appendix 1 of WETR 2009/2.

<sup>3</sup> Section 31-2 and regulation 31-2.01.

- sparkling wines;
- fortified wines; and
- dessert wines.

## **Grape wine products<sup>4</sup>**

13. [Omitted.]

13A. A grape wine product is a beverage that contains at least 70% grape wine and:

- has not had added to it any ethyl alcohol from any other source, except:
  - grape spirit; or
  - alcohol used in preparing vegetable extracts (including spices, herbs and grasses) where the alcohol:
    - is only used to extract flavours from vegetable matter;<sup>4B</sup>
    - is essential to the extraction process;<sup>4C</sup> and
    - adds no more than one percentage point to the overall alcoholic strength by volume of the beverage.<sup>4D</sup>
- has not had added to it the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial;<sup>4E</sup> and
- contains between 8% and 22% (inclusive) by volume of ethyl alcohol.

14. The exclusion 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 then the resulting beverage is not a grape wine product.<sup>4EA</sup>

14A. There are additional and specific criteria that must be satisfied with respect to the addition of alcohol used in preparing vegetable extracts, in order for a beverage to be a grape wine product.<sup>4EB</sup>

<sup>4</sup> Section 31-3 and regulation 31-3.01.

<sup>4A</sup> [Omitted.]

<sup>4B</sup> Paragraph 31-3.01(3)(a) of the WET Regulations.

<sup>4C</sup> Paragraph 31-3.01(3)(b) of the WET Regulations.

<sup>4D</sup> Paragraph 31-3.01(3)(c) of the WET Regulations.

<sup>4E</sup> Sub-regulation 31-3.01(2) of the WET Regulations.

<sup>4EA</sup> Section 31-3.

<sup>4EB</sup> Sub-regulation 31 3.01(3) of the WET Regulations.

15. We consider that the reference to ‘alcohol used in preparing vegetable extracts’ in section 31-3, is limited to alcohol used in the extraction of flavours from vegetable matter that is essential to the extraction process. It does not extend to alcohol that has been used as a carrying medium for flavours made from vegetable extracts.

16. The types of beverage covered by the definition<sup>5</sup> include grape wine products such as wine cocktails, flavoured wines and Irish style cream drinks. The definition includes a minimum and maximum alcohol band to prevent low strength spirits from accessing the WET.

16A. A grape wine product must not have added to it the flavour of any alcoholic beverage (other than wine) whether that added flavour is natural or artificial. This is to ensure that where grape wine products mimic the taste of a spirit flavoured beverage, they are taxed at the same rate as those beverages.<sup>5AA</sup>

*Example 1 – addition of the flavour of an alcoholic beverage to wine*

16B. *An entity manufactures alcoholic beverages by adding flavours to wine. One of the flavours is a strawberry daiquiri flavour. The strawberry daiquiri flavour does not contain alcohol. The strawberry daiquiri flavour is the flavour of an alcoholic cocktail and is therefore the flavour of an alcoholic beverage. The addition of the strawberry daiquiri flavour to the wine means that the resulting beverage is not a grape wine product.*

16C. We consider that the preclusion of the addition of the ‘flavour of any other alcoholic beverage’ includes more than one added flavour that, when combined together, is the flavour of an alcoholic beverage (other than wine), whether such flavours are natural or artificial. We also consider that the way in which the product is named and marketed will have an impact on (but will not be determinative of) whether the beverage has had added to it flavours designed to mimic the taste of a beverage other than wine and, therefore, whether it will meet the definition of a grape wine product.

*Example 2 – addition of multiple flavours and named after a spirit-based beverage*

16D. *An entity manufactures an alcoholic beverage by adding flavours to wine. These flavours include lime, mint and sugar and the resulting product is called ‘Mystic Mojito’. A traditional Mojito is a spirit-based cocktail consisting of rum, lime juice and sugar. The addition of these flavours to wine, coupled with the name, indicate the product intends to mimic an alcoholic beverage other than wine and therefore would not be a grape wine product.*

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<sup>4F</sup> [Omitted.]

<sup>5</sup> See paragraphs 1.231 and 1.237 of the Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999.

<sup>5A</sup> [Omitted.]

<sup>5AA</sup> Explanatory Statement to Select Legislative Instrument 2009 No.234.

*Example 3 – multiple flavours not named after a spirit-based beverage*

16E. *An entity manufactures an alcoholic beverage by adding pineapple and coconut flavours, and cream, to wine. The product is marketed as 'Pineapplecolada'. The ingredients, when combined, are that of a Pina Colada – a spirit-based beverage. Despite not being marketed as a Pina Colada, the product would not be a grape wine product as the combination of the flavours are that of an alcoholic beverage other than wine.*

17. It is inherent in the definition of grape wine product<sup>5AB</sup>, and the further explanation in the Explanatory Memorandum to the *Excise Tariff Amendment (2009 Measures No. 1) Act 2009* that grape wine products are to be limited to beverages where the alcohol content is attributable to grape wine and/or grape spirit. The allowance of alcohol in preparing vegetable extracts<sup>5B</sup> recognises that in making flavours from vegetable matter alcohol is often used in the process. For example, in the manufacture of a flavour infused grape wine product, such as vermouth, herbs, spices or other vegetable matter could be added as an infusion. Alternatively, they could be macerated and steeped in alcohol as a means of extracting the flavours and then added to wine or an existing grape wine product.

18. When flavours are extracted from vegetable matter using alcohol (for example, by the vegetable matter being macerated and steeped in alcohol) and the alcohol is essential to the extraction processes, its addition will not preclude the resulting beverage from being a grape wine product. The addition of alcohol essential to the flavour extraction processes must add no more than one percentage point to the overall alcoholic strength of the beverage.<sup>5C</sup>

19. In contrast to the flavouring process described above, concentrated flavours may be made from vegetable matter. Before being added to wine or an existing grape wine product, 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 or existing grape wine product. In these circumstances if the ethyl alcohol with which the flavour is combined before being added to the wine or an existing grape wine product is not grape spirit, the resulting beverage will not be a grape wine product. This is because the additional ethyl alcohol into which the flavour was incorporated was not used in the process of preparing the vegetable extract and was not essential to the extraction process.

20. [Omitted.]

20A. Grape wine products include the following:

<sup>5AB</sup> Section 33-1 and regulation 31 3.01.

<sup>5B</sup> Subparagraph 31-3(b)(ii).

<sup>5C</sup> Paragraph (c) of sub-regulation 31-3.01(3).

- vermouth, marsala and green ginger wine (except green ginger wine with spirits such as scotch added);
- wine-based cocktails and creams that do not contain the flavour of an alcoholic beverage (other than wine), whether the flavour is natural or artificial; and
- wine-based imitation liqueurs that do not contain the flavour of an alcoholic beverage (other than wine), whether the flavour is natural or artificial,

but only where the specific requirements set out in regulation 31-3.01 are met.

21. Grape wine products do not include the following:

- wine coolers where they do not satisfy the requirements set out in regulation 31-3.01;
- ready to drink (RTD) or designer drinks that include a wine base but do not satisfy the requirements set out in regulation 31-3.01;
- RTDs or designer drinks that contain spirits (other than grape spirit); and
- spirit-based (other than grape spirit) cocktails, creams and liqueurs.

### ***Fruit or vegetable wine***<sup>6</sup>

22. 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

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<sup>5D</sup> [Omitted.]

<sup>6</sup> Section 31-4 and regulation 31-4.01.

- 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.

23. Fruit or vegetable wines include:

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

24. Fruit or vegetable wines do not include RTDs or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges, etcetera (unless they satisfy the requirements in paragraph 22 of this Ruling).

### ***Cider or perry***<sup>7</sup>

25. 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.

26. 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.<sup>8</sup>

27. Cider and perry include:

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

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<sup>7</sup> Section 31-5.

<sup>8</sup> This is consistent with the definitions of cider and perry in Standard 2.7.3 of the Australia New Zealand Food Standards Code.

28. 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.

**Mead<sup>9</sup>**

29. [Omitted.]

30. 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 the mead 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

<sup>9</sup> Section 31-6 and regulation 31-6.01.

fruit then it must contain at least 8% by volume of ethyl alcohol before the grape spirit or neutral spirit is added.

31. 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.

32. [Omitted.]

33. Mead includes:

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

## **Sake**<sup>10</sup>

34. 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.

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

36. Sake includes:

- fermented sake; and
- rice wine.

## **The meaning of beverage in the context of the WET Act**

37. Intrinsic in the definitions of each of the products to which the WET Act applies, (see paragraphs 10 to 36 of this Ruling), is that amongst other things, the relevant product must be a 'beverage'. That is, in addition to the other specified requirements, the product must be a 'beverage' for it to be subject to WET.

38. Beverage is not defined in the WET Act and so takes its ordinary meaning. We consider a 'beverage' to be a drink of any kind, which is generally swallowed to quench thirst or for nourishment.<sup>11</sup>

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<sup>10</sup> Section 31-7.

38A. Generally, a beverage will be capable of being consumed through a straw and is thin enough to be consumed from a glass.

39. As a matter of everyday usage and language, wine is considered to be a drink and therefore is a 'beverage' in accordance with the ordinary meaning of that term. This is reflected in the dictionary definition of wine which refers to wine as a beverage.<sup>11A</sup>

40. The test of whether a beverage is wine is to be applied to the finished product intended and suitable for consumption, and not to liquid that exists during the stages of production.<sup>11B</sup>

41. Raw wine is the result of the initial (primary) fermentation of grapes or other fruits or vegetables. The wine is usually finished by stabilising, fining and filtering, secondary fermentation (malolactic fermentation) if needed, maturation and racking to clarify the wine by removing unwanted solids. In these circumstances, the test of whether a beverage is wine must be applied to the finished wine (intended and suitable for consumption), and not to the raw wine.

42. [Omitted.]

43. [Omitted.]

### **Rate of WET**

44. The amount of tax is calculated by multiplying the taxable value<sup>12</sup> of the assessable dealing by 29%.<sup>13</sup>

### **How does WET work?**

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

46. WET 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, WET is calculated on the selling price of the wine excluding wine tax and Australian goods and services tax (GST).<sup>14</sup> 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

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<sup>11</sup> *Bristol Myers Company Pty Ltd v. Commissioner of Taxation* 90 ATC 4553 at 4556 and 4557.

<sup>11A</sup> Macquarie Dictionary.

<sup>11B</sup> *Divas Beverages Holdings Ltd v. Commissioner of Taxation* [2018] FCA 576; 2018 ATC 20-654.

<sup>12</sup> See paragraphs 89 to 160 of this Ruling for discussion on taxable value.

<sup>13</sup> Section 5-5.

<sup>14</sup> The amount on which the WET 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.

tastings or promotional activities, alternative values are used to calculate the tax payable.

47. WET is imposed on assessable dealings with wine, unless an exemption applies. If an exemption does not apply, then the dealing is taxable, and WET 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<sup>15</sup>, then a credit for that earlier tax may be claimed as an offset against the tax payable on the later dealing.

48. 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.

49. 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 WET and GST). In this case, GST is calculated on the selling price of the wine including the WET.

50. An assessable dealing may be exempted from WET because the purchaser has grounds for quoting and has made a quote (see paragraphs 177 to 182A and Appendix 1 of this Ruling). The purchaser's Australian Business Number (ABN) is used for quoting.

51. Normally, for retailers (including bottle shops, hotels, restaurants and cafes), WET is included in the price for which they purchase the wine. Most retailers are not entitled to a credit for WET included in the purchase price of the wine. The system is designed so that WET 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.

52. Paragraph 6B of this Ruling sets out a schematic diagram showing the basics of how the WET works in relation to the more common assessable dealings with wine.

53. [Omitted.]

## Do you need to register for WET?

54. 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).

55. You do not have a liability to pay WET on any assessable dealing with wine (other than a *customs dealing*) unless you are registered or are required to be registered for GST.<sup>16</sup>

<sup>15</sup> Taxable dealing means a dealing in the Assessable Dealings Table in section 5-5 for which no exemption under Division 7 is available.

<sup>16</sup> Subsection 5-5(2). A customs dealing occurs when either, a person who is a passenger or crew on an international flight or voyage takes wine purchased from

56. [Omitted.]

## **What are assessable dealings?**

### **Wholesale sales**

57. The most common assessable dealing is a wholesale sale. You make a wholesale sale where you sell wine to an entity which purchases the wine for the purposes of resale.<sup>17</sup> A wholesale sale of wine is taxable<sup>18</sup> even if the wine has been taxed previously (although there is a credit<sup>19</sup> for the earlier tax). This ensures that tax is imposed on the final wholesale sale.

58. 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.

59. 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.<sup>20</sup>

### *Example 4 – sale of wine that is not a wholesale sale*

60. *Braden's Steak House is a restaurant which is experiencing a temporary stock shortage of wine. Braden's Steak House usually purchases their supplies of wine from a wholesaler but on this occasion needs the wine immediately. Braden's Steak House goes to Larry's Liquor Retail House and buys the wine they need.*

61. *The sale by Larry's Liquor Retail House to Braden's Steak House is not a wholesale sale.*

### **Retail sales**

62. A retail sale<sup>21</sup> is any sale that is not a wholesale sale (see paragraphs 57 to 61 of this Ruling). There are a number of situations where retail sales of wine are assessable dealings.

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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.

<sup>17</sup> Section 33-1.

<sup>18</sup> Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.

<sup>19</sup> Credit Ground CR4 in the WET Credit Table in section 17-5.

<sup>20</sup> Section 33-1.

63. The following retail sales 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,<sup>22</sup>
- retail sales of wine which were obtained by the seller WET-free under quotation of the seller's ABN,<sup>23</sup>
- retail 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 WET in the price to the retailer. These sales by the retailer are referred to as untaxed sales
- retail sales by a grape grower of wine made on their behalf by a contract winemaker from grapes supplied by the grape grower (where the grape grower retains ownership throughout the winemaking process). These sales by the grape grower are also referred to as untaxed sales;<sup>25</sup> and
- retail sales of wine by a retailer, for example, a bottle shop, that purchased bulk wine at a price which included WET and then placed the wine in bottles or other containers (not including packaged wine into a paper bag, carry bag or similar container at the time of the retail sale or placing unpackaged wine into a container supplied by a customer).

### ***Indirect marketing sales***

64. Indirect marketing sales<sup>27</sup> are a type of retail sale that are assessable dealings even though the purchaser of the wine may have borne WET. These arrangements are assessable dealings to ensure that the wine is taxed on the full wholesale value.<sup>28</sup> In accordance with section 5-20, you make an indirect marketing sale<sup>29</sup> if you are not

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<sup>21</sup> Section 33-1.

<sup>22</sup> Assessable Dealing AD2a in the Assessable Dealings Table in section 5-5.

<sup>23</sup> Assessable Dealings AD2b and AD12b in the Assessable Dealings Table in section 5-5. If the sale is an *indirect marketing sale* (see paragraph 64 of this Ruling) assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5.

<sup>24</sup> [Omitted.]

<sup>25</sup> Assessable Dealing AD2e in the Assessable Dealings Table in section 5-5; section 5-25.

<sup>26</sup> [Omitted.]

<sup>27</sup> Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5; section 5-20.

<sup>28</sup> See paragraphs 3.19 and 3.20 of the Explanatory Memorandum to the A New Tax System (Wine Equalisation Tax) Bill 1999.

<sup>29</sup> Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5; section 5-20.

the manufacturer of the wine and the sale occurs in either of the following circumstances:

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

65. [Omitted.]

66. [Omitted.]

67. [Omitted.]

68. [Omitted.]

69. [Omitted.]

70. [Omitted.]

71. These types of sales usually involve an agency arrangement. Whether or not a retailer is acting as your agent requires 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 (for example a written agency agreement), the description used by the parties and the conduct of the parties will determine whether or not an agency arrangement exists. An agreement under Subdivision 153-B of the GST Act, although on its own may not be conclusive, may be indicative of an agency arrangement between parties.<sup>31A</sup>

72. [Omitted.]

73. [Omitted.]

### ***Royalty-inclusive sales***

74. Royalty-inclusive sales<sup>32</sup> are another category of retail sales that are assessable dealings, even though the purchaser of the wine may have borne WET. Royalties paid before the last assessable dealing with wine will be covered by the special taxable value rules for royalty payments (see paragraph 129 of this Ruling). If the royalty

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<sup>30</sup> [Omitted.]

<sup>31</sup> [Omitted.]

<sup>31A</sup> See Goods and Services Taxation Ruling GSTR 2000/37 *Goods and services tax: agency relationships and the application of the law* for a discussion on general principles of agency arrangements and the operation of Division 153B of the GST Act.

<sup>32</sup> Assessable Dealings AD2c and AD12c in the Assessable Dealings Table in section 5-5; section 5-15.

payment is made after that time, then the amount of the royalty will be included in the value of any retail sale.<sup>33</sup>

75. Royalty<sup>34</sup> is a defined term in the WET Act.

76. [Omitted.]

77. [Omitted.]

78. [Omitted.]

79. [Omitted.]

### ***Application to own use***

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

- wine used for tastings;
- wine used for promotions;
- wine donated to charity;
- wine given as samples;
- wine given to staff; and
- wine taken for personal consumption.

81. The definition of application to own use<sup>38</sup> 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 you will not have a liability for WET where you use wine, which has not previously been taxed, 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).

82. We consider that wine included as bonus wine with the sale of other wine as part of a contract of sale is not applied to the seller's

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<sup>33</sup> See paragraph 3.17 of the Explanatory Memorandum to the A New Tax System (Wine Equalisation Tax) Bill 1999.

<sup>34</sup> Section 9-70.

<sup>35</sup> [Omitted.]

<sup>36</sup> [Omitted.]

<sup>37</sup> [Omitted.]

<sup>38</sup> Section 33-1.

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.

83. You will have a WET liability for wine that you apply to your own use, if you are registered or are required to be registered for GST purposes, and you:

- are the manufacturer of the wine;<sup>39</sup>
- obtained the wine under quote (see paragraphs 174 to 199A of this Ruling);<sup>40</sup> or
- 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).<sup>41</sup>

#### ***Royalty-inclusive application to own use***

84. An application to own use of wine may be an assessable dealing even though someone has already borne WET on that particular wine. An example of this is a royalty-inclusive application to own use.<sup>42</sup> 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).<sup>43</sup>

85. 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

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<sup>39</sup> Assessable Dealing AD3b, in the Assessable Dealings Table in section 5-5.

<sup>40</sup> Assessable Dealings AD3c, AD13c in the Assessable Dealings Table in section 5-5; section 31-15.

<sup>41</sup> Assessable Dealings AD3a and AD13a in the Assessable Dealings Table in section 5-5; section 5-25.

<sup>42</sup> Assessable Dealings AD3d and AD13d in the Assessable Dealings Table in section 5-5; section 5-25.

<sup>43</sup> Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

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.<sup>44</sup>

## **Local entry**

86. The WET Act sets out the situations that are assessable dealings with imported wine.<sup>45</sup> 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.

## **Removal from a customs clearance area**

87. Removal from the customs clearance area of wine purchased by a relevant traveller<sup>46</sup> from an inwards duty-free shop is an assessable dealing.<sup>47</sup> You are a relevant traveller if you are a person (whether passenger or crew member) who has alighted from an international flight.

## **What value is used to calculate the WET?**

88. WET is calculated by multiplying the taxable value of a taxable dealing by 29%.<sup>48</sup> 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 you have a transaction with wine that is not at arm's length<sup>49</sup> or to include the value of royalties or containers.<sup>50</sup>

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<sup>44</sup> Section 5-15.

<sup>45</sup> Assessable Dealing AD10 in the Assessable Dealings Table in section 5-5; section 5-30.

<sup>46</sup> Section 33-1 and section 96B of the *Customs Act 1901*.

<sup>47</sup> Assessable Dealings AD4b and AD14b in the Assessable Dealings Table in section 5-5.

<sup>48</sup> Subsection 5-5(3).

<sup>49</sup> See paragraphs 158 to 160 of this Ruling.

<sup>50</sup> See paragraphs 74 and 129 of this Ruling.

### ***Taxable value of wholesale sales***

89. For a taxable dealing with wine that is a wholesale sale the taxable value is the price for which the wine is sold (excluding WET and GST).<sup>51</sup> Taking into consideration the ordinary legal meaning of 'sale', the extension to the ordinary meaning of sale as specified in section 33-1, and the definition of 'price' in section 33-1, we consider 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.<sup>52</sup>

90. 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.

91. 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.

### ***Meaning of 'sale'***

92. The word 'sale' is not defined in the WET Act except to specify that it includes barter or exchange.<sup>53</sup>

93. 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.<sup>54</sup> 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.<sup>55</sup>

94. We consider that the WET Act is one such context in which it is appropriate to adopt the wider, non-technical interpretation of the term 'sale'. The definition of 'sale' in section 33-1 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.

95. 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.

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<sup>51</sup> Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.

<sup>52</sup> See the comments of Windeyer J in *E.M.I. (Australia) Ltd. v. FC of T* (1971) 45 ALJR 349 at 4118; 71 ATC 4112 at 4118; (1971) 2 ATR 325 at 330.

<sup>53</sup> Section 33-1.

<sup>54</sup> *Halsbury's Law of England*, 1983, vol. 41, 4<sup>th</sup> edn, Butterworths, London, paragraph 601.

<sup>55</sup> *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.'

96. 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'<sup>56</sup>.

### *Meaning of 'price'*

97. Section 33-1 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.

98. [Omitted.]

99. [Omitted.]

100. [Omitted.]

101. [Omitted.]

102. [Omitted.]

103. The reference to 'price' refers to 'consideration', which is defined very broadly in section 9-15 of the GST Act to include any payment, act or forbearance, in connection with a supply of anything.

### *Delivery charges*

104. 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.<sup>60</sup> Therefore, where wine is sold under a contract

<sup>56</sup> Pursuant to paragraph (b) of the definition of the term 'application to own use' in section 33-1, if an entity gives wine away or transfers property in wine under a contract that is not a contract of sale, for the purposes of the WET Act this will represent an application to own use as opposed to a sale of the wine. The taxable value of a dealing with wine that is an application to own use is the notional wholesale selling price. See paragraphs 80 to 83 and paragraphs 138 to 141 of this Ruling.

<sup>57</sup> [Omitted.]

<sup>58</sup> [Omitted.]

<sup>59</sup> [Omitted.]

<sup>60</sup> 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.

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.

105. 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).

106. [Omitted.]

*Example 6 – sale price includes delivery*

107. *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.*

108. *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*

109. *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.*

110. *In these circumstances the charge for delivery is under a separate contractual arrangement to the sale of the wine. The*

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<sup>61</sup> [Omitted.]

*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*

111. 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.

112. 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*

113. *Wine Wholesalers Pty Ltd sells wine for \$200 per case. Wine Wholesalers Pty Ltd's usual trading terms allow 30 days for payment. Title in the wine passes to the customer upon delivery of the wine. 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.*

114. 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*

115. *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>

116. 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*

117. *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*

118. 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 WET 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.

119. 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.

120. 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;
- 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; and
- distributor margin payments – these are payments to a distributor and generally cover the distributors general costs like freight, administration, storage, invoicing,

sales monitoring, debt collection, wastage and internet costs.

121. 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.

121A. Payments provided by the purchaser for the specific benefit of the producer's product or brand do not reduce the selling price of wine. Such services include positioning wine in a prime position in a bottle shop, so it is marketed in a way that is better than the marketing of other wines in the shop or advertising the wine as 'wine of the month' in a retailer's sales catalogue.

122. Examples of payments which do not usually reduce the sale price of wine also 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
- 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*

123. Some sellers use commission agents to facilitate the sale of their wine.<sup>61A</sup> 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*

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

125. *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.*

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<sup>61A</sup> Refer to paragraphs 64 to 71 of this Ruling – for example, indirect marketing sales.

### *Auction fees*

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

- seller's 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
- buyer's 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*

127. 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.

128. 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***

129. 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 74 of this 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.<sup>62</sup>

### *Example 12 – value of a container*

130. *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 handmade wooden display cases.*

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

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<sup>62</sup> Section 9-65; section 9-70.

**Apportionment of amounts where wine and other goods are sold together**

132. If you package and sell wine and other goods 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 WET and GST) for which the wine could reasonably have been expected to have sold for separately.<sup>63</sup>

133. Sometimes where you package wine with other goods and sell them 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.

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

134. *Good Wines Winery Ltd sells wine with a wholesale price of \$30 (excluding WET and GST), a key ring with a wholesale price of \$15 (excluding GST) and a pen with a wholesale price of \$5 (excluding GST) by wholesale in a package for \$40 (excluding WET 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 WET on the wholesale sale of the package by Good Wines Winery Ltd.*

135. *The WET and GST payable by Good Wines Winery Ltd is calculated as follows:*

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

<sup>63</sup> Subsection 27-15(1).

*Example 14 – apportionment of amounts where wine and other goods are sold together*

136. *The Fairly Good Wine Distribution Company sells a package of a bottle of wine, an ice bucket and a key ring for a wholesale price of \$54 (excluding WET and GST). The Fairly Good Wine Distribution Company also sells this wine by wholesale and does not sell the ice bucket or key ring by wholesale. They purchase the wine for \$25, the ice bucket for \$10 and the key ring for \$1. Apportioning the amounts in the ratio of the purchasing price results in a taxable value of the wine of:*

<i>Ratio between purchase and selling prices</i>	<i>54/(25+10+1)</i>	<i>1.5</i>
<i>Taxable value of the wine</i>	<i>\$25 x 1.5</i>	<i>\$37.50</i>

137. As discussed at paragraphs 104 and 105 of this Ruling, the price for which you sell wine will include delivery charges where it is sold under a contract that includes delivery. In these circumstances, when calculating the taxable value of the wine, it is not appropriate for you 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 your customer to obtain good title to the wine from you (see paragraphs 111 to 117 of this 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***

138. For most other taxable dealings, the taxable value is the notional wholesale selling price.<sup>64</sup> The discussion at paragraphs 89 to 129 of this 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 142 to 151 of this Ruling.

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<sup>64</sup> Assessable Dealings Table in section 5-5.

139. 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 provided at the cellar door or promotional work is undertaken.<sup>65</sup> The taxable value specified in the WET Act for these dealings with wine is the notional wholesale selling price.<sup>66</sup>

140. The notional wholesale selling price is also used to determine the taxable value for retail sales which are indirect marketing sales<sup>67</sup> and retail sales of wine which is placed in containers at a time after WET became payable on the wine by a person other than the seller.<sup>68</sup>

141. Where the wine has been purchased free of WET under quote and applied to own use the taxable value is the purchase price (excluding GST).<sup>69</sup> However, where the wine is imported under quote by the applier, the taxable value is the GST importation value.<sup>70</sup>

### ***Notional wholesale selling price for grape wine***

142. There are two methods available for you to work 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 WET 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.<sup>71</sup> The half retail price method is used unless the average wholesale price method is chosen.<sup>72</sup>

### ***The half retail price method***

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

- for retail sales of grape wine, is 50% of the price (including WET and GST) of those sales;<sup>73</sup> and

<sup>65</sup> 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.

<sup>66</sup> 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 80 to 83 of this Ruling).

<sup>67</sup> Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5.

<sup>68</sup> Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.

<sup>69</sup> Assessable Dealings AD3c and AD13c in the Assessable Dealings Table in section 5-5.

<sup>70</sup> Assessable Dealing AD13c in the Assessable Dealings Table in section 5-5. See paragraph 156 of this Ruling for an explanation of 'GST importation value'.

<sup>71</sup> Section 9-25.

<sup>72</sup> Subsection 9-25(2).

<sup>73</sup> Paragraphs 89 to 128 of this Ruling discuss what forms part of the price for a wholesale sale. The same considerations apply for retail sales.

- for applications to own use connected with retail sales of grape wine, is 50% of the price (including WET and GST) for which the entity would normally have sold the wine if the sale were a retail sale.<sup>74</sup>

*Example 15 – WET and GST payable under half retail price method*

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

145. *WET 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*

146. You can only choose to use this method if, during the tax period in respect of which the liability to pay WET 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.<sup>75</sup>

147. You work out the average wholesale price using the weighted average of the prices (excluding WET and GST) for you wholesale sales (including exports) of grape wine that fall into the above category for the tax period.<sup>76</sup> When calculating the average wholesale price, you are able to take into account any discounts, incentives, rebates and other payments that reduce the price for which your wine is sold.

*Example 16 – WET and GST payable under average wholesale price method*

148. *Good Wines Winery Ltd sells 1 dozen bottles of grape wine at the cellar door to a retail customer for \$190 (including WET 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*

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<sup>74</sup> Section 9-35.

<sup>75</sup> Subsection 9-25(3).

<sup>76</sup> Section 9-40. See paragraphs 57 to 61 of this Ruling for a discussion of wholesale sales.

*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.*

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

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

150. *The WET payable by the winery under the average wholesale price method on the cellar door retail sale of 1 dozen bottles is:*

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

151. *The GST payable on the cellar door sale is:*

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

### ***Grape wine sold by the glass***

152. If you are a wine producer who sells grape wine by the glass, you 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 WET 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:** you can only use this method if you satisfy the requirements set out in paragraph 146 of this Ruling.

### ***Notional wholesale selling price for wine other than grape wine***

153. You must use the half retail price method as the notional wholesale selling price if you have a taxable dealing with wine that is not grape wine, and the dealing is either a retail sale, or an application to own use connected with retail sales.<sup>77</sup>

### ***Wine other than grape wine sold by the glass***

154. If you are a producer of wine that is not grape wine, and you sell that wine by the glass, you must calculate WET using a taxable

<sup>77</sup> Section 9-30.

value of 50% of the price (including WET and GST) of the glass of wine.

***Notional wholesale selling price for other dealings***

155. 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 WET and GST) for which the wine could reasonably have been expected to be sold by wholesale under an arm's length transaction.<sup>78</sup>

***Imported wine***

156. 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.<sup>79</sup> The GST importation value is the customs value plus the costs of transport, insurance and duty.<sup>80</sup>

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

157. The taxable value for royalty-inclusive sales and royalty-inclusive applications to own use is the amount that would be the price (excluding WET 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.<sup>81</sup>

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

158. The WET 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.<sup>82</sup>

159. Where you make sales to staff, shareholders and grape growers at discounted prices, these sales are considered to be non-arm's length sales. Accordingly, you must pay WET on these sales based on prices that would be used in a similar arm's length transaction. For example, you may charge your staff \$100 (including WET 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 WET and GST) per dozen. WET on the staff sale should be calculated by reference to the normal retail price of \$150 per dozen (WET payable is \$21.75 per dozen using the half retail price method).

<sup>78</sup> Section 9-45.

<sup>79</sup> Assessable Dealing AD10 in the Assessable Dealings Table in section 5-5.

<sup>80</sup> Section 33-1; section 195-1 of the GST Act; section 13-20 of the GST Act.

<sup>81</sup> Assessable Dealings AD2c, AD3d, AD12c and AD13d in the Assessable Dealings Table in section 5-5.

<sup>82</sup> Section 27-10.

160. We consider that sales to related companies or other related entities are also non-arm's length transactions.

## Do you need to specify the amount of WET on invoices?

161. Where you sell wine by wholesale for a price that includes WET, you must specify the amount of the WET on the invoice you give to the purchaser.<sup>83</sup> The WET 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.

162. You do not have to specify the amount of WET where you sell the wine by retail, that is, to the end user, even if WET is payable on that transaction.

## What exemptions can apply?

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

- the dealing is a supply that is GST-free<sup>84</sup> or is a local entry that is a non-taxable importation for the purposes of the GST Act;<sup>85</sup>
- there is a quote given in respect of the dealing (see paragraphs 174 to 199A of this Ruling);<sup>86</sup>
- the dealing is a customs dealing covered by certain specified items in Schedule 4 to the *Customs Tariff Act 1995*;<sup>87</sup>
- there is a local entry of wine that has been taxed while in bond or under the control of Customs;<sup>88</sup> and
- there is a local entry of wine which was exported from Australia and is subsequently returned to Australia in an unaltered condition.<sup>89</sup> This exemption applies where the importer has not previously received a refund of WET related to the export of the wine under the tourist refund scheme and is either the manufacturer of the wine or has previously paid WET when the wine was purchased or imported.<sup>90</sup>

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<sup>83</sup> Section 27-5.

<sup>84</sup> Other than because of Subdivision 38-D (child care) of the GST Act.

<sup>85</sup> Section 7-5.

<sup>86</sup> Section 7-10.

<sup>87</sup> Section 7-15. For importations that occur on or after 1 March 2013 the specified items in Schedule 4 to the *Customs Tariff Act 1995* are items 10, 11, 15, 18, 21, 21A, 24 and 27.

<sup>88</sup> Section 7-20.

<sup>89</sup> That is, without having been subject to any treatment, industrial processing, alteration or any other process since its export.

<sup>90</sup> Section 7-25.

164. If an exemption applies to an assessable dealing, then that dealing is not taxable and is therefore not subject to WET.<sup>91</sup>

### ***Are sales to overseas travellers exempt?***

#### *GST-free and WET-free exports of wine by overseas travellers*

165. Sales to overseas travellers who take delivery of the wine in Australia are subject to WET and GST<sup>92</sup> unless all of the following conditions are met:

- the overseas traveller is not registered or required to be registered for GST;
- the overseas traveller 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 overseas traveller, 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;<sup>92A</sup> and
- the wine is exported within 60 days<sup>93</sup> (or such further period as the Commissioner allows) after the earlier of:
  - the day on which the seller of the wine receives consideration for the supply of the wine; or
  - the day on which the seller gives an invoice for the supply of the wine.

#### *Refunds under the Tourist Refund Scheme*

166. If you are an overseas traveller, you may be entitled to a refund of the WET and GST under the Tourist Refund Scheme at the point of departure from Australia if you still have the wine with you.<sup>94</sup> The Tourist Refund Scheme is administered by the Department of Immigration and Border Protection Service (DIBP).

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<sup>91</sup> Division 7.

<sup>92</sup> Unless the wine is supplied under the sealed bag system.

<sup>92A</sup> Pursuant to paragraph 38-185(3)(f) of the GST Act, from 1 July 2010, overseas travellers who are residents of an External Territory of Australia are also required to provide a declaration to the supplier stating that a refund of WET and GST has not been sought through the Tourist Refund Scheme.

<sup>93</sup> The wine is exempt from WET under section 7-5 because it is GST-free under subsection 38-185(1) of the GST Act. See GSTR 2002/6 *Goods and Services Tax: Export 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.

<sup>94</sup> 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).

167. If you are an overseas traveller, you may be eligible for a refund under the Tourist Refund Scheme if you:

- have borne WET on the wine;<sup>95</sup>
- purchase at least \$300 (including WET and GST) of eligible goods from the one registered person (the purchase does not have to be entirely of wine);<sup>96</sup>
- hold tax invoices for the goods;<sup>97</sup>
- export the goods as accompanied baggage within 60 days after the day on which they were acquired;<sup>98</sup> and
- leave Australia at an airport or seaport that has a Tourist Refund Scheme facility.<sup>99</sup>

168. A refund under the Tourist Refund Scheme is not available if the wine has been partly consumed.<sup>100</sup> A refund is also not available if you are leaving Australia in the course of your 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.<sup>101</sup>

168A. In addition to being able to claim a refund of WET through the Tourist Refund Scheme for accompanied baggage, if you are a resident of an Australian external Territory, you can purchase wine and claim a refund of WET when you export the wine back to their home territory as unaccompanied baggage, provided you are not registered or required to be registered for GST at the time the wine is purchased.<sup>102A</sup>

168B. An external Territory is Norfolk Island, Christmas Island or Cocos (Keeling) Islands. You are a resident of an Australian external territory if you are an individual:

- who resides in an external Territory;
- whose domicile is an external Territory; or
- who has actually been in an external Territory, continuously or intermittently, during more than half of the last twelve months.<sup>102B</sup>

168C. If you are a resident of an Australian external Territory, you may be eligible for a refund under the Tourist Refund Scheme for wine exported as unaccompanied baggage if you:

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<sup>95</sup> Paragraph 25-5(1)(a).

<sup>96</sup> Paragraph 25-5(1)(b); Regulation 168-5.04 of the GST Regulations.

<sup>97</sup> Regulation 168-5.05 of the GST Regulations.

<sup>98</sup> Regulation 168-5.09 of the GST Regulations.

<sup>99</sup> Paragraph 25-5.02(1)(b) of the WET Regulations; Regulation 168-5.07 of the GST Regulations.

<sup>100</sup> Subregulation 25-5.02(2) of the WET Regulations.

<sup>101</sup> Paragraph 25-5.02(1)(b) of the WET Regulations; Regulation 168-5.06 of the GST Regulations.

<sup>102A</sup> Subsection 25-5(1A); paragraph 168-5(1A)(d) of the GST Act.

<sup>102B</sup> Paragraph 168 5(1A)(c) of the GST Act.

- have borne WET on the wine;<sup>102C</sup>
- purchase at least \$300 (including WET and GST) of eligible goods from the one registered person (the purchase doesn't have to be entirely of wine);<sup>102D</sup>
- hold tax invoices for the goods;<sup>102E</sup>
- export the goods as unaccompanied baggage to an external Territory within 60 days after the day on which they were acquired;<sup>102F</sup>
- have sufficient documentary evidence to show that the wine has been exported or that arrangements have been made to export the goods to the external Territory within 60 days of purchasing the goods;<sup>102G</sup>
- leave Australia at an airport or seaport that has a Tourist Refund Scheme facility;<sup>102H</sup> and
- are entitled to a payment equivalent to the amount of GST payable, or a proportion of the GST payable, on the taxable supply of the wine to them under subsection 168-5(1A) of the GST Act.<sup>102I</sup>

169. The amount of WET to be refunded under the Tourist Refund Scheme is calculated as 29% of half the purchase price of the wine (including WET and GST).<sup>102</sup> For example, if wine is purchased by the overseas traveller for \$320 including WET and GST the amount of WET to be refunded is calculated as follows:

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

#### *Sales from duty-free stores*

170. If you are an overseas traveller, you can purchase wine from a duty-free store free of WET and GST under the sealed bag system.<sup>103</sup>

#### ***Is an export subject to WET where you export the wine on behalf of a purchaser?***

171. Where you export wine on behalf of a purchaser (including overseas travellers) and you do not reimport the wine, exemption

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<sup>102C</sup> Paragraph 25-5(1A)(a).

<sup>102D</sup> Paragraph 25-5(1A)(b); Regulation 168-5.04 of the GST Regulations.

<sup>102E</sup> Paragraph 25-5(1A)(b); Regulation 168-5.05 of the GST Regulations.

<sup>102F</sup> Paragraph 25-5(1A)(b); Regulation 168-5.10B of the GST Regulations.

<sup>102G</sup> Paragraph 25-5(1A)(b); Regulation 168-5.10C(1)(c) of the GST Regulations.

<sup>102H</sup> Paragraph 25-5.02(1) of the WET Regulations; Regulation 168-5.07 of the GST Regulations.

<sup>102I</sup> Paragraph 25-5(1A)(c).

<sup>102</sup> Regulation 25-5.03 of the WET Regulations.

<sup>103</sup> Section 7-5; 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.

from WET and GST applies provided you export the wine within 60 days<sup>104</sup> 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.<sup>105</sup>

172. Where the consideration is provided in instalments, exemption from WET and GST applies provided you do not re-import the wine and you export the wine within 60 days<sup>106</sup> after the earlier of:

- the day on which the entity receives 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.<sup>107</sup>

173. You should retain evidence of the export in your records to support treating the wine as WET exempt.

## What is quoting?

174. Quoting is a mechanism to relieve or defer WET on wine to a later assessable dealing or to give effect to exemption from WET for a particular supply of wine.<sup>108</sup>

175. If a quote is made in respect of an assessable dealing, then that dealing is exempt from WET. 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 as set out in Appendix 1 of this Ruling.

176. Although quoting an ABN enables wine to be supplied without WET being payable, the supply may still be subject to GST.

## Grounds for quoting

177. There are four standard grounds for quoting an ABN. You have a quoting ground if, at the time of quoting, you intend to:

- sell the wine by wholesale or indirect marketing sale while the wine is in Australia;

<sup>104</sup> The Commissioner may allow a further period.

<sup>105</sup> Section 7-5; item 1 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act.

<sup>106</sup> The Commissioner may allow a further period.

<sup>107</sup> Section 7-5; item 2 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act.

<sup>108</sup> Sections 7-10 and 13-5.

- sell the wine by any kind of sale while it is in Australia and you are, at the time of quoting, mainly a wholesaler (see paragraphs 180 and 181 of this 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.<sup>109</sup>

However, you are not entitled to quote unless you are registered for GST.<sup>110</sup>

178. You have no grounds for quoting if you purchase or import the wine with the intention of applying the wine to your 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 you purchase the wine for these purposes it can still be purchased under quote.<sup>111</sup>

179. You also have no grounds for quoting if you intend to place the wine in containers and sell it by retail, unless you are mainly a wholesaler.

180. You are mainly a wholesaler at the time of quoting only if:<sup>112</sup>

- wholesale sales and indirect marketing sales account for more than half the total value of all sales of assessable wine you made during the 12 months ending at the time of quoting; or
- you have 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 of your sales of assessable wine during the 12 months starting at the time of quoting.

181. For the purpose of determining whether you are mainly a wholesaler, the value of a sale of wine is the price for which the wine is sold (including WET and GST).<sup>113</sup>

182. You may also quote in special circumstances that fall outside the quoting grounds if you have received authorisation from the Commissioner.<sup>114</sup>

182A. If you purchased wine for a price which included WET, you cannot on-sell the wine under quote. Any quote given to you for WET-paid wine will be ineffective and you will be liable for WET on

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<sup>109</sup> Subsection 13-5(1).

<sup>110</sup> Subsection 13-5(2).

<sup>111</sup> Section 33-1.

<sup>112</sup> Subsection 13-5(3).

<sup>113</sup> Subsection 13-5(3).

<sup>114</sup> Section 13-10.

the sale of the wine.<sup>114A</sup> However, where you have a subsequent dealing with the wine for a price that includes WET, you may be able to claim a WET credit for the WET you bore when you purchased the wine.<sup>114B</sup>

### **Form of quoting**

183. A quotation of an ABN must be made in writing, in the approved form, at or before the time of the dealing.<sup>115</sup> 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.

184. From 1 July 2018 (and for 2018 vintage wine, from 1 January 2018)<sup>116</sup>, where you purchase wine from a producer, you must state in the quotation whether you intend to have a taxable dealing with the wine. That is, you must indicate whether:

- you intend to have a taxable dealing with the wine; or
- you intend to do any of the following:
  - make a GST-free supply of the wine;
  - use the wine as a material in manufacture or other treatment or processing; or
  - on-sell the wine under quote.

184A. Where you provide a quote to an entity that is not the producer of the wine, there is no requirement to state whether or not you intend to have a taxable dealing.

184B. Where you state in the quote that you will have a taxable dealing with the wine you purchase, you will be liable to pay WET on your subsequent dealing, whether or not it would be otherwise taxable. This is because no exemption or exclusion from WET applies for wine if you state in the quote that you will have a taxable dealing with the wine, and you:

- make a GST-free supply of the wine;
- use the wine as a material in manufacture or other treatment or processing; or
- on-sell the wine under quote.<sup>116A</sup>

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<sup>114A</sup> Section 13-32.

<sup>114B</sup> Refer to paragraphs 199B and 199C of this Ruling.

<sup>115</sup> Section 13-20.

<sup>116</sup> Subsection 19(2) *Treasury Tax Laws Amendment (2017 Measures No. 4) Act 2017*. 2018 vintage wine is wine where at least 50% of the total volume of the wine resulted from source product that was crushed on or after 1 January 2018. Refer to paragraphs 97 to 98 of WETR 2009/2.

<sup>116A</sup> Section 5-50.

*Example 17 – wine subsequently sold under quote – exemption does not apply*

184C. *Dan's Dynamic Distributors purchases wine from the Howling Fog Winery. In the quote, Dan indicates an intention to have a taxable dealing with the wine.*

184D. *A week later, Dan's Dynamic Distributors receives a purchase order from Jose's Wholesalers to purchase the Howling Fog's wine. Jose's provides a quote to Dan's and Dan's sells the wine free of WET for \$350 (exclusive of GST).*

184E. *As Dan's had indicated to the Howling Fog that it would have a taxable dealing with the wine, Dan's is liable to remit WET on the sale of the wine on its business activity statement (BAS) as it is not covered by the exemption for quoting in section 7-10.<sup>116B</sup> Dan's must include the amount of \$101.50 at label 1C (29% of \$350) on its BAS.*

184F. *As Dan's will have a WET liability when it sells the wine to Jose's, Dan may choose not to accept the quote from Jose's and sell the wine to Jose's for a price that includes WET.*

185. [Omitted.]

186. If you are importing wine and you are both entitled and wishing to obtain it free of WET under quote, you must quote your ABN to DHA. You can authorise your customs broker to quote your ABN on your behalf.

187. If you are a purchaser and you are permitted to quote, you can quote on each purchase or, where appropriate, give a periodic quote to each supplier to cover your purchases of wine for periods up to one year.<sup>117</sup>

188. There is no need to ask for approval from the Commissioner before using a periodic quotation. Purchasers and suppliers can agree on any period, not exceeding one year that best suits their needs.<sup>118</sup>

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

190. [Omitted.]

191. If you have given your supplier a periodic quotation and you make a purchase of wine from the supplier during the period covered by the quote in respect of which you are not entitled to quote, you must notify the supplier that you are not quoting for that purchase at or before the time of the purchase.<sup>119</sup> Failure to do so is an offence.<sup>120</sup>

192. If you have given a producer a periodic quotation which indicates you intend to make a taxable dealing of the wine, and for a particular purchase you do not intend on making a taxable dealing, you must notify the producer of your intention. Provided it is in the

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<sup>116B</sup> Subsection 5-50(2).

<sup>117</sup> Section 13-15.

<sup>118</sup> Subsection 13-15(1).

<sup>119</sup> Subsection 13-15(3).

<sup>120</sup> Subsection 13-15(4).

approved form (see Appendix 1 of this Ruling), you can provide the notification on any document (for example a purchase order) provided to the producer at or before the time of the sale. Failure to do so will give rise to a WET liability for you on your subsequent dealing, as no exemption will apply.<sup>121</sup>

192A. If you have given a producer a periodic quotation which indicates that you do not intend to make a taxable supply of the wine, and for a particular purchase during the period covered by the periodic quote you do intend making a taxable supply of the wine, you can notify the producer of your intention. Provided it is in the approved form (see Appendix 1 of this Ruling) and is made at or before the time of the purchase, the notification can be made on any document (for example a purchase order) provided by you to the producer.

193. The notification in each of the cases above should be in the form shown in Appendix 1 of this Ruling.

193A. We acknowledge that there may be times where you purchase wine from a producer under quote and you may not know whether the wine will, or will not, be the subject of a subsequent taxable dealing. Your quote must indicate your *intention at the time of making your quote*. As explained in paragraph 175 of this Ruling, if your quote states an intention to make a taxable dealing, and you subsequently do not have a taxable dealing, you will nonetheless be liable to WET on that subsequent dealing.

193B. Where you do not deal with the wine you have purchased in accordance with the statement you made in your quote to the producer, there is no mechanism for you to retrospectively amend your quotation.

### ***Quoting by telephone, fax and electronic orders***

194. The Commissioner 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.

195. In practice, when you are purchasing wine, this will allow you 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.

196. Where you order wine by facsimile, the full form of quotation should be used.

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<sup>121</sup> Section 5-50.

197. Where you purchase wine from a particular supplier by means of electronic data interchange, (for example, email) a quote can be sent electronically, providing that:

- you include all of the information as set out in the approved form in Appendix 1 of this Ruling; and
- the supplier agrees to accept the quote electronically.

### ***Who can sign the quotation?***

198. Quotations of an ABN by a purchasing entity should be made by a person authorised to act for the entity. 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 WET will be used. It is not necessary to advise the Commissioner who is authorised to sign the quotation but a record must be kept.

### ***Situations where the purchaser is entitled to quote***

199. The following are examples of situations where you are entitled to quote if you are purchasing wine (in all cases it is assumed that you are registered for GST and that if you are quoting to the producer of the wine, you indicate your intention as to whether you will make a taxable dealing with the wine, as explained by paragraph 184 of this Ruling).<sup>122</sup>

- You intend to sell the wine by wholesale.
- You intend to sell the wine by indirect marketing sales.
- You are a wine wholesaler (who sells exclusively or mainly by wholesale)<sup>123</sup> and intends to sell the wine.
- You are a winemaker who intends to blend the purchased wine with other wine.
- You are a winemaker who intends to use the wine for analysis and comparison with wine you are manufacturing.
- You are mainly a wine retailer, but you intend to sell the wine being purchased exclusively by wholesale.
- You intend 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.

<sup>122</sup> The standard grounds for quoting are set out in section 13-5.

<sup>123</sup> Subsection 13-5(3) and see paragraphs 180 and 181 of this Ruling.

- You are 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).
- You are 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).
- You are 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).<sup>124</sup>
- You are 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).<sup>125</sup>

199A. Even if you have an entitlement to quote, if the supplier to whom you provided your quote purchased the wine for a price that included WET, your quote will be ineffective to exempt the supplier's sale to you from WET and the supplier cannot accept your quote. In this situation, the supplier will be liable for WET on the sale to you. However, you may be entitled to a credit for the WET where you have a further taxable dealing with the wine.<sup>125A</sup>

## WET credits

199B. There are five broad grounds for WET credits available under the WET Act:

- credits for overpaid WET;
- credits to avoid wine being taxed twice;
- producer rebates;
- import related credits; and
- credits for bad debts.<sup>125B</sup>

<sup>124</sup> Paragraph 13-5(1)(d).

<sup>125</sup> Paragraph 13-5(1)(d).

<sup>125A</sup> See paragraphs 199B to 199E of this Ruling on credits.

<sup>125B</sup> The WET Credit Table in section 17-5.

199C. Examples of common situations where you may be entitled to claim a WET credit include:

- You purchase wine to sell by wholesale and, although satisfying the requirements to quote, you do not quote your ABN and WET is included in the purchase price. You then sell the wine for a price including WET. You are entitled to a credit for the WET borne when you purchased the wine at the time of the subsequent assessable dealing.<sup>125C</sup>
- You are a retailer/wholesaler that sells wine by wholesale from stock you purchased at prices which included WET. You are required to pay WET on the wine sold by wholesale, but you are entitled to a credit for the WET borne on the wine when you purchased it.<sup>125D</sup>
- You sell wine by wholesale in taxable circumstances and pay WET on the sale. Subsequently, you allow a settlement discount on the sale. You are entitled to a credit for the amount of WET included in the discount allowed.<sup>125E</sup>
- You sell wine by wholesale and pay WET on the sale. Part or all of the amount of the sale is later written off as a bad debt. You are entitled to a credit for a proportion of the WET paid equal to the proportion of the debt written off.<sup>125F</sup>
- You are a retailer and you purchase bulk wine at a price which includes WET. You bottle the wine, and sell the bottled wine by retail. You have a liability to pay WET on the bottled wine when it is sold by retail<sup>125G</sup> and you are entitled to a credit of the WET previously borne on the wine.<sup>125H</sup>

### ***Agreement with Commissioner on amount of credit***

199D. Section 17-40 provides that the Commissioner may enter into an agreement with you regarding the manner of calculating and claiming the WET credits to which you are entitled. This allows for methods of calculating the amount of credit where you are not able to or would have difficulty in determining the amount of credit. It does not allow for credits in circumstances other than those listed in the WET Credit Table in section 17-5.

<sup>125C</sup> Credit Ground CR4 in the WET Credit Table in section 17-5.

<sup>125D</sup> Credit Ground CR4 in the WET Credit Table in section 17-5.

<sup>125E</sup> Credit Ground CR1 in the WET Credit Table in section 17-5.

<sup>125F</sup> Credit Ground CR15 in the WET Credit Table in section 17-5.

<sup>125G</sup> Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.

<sup>125H</sup> Credit Ground CR4 in the WET Credit Table in section 17-5.

199E. We are aware of the following scenario 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.

- An entity purchases wine from a wine retailer and the invoice for the wine purchased does not specify the amount of WET borne. The entity then on sells the wine as a wholesale sale on which they are liable to WET. The entity is entitled to a credit of WET<sup>1251</sup> for the amount of WET borne. Where the entity is not in a position to know the amount of WET 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 WET and GST) less any WET  
included in the price that has been refunded or  
credited to the entity.*

## Date of effect

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199F. This Ruling applies both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

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**Commissioner of Taxation**

24 June 2009

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<sup>1251</sup> Credit Ground CR4 in the WET Credit Table in section 17-5.

## **Appendix 1 – Approved quoting forms**

199G. The approved quoting forms as referred to in paragraphs 183 to 197 of this Ruling are provided.

### **A) One-off quote**

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 to have a taxable dealing with the wine\*
- intends to\*
  - use the wine as an input into manufacture or other treatment or processing, or
  - make a GST-free supply of the wine, or
  - sell the wine to an entity quoting its Australian Business Number

\* 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 the quote is made

\_\_\_\_\_

Name of entity quoting

\_\_\_\_\_

Name of individual authorised to quote

\_\_\_\_\_

Signature of individual authorised to quote

\_\_\_\_\_

Date

\_\_\_\_\_

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## B) Periodic quote

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 a separate one-off quotation has been provided, and 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 intends to have a taxable dealing with 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.\*
- The entity declares that at the time of making this periodic quote it intends to:
  - use the wine as an input in manufacture or other treatment or processing, or
  - make a GST free supply of the wine
  - sell the wine to an entity quoting its Australian Business Numberfor 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 quoting

\_\_\_\_\_

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.

**C) Not entitled to quote for a purchase covered by periodic quote**

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

\_\_\_\_\_

## D) Quotation to Department of Home Affairs

A quotation to the Department of Home Affairs 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 2 – Compliance guide**

**!** This Appendix contains information to assist taxpayers in complying with relevant tax laws. Provided you follow the advice in this appendix in good faith and consistently with the ruling section, the Commissioner will administer the law in accordance with this guide.

### **How do you pay the WET?**

200. Where you have a taxable dealing with wine (other than the local entry of imported wine), your net amount<sup>126</sup> for a tax period includes the sum of all amounts of WET payable by you that are attributable to that tax period less the sum of all amounts of WET credits to which you are entitled that arise during that tax period.<sup>126A</sup> This is done by entering the total amount of WET payable against Label 1C on your activity statement. The total of any WET credits is entered against Label 1D on your activity statement.

201. If you import wine you are required to pay the WET to DHA at the time of the customs dealing unless you quote your ABN. This is so even where you have received approval from the Commissioner to defer the payment of GST on taxable importations.

### **When do you pay the WET?**

202. For a taxable dealing with wine that is a supply for GST purposes, the WET payable is attributable to the same tax period or tax periods as the GST payable on the taxable supply.<sup>127</sup> However, if the time of the dealing occurs after the end of that tax period or periods, the WET payable may be treated as being attributable to the tax period in which the time of the dealing occurs.<sup>128</sup>

203. 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 92 to 96 of this 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. If you sell wine under a contract containing a *Romalpa* clause, and you do not account for GST on a cash basis, the GST would commonly be attributed to the tax period in which the you issue an invoice. However, the sale, which is the taxable dealing, does not occur until a later period and the WET is attributable to the tax period in which the sale occurs.

204. Furthermore, in circumstances where an assessable dealing consists of a sale, if the purchaser uses the wine after the time when

<sup>126</sup> Section 33-1, definition of net amount.

<sup>126A</sup> Sections 21-5 and 21-15.

<sup>127</sup> Section 21-10.

<sup>128</sup> Paragraph 5-5(2)(c) and section 21-10.

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 WET is attributable to the tax period when the use occurs.

205. The term 'use' is not defined in the WET Act. In addition to the on-selling of wine by a purchaser, we consider 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.

206. For a taxable dealing that is not a supply for GST purposes (for example, an application to own use), the WET payable is attributable to the tax period in which the time of the dealing occurs.<sup>129</sup>

207. [Omitted.]

208. [Omitted.]

209. [Omitted.]

210. [Omitted.]

## How do you claim WET credits?

211. Where you are registered for GST, you can claim WET credits as a reduction in your net amounts due under the GST Act.<sup>145</sup> This is done by entering the total amount of WET credits being claimed against

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<sup>129</sup> [Omitted.]

<sup>130</sup> [Omitted.]

<sup>131</sup> [Omitted.]

<sup>132</sup> [Omitted.]

<sup>133</sup> [Omitted.]

<sup>134</sup> [Omitted.]

<sup>135</sup> [Omitted.]

<sup>136</sup> [Omitted.]

<sup>137</sup> [Omitted.]

<sup>138</sup> [Omitted.]

<sup>139</sup> [Omitted.]

<sup>140</sup> [Omitted.]

<sup>141</sup> [Omitted.]

<sup>142</sup> [Omitted.]

<sup>143</sup> [Omitted.]

<sup>144</sup> [Omitted.]

<sup>145</sup> Subsection 17-10(1) and section 21-15.

Label 1D on your business activity statement. There is no monetary limit for credits claimed as reductions in a registered entity's GST liability.

212. If you are not registered or required to be registered for GST, you can claim credits as a direct refund from the Commissioner.<sup>146</sup> Direct refunds are not available for amounts totalling less than A\$200.<sup>147</sup> However, individual claims may be aggregated to reach the A\$200 minimum amount.

213. [Omitted.]

214. If it would otherwise be greater than the arm's length amount, the WET 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.<sup>149</sup>

215. If you are registered or required to be registered for GST, claims for WET credits are subject to a time limit, generally 4 years from the date you lodged your return for the tax period.

216. If you are not registered and not required to be registered for GST, claims for WET credits must be made within 4 years of the time when the WET credit arises.<sup>151</sup>

### **What records do you need to keep and for how long do you need to keep them?**

217. You must keep records of all transactions that relate to the dealing or credit claim for the longest of:

- 5 years after the completion of the transactions or acts to which they relate;
- the period of review for any assessment of a net amount to which those records, transactions or acts relate. In practical terms this means:
  - 4 years from the day after you lodge your GST return that takes into account the WET payable or WET credit entitlement unless the period of review is extended in the circumstances set out in section 155-35 of Schedule 1 to the TAA;

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<sup>146</sup> Subsection 17-10(2).

<sup>147</sup> Section 17-15.

<sup>148</sup> [Omitted.]

<sup>149</sup> Section 27-10.

<sup>150</sup> [Omitted.]

<sup>150A</sup> [Omitted.]

<sup>151</sup> Subsections 17-10(2) and 17-10(3).

- for a customs dealing, 4 years from the day after Customs gives you an import declaration advice or a self-assessed clearance declaration advice unless the period of review is extended in the circumstances set out in section 155-35 of Schedule 1 to the TAA; and
- where an assessment has been amended under Subdivision 155-B of Schedule 1 to the TAA, the refreshed period of review that applies to the latest amendment. That is, 4 years after the day on which the Commissioner gave notice of the last of the amendments.<sup>152</sup>

218. The records must be in English or readily accessible and convertible into English. The WET liability must also be able to be readily determined from your records.<sup>153</sup>

### **Are there anti-avoidance provisions for wine tax?**

219. Division 165 of the GST Act applies in relation to WET in the same way that it applies to GST.

220. This is because:

- WET payable on taxable dealings (other than custom dealings) is included in the net amount under Division 17 of the GST Act.<sup>154</sup>
- Amounts of WET payable on customs dealings are treated as if they were amounts payable under the GST Act.<sup>155</sup>

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<sup>152</sup> Section 382-5 of Schedule 1 of the TAA.

<sup>153</sup> Section 382-5 of Schedule 1 of the TAA.

<sup>154</sup> Section 21-5.

<sup>155</sup> Section 23-10.

## **Appendix 3 – Detailed contents list**

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