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

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There is a Compendium for this document: **WETR 2009/1EC** .

From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the Fuel Tax legislation with the term 'indirect tax zone' by the *Tax and Superannuation Laws Amendment (2015 Measures No. 1) 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 The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts.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 *A New Tax System (Goods and Services Tax) Act 1999*.

This Ruling contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999,* which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019.* This Ruling continues to have effect in relation to the remade Regulations.

Paragraph 32 of TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed and rewritten.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this Ruling is available.

This document has changed over time. This is a consolidated version of the ruling which was published on *1 August 2018*

Wine Equalisation Tax Ruling

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

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Preamble

This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the *Taxation Administration Act 1953* and former section 105-60 of Schedule 1 to the *Taxation Administration Act 1953*.

From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to 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://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

1. The *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) deals with tax on sales, importations and certain other dealings with wine which take place on or after 1 July 2000. The tax on wine is referred to in this Ruling as the wine tax although it is also known as the wine equalisation tax or WET.

2. This Ruling explains how the wine tax system operates and which alcoholic products are covered by the wine tax.

3. This Ruling replaces Wine Equalisation Tax Ruling WETR 2004/1 Wine equalisation tax: the operation of the wine equalisation tax system (WETR 2004/1).

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.

Date of effect

5. This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue, except for the compliance improvement (repackaged wine) measure[1] which has a date of effect of 31 August 2004. You can rely upon this ruling on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

Note 1: the Addendum to this Ruling that issued on 6 July 2011, explains our view of the law as it applied both before and after its date of issue.

5A. Changes made to this Ruling by an addendum that issued on 22 May 2013 have been incorporated into this version of the Ruling.[1A]

Background

6. The operation of the wine equalisation tax system was previously explained in WETR 2004/1. This Ruling expands on, and further explains the concepts and issues that were addressed in WETR 2004/1 which has been withdrawn with effect from the date of issue of this Ruling. This Ruling does not discuss the operation of the producer rebate. The operation of the producer rebate in relation to New Zealand participants is addressed in Wine Equalisation Tax Ruling WETR 2006/1 Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand. For other than New Zealand participants the operation of the producer rebate is addressed in Wine Equalisation Tax Ruling WETR 2009/2 Wine equalisation tax: operation of the producer rebate for other than New Zealand participants.

Previous Rulings

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.

[1] See paragraphs 53 and 63 (final dot point) of this Ruling.
[1A] Refer to the Addendum to see how the Addendum amends this Ruling.

Ruling and Explanation

Which alcoholic products are affected?

8. Wine tax applies to the following alcoholic beverages provided they contain more than 1.15% by volume of ethyl alcohol:[2]

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

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

Grape wine[3]

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

[2] Section 31-1.
[3] Section 31-2 and regulation 31-2.01.

Grape wine products[4]

13. Up to and including 9 September 2009 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); and
- contains between 8% and 22% (inclusive) by volume of ethyl alcohol.[4A]

13A. From 10 September 2009 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;[4B]
    - is essential to the extraction process;[4C] and
    - adds no more than one percentage point to the overall alcoholic strength by volume of the beverage.[4D]
- has not had added to it the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial;[4E] and
- contains between 8% and 22% (inclusive) by volume of ethyl alcohol.

14. As per section 31-3 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. As referred to in paragraph 13A of this Ruling, subregulation 31-3.01(3), which applies from 10 September 2009, introduces some 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.

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[4] Section 31-3 and regulation 31-3.01.
[4A] Section 31-3.
[4B] Paragraph 31-3.01(3)(a) of the WET Regulations.
[4C] Paragraph 31-3.01(3)(b) of the WET Regulations.
[4D] Paragraph 31-3.01(3)(c) of the WET Regulations.
[4E] Sub-regulation 31-3.01(2) of the WET Regulations.

15. The Commissioner considers 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. The specific criteria set out in subregulation 31-3.01(3),[4F] which apply from 10 September 2009, are consistent with this view.

16. According to the Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999 (the EM) that inserted the definition of 'grape wine product' the types of beverage covered by the definition[5] include grape wine products such as wine cocktails, flavoured wines and Irish style cream drinks. The EM also explains that the definition includes a minimum and maximum alcohol band to prevent low strength spirits from accessing the WET.

16A. From 10 September 2009, subregulation 31-3.01(2) amended the definition of 'grape wine products' to provide that a grape wine product must not have added to it the flavour of any alcoholic beverage[5A] (other than wine) whether that added flavour is natural or artificial. It is the Commissioner's view 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.

Example 1A – 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.*

[4F] See paragraph 13A of this Ruling for a list of the specific criteria.

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

[5A] The flavour of an alcoholic beverage includes the flavour of one or more spirits, liqueurs, alcoholic cocktails and/or beer, which may or may not be combined with other flavourings.

17. It is inherent in the definition of grape wine product in section 31-3, the further explanation in the EM, and the specific criteria set out in regulation 31-3.01 that for the purposes of the WET Act 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[5B] 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. However, from 10 September 2009, 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.[5C]

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 as defined in section 31-3 and subregulation 31-3.01(3), as 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. Up to and including 9 September 2009, grape wine products included the following:

- vermouth, marsala and green ginger wine (except green ginger wine with spirits such as scotch added);
- wine based cocktails and creams that satisfy the requirements above; and
- wine based imitation liqueurs,

but only where the specific requirements set out in paragraph 13 of this Ruling are met.

[5B] Subparagraph 31-3(b)(ii).
[5C] Paragraph (c) of sub-regulation 31-3.01(3).

20A. From 10 September 2009, grape wine products include the following:

- 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 paragraph 13A of this Ruling are met.

21. Grape wine products do not include the following:

- wine coolers where they do not satisfy the requirements set out in paragraph13 of this Ruling or paragraph 13A of this Ruling (whichever is relevant);[5D]
- ready to drink (RTD) or designer drinks that include a wine base but do not satisfy the requirements set out in paragraph 13 of this Ruling or paragraph 13A of this Ruling (whichever is relevant);
- 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[6]

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

[5D] The requirements set out in paragraph 13 of this Ruling apply up until and including 9 September 2009, and the requirements set out at paragraph 13A of this Ruling apply from 10 September 2009.
[6] 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, et cetera (unless they satisfy the requirements in paragraph 22 of this Ruling).

Cider and Perry[7]

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.[8]

27. Cider and perry include:

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

[7] Section 31-5.
[8] 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[9]

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

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

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

- is the product of the complete or partial fermentation of honey;
- has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit;
- has not had added any liquor or substance that gives colour or flavour other than:
  - grape spirit or neutral spirit;
  - honey, herbs and spices, which can be added at any time;
  - caramel, provided it is added after the fermentation process is complete; and
  - fruit or product derived entirely from fruit, provided:
    - the fruit or product has not been fermented;
    - the fruit or product is added to the mead before fermentation of the mead; and

[9] Section 31-6 and regulation 31-6.01.

- 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 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. Up to and including 8 June 2005, mead includes:

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

33. From 9 June 2005, mead includes:

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

Sake[10]

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.

[10] Section 31-7.

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 it ordinary meaning. The ordinary meaning of beverage was examined in the context of Sales Tax legislation in *Bristol-Myers Company Pty Ltd v. Commissioner of Taxation* (Bristol-Myers case).[11] In that case Lockhart J said:

> I prefer the simpler definition attributed to the word 'beverage' by the Macquarie Dictionary which is simply 'a drink of any kind'.
>
> 'Drink' when used as a noun is defined in slightly different ways by the dictionaries, but in my view it means any liquid which is swallowed to quench thirst or for nourishment.

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. For example, the Macquarie Dictionary relevantly defines wine as follows:

> 1. the fermented juice of the grape, in many varieties (red, white, sweet, dry, still, sparkling, etc.) used as a beverage and in cookery, religious rites, etc.
>
> 2. a particular variety of such fermented grape juice: *port and sherry wines.*
>
> 3. the juice, fermented or unfermented, of various other fruits or plants, used as a beverage, etc.: *gooseberry wine*; *currant wine.*
>
> 4. ……

40. The Commissioner considers that raw wine is also a beverage. Provided that the other specific requirements of Division 31 of the WET Act are satisfied, including the requirement that the relevant beverage contains more than 1.15% by volume of ethyl alcohol, raw wine will be a beverage that is subject to WET.

[11] 90 ATC 4553 at 4556 and 4557

41. Some winemakers purchase raw wine (wine that has undergone primary fermentation) and finish the wine by stabilising, fining and filtering, secondary fermentation (malolactic fermentation) if needed, maturation and racking to clarify the wine by removing unwanted solids.

42. Raw wine is the result of the initial (primary) fermentation of grapes or other fruits or vegetables. Consistent with the ordinary meaning of wine, raw wine is the fermented juice of grapes or other fruits or vegetables et cetera.

43. In order to make it more commercially saleable, raw wine may undergo further processing, including maturation, filtration and blending. However prior to these additional processes being undertaken, the raw wine possesses the essential characteristics of wine, which in accordance with its ordinary meaning is a drink, and in accordance with the principles expressed by Lockhart J in the Bristol-Myers case, is a beverage.

Rate of wine tax

44. The amount of tax is worked out by multiplying the taxable value[12] of the assessable dealing by 29%.[13]

How does the wine tax work?

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

46. The wine tax is normally a once only tax designed to fall on the last wholesale sale. Where wine is sold by wholesale to a retailer, for example, to a distributor, bottle shop, hotel or restaurant, wine tax is calculated on the selling price of the wine (excluding wine tax and GST).[14] If wine is not the subject of a wholesale sale, for example, it is sold by retail by the manufacturer at the cellar door or used by the manufacturer for tastings or promotional activities, alternative values are used to calculate the tax payable.

47. Wine tax is imposed on assessable dealings with wine, unless an exemption applies. If the dealing is taxable, wine tax is calculated on the taxable value of the dealing. If the wine, or some part of the wine, has already been subject to a taxable dealing,[15] then a credit for that earlier tax may be claimed as an offset against the tax payable on the later dealing.

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[12] See paragraphs 89 to 160 of this Ruling for discussion on taxable value.
[13] Section 5-5.
[14] The amount on which the wine tax is calculated may be increased in certain circumstances, for example, where the transaction is not at arm's length or to include the value of royalties or containers.
[15] Taxable dealing means a dealing in the Assessable Dealings Table in section 5-5 for which no exemption under Division 7 is available.

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

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

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

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

When does the wine tax apply from?

53. In most cases if the time of a taxable dealing with wine is on or after 1 July 2000, the wine tax applies to the dealing. An exception to this is a sale of wine by a retailer, for example a bottle shop, that purchased bulk wine at a price which included wine tax and then placed the wine in bottles or other containers on or after 31 August 2004. See the final dot point of paragraph 63 of this Ruling.

Does an entity need to register for wine tax?

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. An entity does not have a liability to pay wine tax on any assessable dealing with wine (other than a *customs dealing*) unless they are registered or are required to be registered for GST.[16]

[16] Subsection 5-5(2).

56. A customs dealing occurs when either:

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

What are assessable dealings?

Wholesale sales

57. The most common assessable dealing is a wholesale sale. A wholesale sale is a sale to an entity which purchases the wine for the purposes of resale.[17] A wholesale sale of wine is taxable[18] even if the wine has been taxed previously (although there is a credit[19] 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.[20]

Example 1 – 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.*

[17] Section 33-1.
[18] Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.
[19] Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.
[20] Section 33-1.

Retail sales

62. A retail sale[21] 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.

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;[22]
- retail sales of wine which were obtained by the seller wine tax free under quotation of the seller's ABN;[23]
- 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 wine tax in the price to the retailer. These sales by the retailer are referred to as untaxed sales.[24] If the winery is not registered and not required to be registered for GST, it is not liable for wine tax or GST and therefore does not include wine tax or GST in the price to the retailer. Where the retailer is registered or is required to be registered for GST, it is liable for wine tax on the untaxed sales. The retailer is also liable for GST on the sale of the wine;
- retail sales by a grape grower of wine produced by a contract winemaker from grapes supplied by the grape grower to the contract winemaker. These sales by the grape grower are also referred to as untaxed sales.[25] Where the grape grower is registered or is required to be registered for GST the grape grower is liable for wine tax on the untaxed sales. The supply of the services of the contract winemaker to the grape grower is not an assessable dealing as the charge is for the services provided by the contract winemaker and not for the sale of wine. The charge by the contract winemaker to the grape grower is not subject to wine tax, but is subject to GST if the contract winemaker is registered or is required to be registered for GST; and

[21] Section 33-1.
[22] Assessable Dealing AD2a in the Assessable Dealings Table in section 5-5.
[23] 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.
[24] Assessable Dealings AD2e and AD12e in the Assessable Dealings Table in section 5-5.
[25] Assessable Dealing AD2e in the Assessable Dealings Table in section 5-5; section 5-25.

- retail sales of wine by a retailer, for example, a bottle shop, that purchased bulk wine at a price which included wine tax and then placed the wine in bottles or other containers on or after 31 August 2004[26] (this does not include the situation where the retailer places packaged wine into a paper bag, carry bag or similar container at the time of the retail sale or places unpackaged wine into a container supplied by a customer).

Indirect marketing sales

64. Indirect marketing sales[27] are a type of retail sale that are assessable dealings even though the purchaser of the wine may have borne wine tax. These arrangements are assessable dealings to ensure that the wine is taxed on the full wholesale value.[28] In accordance with section 5-20 there is an indirect marketing sale[29] if the sale is a retail sale by an entity which is not the manufacturer of the wine and the sale occurs in either of the following circumstances:

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

[26] Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.
[27] Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5; section 5-20.
[28] See paragraphs 3.19 and 3.20 of the Explanatory Memorandum to the A New Tax System (Wine Equalisation Tax) Bill 1999.
[29] Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5; section 5-20.

(a) Retail sales made through another entity

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

- wine sold on consignment where a retailer sells wine on behalf of the owner of the wine as an agent;[30]
- door-to-door sales, party-plan sales of wine or internet sales of wine where the entities that conduct the sales are not employees of the seller; and
- wine sold at auction where an auctioneer is acting as agent for the seller of the wine and the sale is not a wholesale sale.

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

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

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

[30] Whether or not a retailer is acting as an agent of the owner of the wine will require an examination of the facts and circumstances in each case. General principles of agency are relevant and, in most cases, relevant documentation about the business relationship (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. See GSTR 2000/37 Goods and services tax: agency relationships and the application of the law for a discussion on general principles of agency arrangements and the operation of Division 153B of the GST Act.

68. Consignment sales undertaken on a 'sale or return' basis will not be indirect marketing sales. 'Sale or return' arrangements occur where wine is consigned by the original seller to a reseller but no sale takes place until a buyer is found at which time two sales occur; the first from the original seller to the reseller and the second from the reseller to the final buyer. The first sale by the original seller is a wholesale sale that will be an assessable dealing[31] and the original seller will be liable for WET on the sale. The second sale is a retail sale by the reseller.

Example 3 – Consignment sale undertaken on a 'sale or return' basis

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

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

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

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

[31] Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.

Example 4 – indirect marketing sale

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

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

Royalty-inclusive sales

74. Royalty-inclusive sales[32] are another category of retail sales that are assessable dealings even though the purchaser of the wine may have borne wine tax. Royalties paid before the last assessable dealing with wine will be covered by the special taxable value rules for royalty payments (see paragraph 129 of this Ruling). If the royalty payment is made after that time, then the amount of the royalty will be included in the value of any retail sale.[33]

75. Royalty[34] is defined as any amount which is paid or payable for the following things (or the right to do those things):

- doing anything that would be an infringement of copyright if done without permission of the copyright owner (as those terms are used in the *Copyright Act 1968*);
- making, using, exercising or vending an invention (as these terms are used in the *Patents Act 1990*);
- using a design that is of a kind capable of being registered under the *Designs Act 2003* (whether or not the particular design is registered under that Act or any other law);
- using a trade mark that is of a kind that is capable of being registered under the *Trade Marks Act 1995* (whether or not the particular trade mark is registered under that Act or any other law) but excluding a mark that relates to a service;
- using confidential information;

[32] Assessable Dealings AD2c and AD12c in the Assessable Dealings Table in section 5-5; section 5-15.
[33] See paragraph 3.17 of the Explanatory Memorandum to the A New Tax System (Wine Equalisation Tax) Bill 1999.
[34] Section 9-70.

- using machinery, implements, apparatus or other equipment;
- supplying scientific, technical, industrial, commercial or other knowledge or information;
- supplying assistance that is ancillary to and is supplied as a means to enable the application or enjoyment of any of the points above; and
- total or partial forbearance in respect of any of the points above.

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

- the sale is a retail sale;
- the sale occurs in the course of a business;
- the sale is not covered by another category of assessable dealing;
- the seller incurs a royalty, that is paid or payable, in connection with the wine; and
- the seller incurs a royalty at or before the time of the sale, or might reasonably be expected to incur such royalty after that time. Alternatively, the royalty is incurred by an associate of the seller or by an entity (except the manufacturer of the wine) under an arrangement with either the seller or an associate of the seller.[35]

77. The taxable value for an assessable dealing that is a royalty-inclusive sale is the amount that would be the notional wholesale purchase price if the manufacturer had incurred the royalty.[36] The notional wholesale purchase price[37] is the price, excluding GST and wine tax, for which it is reasonably expected that the wine could be purchased by wholesale in an arms-length transaction. In other words, for a royalty-inclusive sale the amount of the royalty is factored into the taxable value of the wine.

Example 5 – Royalty-inclusive sale

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

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

[35] Section 5-15.
[36] Assessable dealings AD2c AD12c in the Assessable Dealings Table in section 5-5.
[37] Section 33-1.

Application to own use

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

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

81. The definition of application to own use[38] excludes a sale of wine, consigning wine for sale on consignment and anything done with imported wine after importation but before it is locally entered. Application to own use also excludes using the wine as part of the process of manufacture or other treatment or processing of wine or other goods. This means that no liability to wine tax arises where wine, which has not previously been taxed, is used in this way. Examples of wine being used as part of the process of manufacture or other treatment or processing are where it is used for:

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

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

[38] Section 33-1.

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

- the manufacturer of the wine;[39]
- a person who obtained the wine under quote (see paragraphs 174 to 199 of this Ruling);[40] or
- a person who obtained the wine as untaxed wine (for example purchased wine from a manufacturer who is not registered and is not required to be registered for GST).[41]

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 wine tax on that particular wine. An example of this is a royalty-inclusive application to own use.[42] 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).[43]

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 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.[44]

[39] Assessable Dealing AD3b, in the Assessable Dealings Table in section 5-5.
[40] Assessable Dealings AD3c, AD13c in the Assessable Dealings Table in section 5-5; section 31-15.
[41] Assessable Dealings AD3a and AD13a in the Assessable Dealings Table in section 5-5; section 5-25.
[42] Assessable Dealings AD3d and AD13d in the Assessable Dealings Table in section 5-5; section 5-15.
[43] Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.
[44] Section 5-15.

Local entry

86. The WET Act sets out the situations that are assessable dealings with imported wine.[45] 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[46] from an inwards duty free shop is an assessable dealing.[47] A relevant traveller means a person (whether passenger or crew member) who has alighted from an international flight.

What value is used to calculate the wine tax?

88. Wine tax is calculated by multiplying the taxable value of a taxable dealing by 29%.[48] The discussion below refers to the normal taxable values which apply to arm's length transactions. These normal taxable values may be increased, for example, where the transaction is not at arm's length[49] or to include the value of royalties or containers.[50]

[45] Assessable Dealing AD10 in the Assessable Dealings Table in section 5-5; section 5-30.
[46] Section 33-1 and section 96B of the *Customs Act 1901*.
[47] Assessable Dealings AD4b and AD14b in the Assessable Dealings Table in section 5-5.
[48] Subsection 5-5(3).
[49] See paragraphs 158 to 160 of this Ruling.
[50] See paragraphs 75 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 wine tax and GST).[51] Taking into consideration the ordinary legal meaning of 'sale', the extension to the ordinary meaning of sale as specified in section 33-1 of the WET Act, and the definition of 'price' in section 33-1 of the WET Act, the Commissioner's view is that the phrase 'the price for which the wine is sold' means the total amount that the buyer promises, expressly or tacitly, to pay to get good title to the wine.[52]

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.[53]

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.[54] 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.[55]

94. The Commissioner considers 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 of the WET Act extends the meaning of 'sale' for the purposes of the WET Act to include barter or exchange. Therefore, for the purposes of the WET Act, 'sale' includes the transfer of the ownership of wine for both monetary and non-monetary amounts.

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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[51] Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.
[52] 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.
[53] Section 33-1.
[54] *Halsbury's Law of England*, 1983, vol. 41, 4th edn, Butterworths, London, paragraph 601.
[55] *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'[56].

Meaning of 'price'

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

(a) so far as the *consideration for the supply is consideration expressed as an amount of *money – the amount (without any discount for the amount of GST (if any) payable on the supply); and

(b) so far as the consideration is not consideration expressed as an amount of money – the *GST inclusive market value of that consideration.

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

(a) any payment, or any act or forbearance, in connection with a supply of anything; and

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

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

Judicial approach

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

> 12.6 The tax is levied at the wholesale level, with tax being paid on the value of the goods at the last wholesale sale. Levying the tax on the wholesale value achieves the relative price impacts on cask and bottled wine outlined in ANTS.
>
> 12.7 The WET policy objectives can only be implemented by carrying across the appropriate liability provisions of the WST as they are applicable to wine. This will ensure that the principles underlying the WET are familiar and concepts underlying the legislation well accepted.

[56] 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.

101. Although wine is now taxed under the WET Act, the basis on which wine is taxed is drawn from the sales tax system. Under the sales tax system, the normal taxable value for a wholesale sale (AD1a, AD1b and AD11b, in the Assessable Dealings Table in section 5-5) was the price (excluding sales tax) for which the goods were sold.[57] This is the same wording as used in the WET Act (except that the exclusion now refers to wine tax and GST).

102. In *E.M.I. (Australia) Limited v. FC of T*[58] (EMI case) Windeyer J said:

> …'the amount' for which a thing is sold means I consider the sum total of all moneys that the buyer promises, expressly or tacitly, to pay to, or for, the seller in order that he, the buyer, may get a good title to goods that he has agreed to buy.[59]

103. It is acknowledged that the decision in the EMI case was based upon the *Sales Tax Assessment Act (No 1) 1930* which referred to 'the amount for which the goods were sold', as opposed to the STAA 1992 and the WET Act which refer to 'the price for which the goods were sold'. In the EMI case, Windeyer J raised doubt over whether the same conclusion would have been reached if the words 'price' or 'consideration' had been used instead of 'amount'. However, the Commissioner considers that the decision is still relevant in the context of the WET Act. The reference to 'price' in the WET Act is not a reference to the ordinary legal meaning of 'price' but refers to the meaning of 'price' as defined in section 9-75 of the GST Act. This in turn refers to 'consideration' which is defined very broadly 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.[60] Therefore, where wine is sold under a contract with a sale price that includes delivery, the amount for which the wine is sold will include all the costs incurred up to the point of delivery.

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[57] Table 1 in Schedule 1 of the *Sales Tax Assessment Act 1992.*
[58] (1971) 45 ALJR 349; 71 ATC 4112; (1971) 2 ATR 325.
[59] 71 ATC 4112 at 4118 at page 4118.
[60] 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.

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. The views set out in paragraphs 104 and 105 of this Ruling are supported by the decision in *Commonwealth Quarries (Footscray) Pty Ltd v. Federal Commissioner of Taxation*[61] (Commonwealth Quarries case) which examined whether or not delivery charges formed part of the amount for which goods were sold in a sales tax context. In the Commonwealth Quarries case the sale contracts were for a single charge for goods to be sold and delivered at a particular place. The High Court considered what was supplied under the contracts was delivered goods as title did not pass until the goods were delivered.

Example 6 – sale price includes delivery

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.*

[61] (1938) 59 CLR 111.

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 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:*

$240 x 10 =	*$2,400*
Plus 1% of $2,400 =	*$24*
Taxable value =	*$2,424*

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 wine tax is payable, while others do not. Examples of trade incentive payments are trade discounts, settlement discounts, volume rebates, promotional rebates, co-operative advertising allowances and deferred credits.

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; and
- settlement discounts – these are discounts which relate to the value of the wine provided by the supplier and are allowed because payment is made in cash or is made promptly.

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.

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

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

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 75 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.[62]

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 hand made wooden display cases.*

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

[62] Section 9-65; section 9-70.

Apportionment of amounts where wine and other goods are sold together

132. If wine and other goods are packaged and sold together for one inclusive price, then the other goods will be treated separately for the purpose of calculating the amount for which the wine was sold. The amount for which the wine was sold is the price (excluding wine tax and GST) for which the wine could reasonably have been expected to have sold for separately.[63]

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

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

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

Price of package	*$40.00*
Wine tax (29% × $24)	*$6.96*
GST (10% × [$40 + $6.96])	*$4.70*
Total price (including wine tax and GST)	*$51.66*

[63] 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 wine tax 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:*

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

137. As discussed at paragraphs 104 to 110 of this Ruling, the price for which wine is sold will include delivery charges where wine is sold under a contract that includes delivery. In these circumstances, when calculating the taxable value of the wine, it is not appropriate to apportion the price between an amount for the wine and an amount for the delivery. The delivery is an integral and ancillary part of the sale of the wine and is not separately identifiable from the sale of the wine. Similarly, a price that comprises a finance charge that is required to be paid in order for a customer to obtain good title to the wine (see paragraphs 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.[64] 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.

[64] 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 given at cellar door or promotional work is undertaken.[65] The taxable value specified in the WET Act for these dealings with wine is the notional wholesale selling price.[66]

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

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

Notional wholesale selling price for grape wine

142. There are two methods available for working out the notional wholesale selling price for a taxable dealing that is either a retail sale (including an indirect marketing sale and a retail sale of wine that is placed in containers at a time after wine tax became payable on the wine by a person other than the seller) of grape wine or an application to own use which is connected with retail sales of grape wine.[71] The half retail price method is used unless the average wholesale price method is chosen.[72]

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[65] 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.
[66] 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 of this Ruling).
[67] Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5.
[68] Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.
[69] Assessable Dealings AD3c and AD13c in the Assessable Dealings Table in section 5-5.
[70] 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'.
[71] Section 9-25.
[72] Subsection 9-25(2).

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 wine tax and GST) of those sales;[73] and
- for applications to own use connected with retail sales of grape wine, is 50% of the price (including wine tax and GST) for which the entity would normally have sold the wine if the sale were a retail sale.[74]

Example 15 – wine tax 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 wine tax and GST). The winery uses the half retail price method to calculate the notional wholesale selling price for its retail sales.*

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

(50% × $22) × 29% = $3.19

GST payable by the winery is:

$22.00 ÷ 11 = $2.00

The average wholesale price method

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

- is of the same vintage as the grape wine to which the dealing relates; and
- is produced from the same grape varieties, or the same blend of grape varieties, as the grape wine to which the dealing relates,

are wholesale sales.[75]

147. The average wholesale price is worked out using the weighted average of the prices (excluding wine tax and GST) for wholesale sales (including exports) of grape wine that fall into the above category for the tax period.[76] See paragraphs 89 to 128 of this Ruling for a discussion of wholesale sales and price. When calculating the average wholesale price an entity is able to take into account any discounts, incentives, rebates and other payments that reduce the price for which the wine is sold.

[73] 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.
[74] Section 9-35.
[75] Subsection 9-25(3).
[76] Section 9-40.

Example 16 – wine tax 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 wine tax and GST). During the same tax period more than 10% of the winery's sales of wine of the same vintage and produced from the same grape varieties are wholesale sales. The winery chooses to use the average wholesale price method to calculate the notional wholesale selling price for its retail sales.*

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 wine tax and GST), and the remaining 30% are at $90 per dozen (excluding wine tax and GST). On this basis, the weighted average of the wholesale prices for wholesale sales made by the winery during the tax period is:*

(70% × $80) + (30% × $90) = $83 per dozen

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

29% × $83 = $24.07

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

$190 ÷ 11 = $17.27

Grape wine sold by the glass

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

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

can calculate the taxable value of the wine:

- using the half retail price method: the taxable value of a glass of wine is 50% of the price (including wine tax and GST) for which the wine is sold by the glass; or
- using the average wholesale price method: ascertain the number of bottles used to sell wine by the glass and use a taxable value per bottle equal to the average wholesale price for a bottle of the same wine (that is, of the same vintage and produced from the same grape varieties or blend of grape varieties). Note: An entity can only use this method if they satisfy the requirements set out in paragraphs 146 of this Ruling.

Notional wholesale selling price for wine other than grape wine

153. The half retail price method must be used as the notional wholesale selling price for a taxable dealing that is either a retail sale of wine that is not grape wine or an application to own use connected with retail sales of wine that is not grape wine.[77]

Wine other than grape wine sold by the glass

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

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

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

Notional wholesale selling 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 wine tax and GST) for which the wine could reasonably have been expected to be sold by wholesale under an arm's length transaction.[78]

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.[79] The GST importation value is the customs value plus the costs of transport, insurance and duty.[80]

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 wine tax and GST) for which the entity could reasonably have been expected to purchase the wine by wholesale under an arm's length transaction if the manufacturer or importer of the wine had incurred the royalty costs.[81]

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[77] Section 9-30.
[78] Section 9-45.
[79] Assessable Dealing AD10 in the Assessable Dealings Table in section 5-5.
[80] Section 33-1; section 195-1 of the GST Act; section 13-20 of the GST Act.
[81] Assessable Dealings AD2c, AD3d, AD12c and AD13d in the Assessable Dealings Table in section 5-5.

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

158. The wine tax liability on a non-arm's length transaction must be at least equal to the amount it would have been if the transaction had been an arm's length equivalent transaction.[82]

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

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

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

161. Where an entity sells wine by wholesale for a price that includes wine tax, they must specify the amount of the wine tax on the invoice given to the purchaser.[83] The wine tax can be specified as a separate amount for each item of taxable wine on the invoice on a line by line basis or as a total amount for all the taxable wine on the invoice.

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

What exemptions can apply?

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

- the dealing is a supply that is GST-free[84] or is a local entry that is a non-taxable importation for the purposes of the GST Act;[85]
- there is a quote given in respect of the dealing (see paragraphs 174 to 199 of this Ruling);[86]
- the dealing is a customs dealing covered by certain specified items in Schedule 4 to the *Customs Tariff Act 1995*;[87]

[82] Section 27-10.
[83] Section 27-5.
[84] Other than because of Subdivision 38-D (child care) of the GST Act.
[85] Section 7-5.
[86] Section 7-10.

- there is a local entry of wine that has been taxed while in bond or under the control of Customs;[88] and
- there is a local entry of wine which was exported from Australia and is subsequently returned to Australia in an unaltered condition.[89] This exemption applies where the importer has not previously received a refund of wine tax related to the export of the wine under the tourist refund scheme and is either the manufacturer of the wine or has previously paid wine tax when the wine was purchased or imported.[90]

164. If an exemption applies to an assessable dealing, then that dealing is not taxable and is therefore not subject to wine tax.[91]

Are sales to overseas travellers exempt?

GST free and wine tax free exports of wine by overseas travellers

165. Sales to overseas travellers who take delivery of the wine in Australia are subject to wine tax and GST[92] 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;[92A] and

[87] 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.
[88] Section 7-20.
[89] That is, without having been subject to any treatment, industrial processing, alteration or any other process since its export.
[90] Section 7-25.
[91] Division 7.
[92] Unless the wine is supplied under the sealed bag system.
[92A] 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.

- the wine is exported within 60 days[93] (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. Overseas travellers may be entitled to a refund of the wine tax and GST under the Tourist Refund Scheme at the point of departure from Australia if they still have the wine with them.[94] The Tourist Refund Scheme is administered by the Australian Customs and Border Protection Service (Customs).

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

- have borne wine tax on the wine;[95]
- purchase at least $300 (including wine tax and GST) of eligible goods from the one registered person (the purchase does not have to be entirely of wine);[96]
- hold a single tax invoice for the goods;[97]
- export the goods as accompanied baggage within 30 days after the day on which they were acquired;[98] and
- leave Australia at an airport or seaport that has a Tourist Refund Scheme facility.[99]

168. A refund under the Tourist Refund Scheme is not available if the wine has been partly consumed.[100] A refund is also not available where the purchaser is leaving Australia in the course of their employment as either the person in charge or command of an aircraft or ship, or as a member of the crew of an aircraft or ship.[101]

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[93] 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.
[94] 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).
[95] Paragraph 25-5(1)(a).
[96] Paragraph 25-5(1)(b); Regulation 168-5.04 of the GST Regulations.
[97] Regulation 168-5.05 of the GST Regulations.
[98] Regulation 168-5.09 of the GST Regulations.
[99] Paragraph 25-5.02(1)(b) of the WET Regulations; regulation 168-5.07 of the GST Regulations.
[100] Sub-regulation 25-5.02(2) of the WET Regulations.
[101] Paragraph 25-5.02(1)(b) of the WET Regulations; regulation 168-5.06 of the GST Regulations.

168A. From 1 July 2010, in addition to being able to claim a refund of WET through the Tourist Refund Scheme, for accompanied baggage, Australia's external Territory residents can purchase wine and claim a refund of WET when they export the wine back to their home territory as unaccompanied baggage, provided they are not registered or required to be registered for GST at the time the wine is purchased.[102A]

168B. An external Territory is Norfolk Island, Christmas Island or Cocos (Keeling) Islands. A resident of an Australian external Territory is 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.[102B]

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

- have borne wine tax on the wine;[102C]
- purchase at least $300 (including wine tax and GST) of eligible goods from the one registered person (the purchase doesn't have to be entirely of wine);[102D]
- hold a single tax invoice for the goods;[102E]
- export the goods as unaccompanied baggage to an external Territory within 60 days after the day on which they were acquired;[102F]
- 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;[102G]
- leave Australia at an airport or seaport that has a Tourist Refund Scheme facility;[102H] 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.[102I]

[102A] Subsection 25-5(1A); Paragraph 168-5(1A)(d) of the GST Act.
[102B] Paragraph 168 5(1A)(c) of the GST Act.
[102C] Paragraph 25-5(1A)(a).
[102D] Paragraph 25-5(1A)(b); Regulation 168-5.04 of the GST Regulations.
[102E] Paragraph 25-5(1A)(b); Regulation 168-5.05 of the GST Regulations.
[102F] Paragraph 25-5(1A)(b); Regulation 168-5.10B of the GST Regulations.
[102G] Paragraph 25-5(1A)(b); Regulation 168-5.10C(1)(c) of the GST Regulations.
[102H] Paragraph 25-5.02(1) of the WET Regulations; Regulation 168-5.07 of the GST Regulations.
[102I] Paragraph 25-5(1A)(c).

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

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

Sales from duty free stores

170. Overseas travellers can purchase wine from a Duty Free Store free of wine tax and GST under the sealed bag system.[103]

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

171. Where an entity exports the wine on behalf of the purchaser (including overseas travellers) and the entity does not reimport the wine, exemption from wine tax and GST applies provided the entity exports the wine within 60 days[104] 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.[105]

172. Where the consideration is provided in instalments, exemption from wine tax and GST applies provided the entity does not re-import the wine and the entity exports the wine within 60 days[106] after the earlier of:

- the day on which the entity receive any of the final instalment of the consideration for the supply of the wine; or
- the day the entity gives an invoice for the final instalment for the supply of the wine.[107]

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

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[102] Regulation 25-5.03 of the WET Regulations.
[103] Section 7-5 of the WET Act; item 7 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act; regulation 38-185.01 and Schedule 5 of the GST Regulations.
[104] The Commissioner may allow a further period.
[105] Section 7-5; item 1 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act.
[106] The Commissioner may allow a further period.
[107] Section 7-5 of the WET Act; item 2 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act.

What is quoting?

174. Quoting is a mechanism to relieve or defer wine tax on wine to a later assessable dealing or to give effect to exemption from wine tax for a particular supply of wine.[108]

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

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

Grounds for quoting

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

- sell the wine by wholesale or indirect marketing sale while the wine is in Australia;
- sell the wine by any kind of sale while it is in Australia and the quoter is, at the time of quoting, mainly a wholesaler (see paragraphs 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.[109]

However, an entity is not entitled to quote unless they are registered.[110]

178. There are no grounds for quoting if the purchaser purchases the wine with the intention of applying the wine to the purchaser's own use. Application to own use does not include using the wine as a material in manufacture or other treatment or processing of wine or other goods. If wine is purchased for these purposes it can still be purchased under quote.[111]

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

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[108] Sections 7-10 and 13-5.
[109] Subsection 13-5(1).
[110] Subsection 13-5(2).
[111] Section 33-1.

180. An entity is mainly a wholesaler at the time of quoting only if:[112]

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

181. For the purpose of determining whether an entity is mainly a wholesaler, the value of a sale of wine is the price for which the wine is sold (including wine tax and GST).[113]

182. A registered entity may also quote in special circumstances that fall outside the quoting grounds if the entity has received authorisation from the Commissioner.[114]

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.[115] 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 October 2004, an entity purchasing wine from a producer must indicate in the quotation if they intend to make a GST-free supply of the wine they are purchasing. Failure to notify the producer of this is an offence.[116] The entity will not need to notify the producer if they purchase wine into stock and subsequently make a GST-free supply of that wine unless they had the intention at the time of purchase of making a GST-free supply of that particular wine.

185. For example with reference to paragraph 184 of this Ruling, the entity may have established local and overseas customers. The entity knows that some of the wine they purchase as a common stock for local or export sale as occasion demands will be exported as GST-free supplies. When they purchase the wine they do not know which particular wine will be used to supply the local or the overseas customers. In this situation, they do not need to notify the producer when purchasing the wine for the common stock.

[112] Subsection 13-5(3).
[113] Subsection 13-5(3).
[114] Section 13-10.
[115] Section 13-20.
[116] Section 19-30.

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

187. Purchasers who are permitted to quote can quote on each purchase or, where appropriate, give a periodic quote to each supplier to cover their purchases of wine for periods up to one year.[117]

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.[118]

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

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

191. If an entity has given their supplier a periodic quotation and then makes a purchase on which they are not entitled to quote, they must notify their supplier that they are not quoting for that purchase.[119] Failure to do so is an offence.[120]

192. If an entity has given a periodic quotation that does not notify the producer that they intend to make a supply of the wine that will be GST-free, and at the time of purchase they do intend to make a supply of the wine that will be GST-free, they must notify the producer accordingly. Failure to do so is an offence.[121]

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

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

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

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[117] Section 13-15.
[118] Subsection 13-15(1).
[119] Subsection 13-15(3).
[120] Subsection 13-15(4).
[121] Section 19-30.

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

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

Who can sign the quotation?

198. Quotations of ABN should be made by the proprietor of the business or a person authorised to act for the proprietor. Persons authorised must have enough knowledge of the business so that they can speak with authority for the proprietor of the business about how the wine being acquired free of wine tax will be used. It is not necessary to advise the 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 the purchaser is entitled to quote (in all cases it is assumed that the purchaser is registered for GST):[122]

- The purchaser intends to sell the wine by wholesale.
- The purchaser intends to sell the wine by indirect marketing sales.
- The purchaser is a wine wholesaler (who sells exclusively or mainly by wholesale)[123] and intends to sell the wine.
- The purchaser is a winemaker who intends to blend the purchased wine with other wine.
- The purchaser is a winemaker who intends to use the wine for analysis and comparison with wine they are manufacturing.
- The purchaser, although selling wine mainly by retail, intends to sell the wine being purchased exclusively by wholesale.
- The purchaser intends to export the wine as a GST-free supply. An example of an export of wine being a GST-free supply is where it is exported (and is not re-imported) within 60 days (or such further period allowed by the Commissioner) after the earlier of the day any of the consideration is received or an invoice is issued for the sale of the wine.

[122] The standard grounds for quoting are set out in section 13-5.
[123] Subsection 13-5(3) and see paragraphs 180 and 181 of this Ruling.

- The purchaser is a Duty Free Store which sells to travellers who export the wine as accompanied baggage and the Duty Free Store operates under the sealed bag system (these sales are GST-free supplies by the Duty Free Store).
- The purchaser is a hospital which provides the wine to patients as part of a hospital meal (supply of the wine to patients as part of their meals is a GST-free supply by the hospital as provision of the wine is directly related to hospital treatment).
- The purchaser is a religious organisation which intends to supply the wine as an integral component of a religious service (this is a GST-free supply by the religious organisation).[124] Note: If the supplier is the producer of the wine, the religious organisation must advise the supplier of their intention to make a GST-free supply of the wine.
- The purchaser is a University/TAFE College which will supply the wine to students as part of course materials for a winemaker's course (where the students will consume or transform the wine this is a GST-free supply by the University/TAFE College).[125] Note: If the supplier is the producer of the wine, the University/TAFE College must advise the supplier of their intention to make a GST-free supply of the wine.

How does an entity pay the wine tax?

200. The net amount[126] for a tax period of an entity that engages in taxable dealings with wine (other than the local entry of imported wine) includes the sum of all amounts of wine tax payable by the entity that are attributable to that tax period less the sum of all amounts of wine tax credits to which the entity is entitled that arise during that tax period.[126A] This is done by entering the total amount of wine tax payable against Label 1C on the activity statement. The total of any wine tax credits is entered against Label 1D on the activity statement.

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

[124] Paragraph 13-5(1)(d).
[125] Paragraph 13-5(1)(d).
[126] Section 33-1, definition of net amount.
[126A] Sections 21-5 and 21-15

When does an entity pay the wine tax?

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

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 103 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. In these circumstances, in the case of a taxpayer who does not account for GST on a cash basis, the GST would commonly be attributed to the tax period in which the seller issues an invoice. However the sale, which is the taxable dealing, does not occur until a later period and the wine tax is attributable to the tax period in which the sale occurs.

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

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

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

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

[127] Section 21-10.
[128] Paragraph 5-5(2)(c) and section 21-10.
[129] Subsection 21-10(2).

Wine tax credits

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

- credits for overpaid wine tax;
- credits to avoid wine being taxed twice;
- producer rebates;
- export-related credits;
- import-related credits; and
- credits for bad debts.[130]

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

- A wholesaler purchases wine to sell by wholesale and, although satisfying the requirements to quote, the wholesaler forgets to quote their ABN and wine tax is included in the purchase price. The wholesaler is entitled to a credit for the wine tax borne on the wine when it was purchased.[131]
- A wine manufacturer purchases wine to blend with other wine and although satisfying the requirements to quote, the manufacturer forgets to quote their ABN and wine tax is included in the purchase price. The wine manufacturer is entitled to a credit for the wine tax borne on the wine when it was purchased.[132]
- A retailer/wholesaler sells wine by wholesale from stock the retailer/wholesaler purchased at prices which included the wine tax. The retailer/wholesaler is required to pay wine tax on the wine sold by wholesale, but is entitled to a credit for the wine tax borne on the wine when it was purchased by the retailer/wholesaler.[133]
- A retailer with stock which was purchased at prices which included wine tax sells wine to a purchaser who quotes an ABN. The retailer is entitled to a refund of the wine tax borne on the wine when it was purchased, provided the wine tax is excluded from the retailer's sale price.[134]

[130] The Wine Tax Credit Table in section 17-5.
[131] Credit Ground CR2 in the Wine Tax Credit Table in section 17-5.
[132] Credit Ground CR2 in the Wine Tax Credit Table in section 17-5.
[133] Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.
[134] Credit Ground CR6 in the Wine Tax Credit Table in section 17-5.

- A wholesaler sells wine by wholesale in taxable circumstances and pays wine tax on the sale. Subsequently the wholesaler allows a settlement discount on the sale. The wholesaler is entitled to a credit for the amount of wine tax included in the discount allowed.[135]
- A retailer with stocks of wine purchased at prices including wine tax sells wine to a customer overseas and exports the wine to the customer as a GST-free supply. The retailer is entitled to a credit for the amount of the wine tax borne on the exported wine provided the wine tax is excluded from the retailer's sale price.[136]
- A wholesaler sells wine by wholesale and pays wine tax on the sale. Part of the amount of the sale is later written off as a bad debt. The wholesaler is entitled to a credit for a proportion of the wine tax paid equal to the proportion of the debt written off.[137]
- A retailer purchases bulk wine at a price which includes wine tax, bottles the wine after 31 August 2004 and sells the bottled wine by retail. The retailer has a liability to pay wine tax on the bottled wine when it is sold by retail[138] and is entitled to a credit of the wine tax previously borne on the wine.[139]

Agreement with Commissioner on amount of credit

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

[135] Credit Ground CR1 in the Wine Tax Credit Table in section 17-5.
[136] Credit Ground CR11 in the Wine Tax Credit Table in section 17-5.
[137] Credit Ground CR15 in the Wine Tax Credit Table in section 17-5.
[138] Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.
[139] Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

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

- A wine exporter who purchased wine from a person registered for GST at a price which included wine tax sells the wine to a customer overseas and exports the wine as a GST-free supply. The exporter is entitled to a credit of the wine tax they have borne on the exported wine to the extent the wine tax is excluded from the exporter's sale price.[140] Where the exporter is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:

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

- An entity purchases wine from a wine producer or from a retail bottle shop and exports the wine whilst retaining ownership of the wine. The entity is entitled to a credit of the wine tax they have borne on the exported wine.[141] Where the entity is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:

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

- An entity purchases wine from a wine retailer and the invoice for the wine purchased does not specify the amount of wine tax borne. The entity then on sells the wine as a wholesale sale. The entity is entitled to a credit of wine tax[142] for the amount of wine tax borne. Where the entity is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:

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

[140] Credit Ground CR11 in the Wine Tax Credit Table in section 17-5.
[141] Credit Ground CR10 in the Wine Tax Credit Table in section 17-5.
[142] Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

- An entity (the first entity) who is registered for GST purchases wine from another entity who is not registered for GST and is not a wine retailer or wine producer. The first entity then exports the wine while retaining ownership of the wine. The first entity is entitled to a credit of the wine tax borne on the wine.[143] Where the first entity is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:

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

- An entity (the first entity) who is registered for GST purchases wine from an entity who is not registered for GST and is not a wine retailer or wine producer. The first entity sells the wine to a customer overseas and exports the wine as a GST-free supply. The first entity is entitled to a credit for the amount of wine tax they have borne on the purchase and which they exclude from the price for which they sell the wine.[144] Where the first entity is not in a position to know the amount of wine tax they have actually borne on the wine and therefore how much wine tax to exclude from the price, they may calculate the amount borne as follows:

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

How does an entity claim wine tax credits?

211. A registered entity is able to claim wine tax credits as a reduction in their net amounts due under the GST Act.[145] This is done by entering the total amount of wine tax credits being claimed against Label 1D on their business activity statement. There is no monetary limit for credits claimed as reductions in a registered entity's GST liability.

212. An entity that is not registered or required to be registered for GST, is able to claim credits as a direct refund from the Commissioner.[146] Direct refunds are not available for amounts totalling less than $200.[147] However, individual claims may be aggregated to reach the $200 minimum amount.

[143] Credit Ground CR10 in the Wine Tax Credit Table in section 17-5.
[144] Credit Ground CR11 in the Wine Tax Credit Table in section 17-5.
[145] Subsection 17-10(1) and section 21-15.
[146] Subsection 17-10(2).
[147] Section 17-15.

213. In the case of a credit arising in relation to a sale of wine, to be refundable, most of the credit grounds require that the wine tax must not have been passed on to the purchaser or, if passed on, have since been refunded to the purchaser.[148]

214. If it would otherwise be greater than the arm's length amount, the wine tax credit on a non-arm's length transaction must be reduced to the amount it would have been if the transaction had been an arm's length transaction.[149]

215. For tax periods prior to 1 July 2012, for persons registered or required to be registered for GST, claims for credits of wine tax must be made within four years of the end of the tax period in which the wine tax credit arises.[150] For tax periods from 1 July 2012, for persons registered or required to be registered for GST, claims for wine tax credits are subject to a time limit, generally four years from the date the entity lodged the return for the tax period.[150A]

216. For persons not registered and not required to be registered for GST claims for wine tax credits must be made within 4 years of the time when the wine tax credit arises.[151]

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

217. For tax periods prior to 1 July 2012, an entity that is liable to wine tax on a taxable dealing or is entitled to a wine tax credit, is required to keep records of all transactions that relate to the dealing or credit claim for a period of five years after completion of the transactions or acts to which they relate. For tax periods from 1 July 2012, an entity is required to keep records of all transactions that relate to the dealing or credit claim for the longest of:

- five years after the completion of the transactions or acts to which they relate;

---

[148] Credit ground CR5 in the table in section 17-5 is an example where there is no requirement that there be a passing on of the wine tax.
[149] Section 27-10.
[150] Subsection 17-10(1) and section 21-15; and subsection 105-55(1) of the TAA.
[150A] The table in section 17-5 of the WET Act specifies when a wine tax credit arises; section 17-10 of the WET Act specifies that if you are registered or required to be registered for GST then amounts of wine tax credits are included in the reduction of the net amount for the tax period in question under section 21-15 of the WET Act; and section 21-15 of the WET Act reduces the net amount for a tax period by the wine tax credits that arise during the tax period. Under section 155-15 of Schedule 1 to the TAA the Commissioner is treated as having made an assessment of a net amount when a GST return is lodged and given notice of that assessment on the same day. Under section 155-35 of Schedule 1 to the TAA amendments to the assessment may be made within the period of review, which starts on the day the notice of assessment is given and ends four years from the day after the notice was given.
[151] Subsections 17-10(2) and 17-10(3).

- the period of review for any assessment of a net amount to which those records, transactions or acts relate. In practical terms this means:
  - four years from the day after the entity lodges its GST return that takes into account the wine tax payable or wine tax credit entitlement unless the period of review is extended in the circumstances set out in section 155-35 of Schedule 1 to the TAA
  - for a customs dealing, four years from the day after Customs gives the entity 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, four years after the day on which the Commissioner gave notice of the last of the amendments.[152]

218. The records must be in English or readily accessible and convertible into English. The wine tax liability must also be able to be readily determined from the entity's records.[153]

Are there anti-avoidance provisions for wine tax?

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

220. This is because:

- Wine tax payable on taxable dealings (other than custom dealings) is included in the net amount under Division 17 of the GST Act.[154]
- Amounts of wine tax payable on customs dealings are treated as if they were amounts payable under the GST Act.[155]

Detailed contents list

221. Below is a detailed contents list for this WET Ruling:

Paragraph

[152] Section 382-5 of Schedule 1 of the TAA.
[153] Section 382-5 of Schedule 1 of the TAA.
[154] Section 21-5.
[155] Section 23-10.

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24 June 2009

References

Previous draft:

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Related Rulings/Determinations:

GSTR 2000/37; GSTR 2002/6; WETR 2002/1; WETR 2006/1; WETR 2009/2

Previous Rulings/Determinations:

WETR 2004/1

Subject references:

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

Legislative references:

- ANTS(WET)A 1999
- ANTS(WET)A 1999 5-5
- ANTS(WET)A 1999 5-5(2)
- ANTS(WET)A 1999 5-5(2)(c)
- ANTS(WET)A 1999 5-5(3)
- ANTS(WET)A 1999 5-10
- ANTS(WET)A 1999 5-15
- ANTS(WET)A 1999 5-20
- ANTS(WET)A 1999 5-25
- ANTS(WET)A 1999 5-30
- ANTS(WET)A 1999 Div 7
- ANTS(WET)A 1999 7-5
- ANTS(WET)A 1999 7-10
- ANTS(WET)A 1999 7-15
- ANTS(WET)A 1999 7-20
- ANTS(WET)A 1999 7-25
- ANTS(WET)A 1999 9-25
- ANTS(WET)A 1999 9-25(2)
- ANTS(WET)A 1999 9-25(3)
- ANTS(WET)A 1999 9-30
- ANTS(WET)A 1999 9-35
- ANTS(WET)A 1999 9-40
- ANTS(WET)A 1999 9-45
- ANTS(WET)A 1999 9-65
- ANTS(WET)A 1999 9-70
- ANTS(WET)A 1999 13-5
- ANTS(WET)A 1999 13-5(1)
- ANTS(WET)A 1999 13-5(1)(d)
- ANTS(WET)A 1999 13-5(2)
- ANTS(WET)A 1999 13-5(3)
- ANTS(WET)A 1999 13-10
- ANTS(WET)A 1999 13-15
- ANTS(WET)A 1999 13-15(1)
- ANTS(WET)A 1999 13-15(3)
- ANTS(WET)A 1999 13-15(4)
- ANTS(WET)A 1999 13-20
- ANTS(WET)A 1999 17-5
- ANTS(WET)A 1999 17-10(1)
- ANTS(WET)A 1999 17-10(2)
- ANTS(WET)A 1999 17-10(3)
- ANTS(WET)A 1999 17-15
- ANTS(WET)A 1999 17-40
- ANTS(WET)A 1999 19-30
- ANTS(WET)A 1999 21-5
- ANTS(WET)A 1999 21-10
- ANTS(WET)A 1999 21-10(2)
- ANTS(WET)A 1999 21-15
- ANTS(WET)A 1999 23-10
- ANTS(WET)A 1999 25-5
- ANTS(WET)A 1999 25-5(1)(a)
- ANTS(WET)A 1999 25-5(1)(b)
- ANTS(WET)A 1999 25-5(1A)
- ANTS(WET)A 1999 25-5(1A)(a)
- ANTS(WET)A 1999 25-5(1A)(b)
- ANTS(WET)A 1999 25-5(1A)(c)
- ANTS(WET)A 1999 27-5
- ANTS(WET)A 1999 27-10
- ANTS(WET)A 1999 27-15(1)
- ANTS(WET)A 1999 Div 31
- ANTS(WET)A 1999 31-1
- ANTS(WET)A 1999 31-2
- ANTS(WET)A 1999 31-3
- ANTS(WET)A 1999 31-3(b)(ii)
- ANTS(WET)A 1999 31-4
- ANTS(WET)A 1999 31-5
- ANTS(WET)A 1999 31-6
- ANTS(WET)A 1999 31-7
- ANTS(WET)A 1999 31-15
- ANTS(WET)A 1999 33-1
- ANTS(WET)R 2000
- ANTS(WET)R 2000 Div 25
- ANTS(WET)R 2000 25-5.02(1)
- ANTS(WET)R 2000 25-5.02(1)(b)
- ANTS(WET)R 2000 25-5.02(2)
- ANTS(WET)R 2000 25-5.03
- ANTS(WET)R 2000 31-2.01
- ANTS(WET)R 2000 31-3.01
- ANTS(WET)R 2000 31-3.01(2)
- ANTS(WET)R 2000 31-3.01(3)
- ANTS(WET)R 2000 31-3.01(3)(a)
- ANTS(WET)R 2000 31-3.01(3)(b)
- ANTS(WET)R 2000 31-3.01(3)(c)
- ANTS(WET)R 2000 31-4.01
- ANTS(WET)R 2000 31-6.01

- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-15
- ANTS(GST)A 1999 9-75
- ANTS(GST)A 1999 13-20
- ANTS(GST)A 1999 Div 17
- ANTS(GST)A 1999 Subdiv 38-D
- ANTS(GST)A 1999 38-185(1)
- ANTS(GST)A 1999 38-185(3)
- ANTS(GST)A 1999 38-185(3)(f)
- ANTS(GST)A 1999 38-185(4)(b)
- ANTS(GST)A 1999 Div 153B
- ANTS(GST)A 1999 Subdiv 153-B
- ANTS(GST)A 1999 Div 165
- ANTS(GST)A 1999 168-5(1A)
- ANTS(GST)A 1999 168-5(1A)(c)
- ANTS(GST)A 1999 168-5(1A)(d)
- ANTS(GST)A 1999 195-1
- ANTS(GST)R 1999 38-185.01
- ANTS(GST)R 1999 Div 168
- ANTS(GST)R 1999 168-5.04
- ANTS(GST)R 1999 168-5.05
- ANTS(GST)R 1999 168-5.06
- ANTS(GST)R 1999 168-5.07
- ANTS(GST)R 1999 168-5.09
- ANTS(GST)R 1999 168-5.10B
- ANTS(GST)R 1999 168-5.10C(1)(c)
- ANTS(GST)R 1999 Sch 5
- TAA 1953
- TAA 1953 Sch 1 105-55(1)
- TAA 1953 Sch 1 105-60 (repealed)
- TAA 1953 Sch 1 Sub div 155-B
- TAA 1953 Sch 1 155-15
- TAA 1953 Sch 1 155-35
- TAA 1953 Sch 1 357-60
- TAA 1953 Sch 1 Div 358
- TAA 1953 Sch 1 382-5
- STAA 1992
- STAA 1992 Sch 1
- Customs Act 1901 96B
- Customs Act 1901 113
- Customs Tariff Act 1995 Sch 4
- Copyright Act 1968
- Designs Act 2003
- Patents Act 1990
- Sales Tax Assessment Act (No 1) 1930
- Trade Marks Act 1995

Case references:

- Bristol-Myers Company Pty Ltd v. Commissioner Of Taxation (1990) 23 FCR 126; 90 ATC 4553; (1990) 21 ATR 417
- Commonwealth Quarries (Footscray) Pty Ltd v. Federal Commissioner of Taxation (1938) 59 CLR 111
- EMI (Australia) Ltd v. Federal Commissioner of Taxation (1971) 45 ALJR 349; 71 ATC 4112; (1971) 2 ATR 325

Other references:

- Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999
- Explanatory Memorandum to the A New Tax System (Wine Equalisation Tax) Bill 1999
- Halsbury's Law of England, 1983, vol. 41, 4th edn, Butterworths, London
- The Australian Oxford Dictionary 2004, Second Edition, Oxford University Press, Melbourne
- The Collins Concise Dictionary 1990, Harper Collins, New York
- The Macquarie Dictionary, [Multimedia], version 5.0.0.0, 1/10/01

ATO references

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Appendix A

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

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

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

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

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

Name of entity quoting

_____

Name of individual authorised to quote

_____

Signature of individual authorised to quote

_____

Date

_____

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

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

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

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

☐ The entity declares that at the time of making this periodic quote it **intends to make a GST-free supply** of all the wine it purchases, however, it undertakes to notify you at or before the time of the relevant assessable dealing if this intention changes for a particular purchase.*

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

Name of entity to whom quote is made

_____

Australian Business Number of entity to whom quote is made

_____

Name of entity making quote

_____

Name of individual authorised to quote

_____

Signature of individual authorised to quote

_____

Date

_____

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

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

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

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

Description of the wine

_____

Date of transaction

_____

Australian Business Number of entity to whom periodic quote was made

_____

Name of entity which made the periodic quote

_____

Australian Business Number of entity which made the periodic quote

_____

Name of individual authorised to make this declaration

_____

Signature of individual authorised to make this declaration

_____

Date

_____

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

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

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

Description of wine

_____

Date of transaction

_____

Australian Business Number of entity to whom periodic quote was made

_____

Name of entity which made the periodic quote

_____

Australian Business Number of entity which made the periodic quote

_____

Name of individual authorised to make this declaration

_____

Signature of individual authorised to make this declaration

_____

Date

_____

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

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

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

Description of wine

_____

Date of transaction

_____

Australian Business Number of entity to whom periodic quote was made

_____

Name of entity which made the periodic quote

_____

Australian Business Number of entity which made the periodic quote

_____

Name of individual authorised to make this declaration

_____

Signature of individual authorised to make this declaration

_____

Date

_____

A quotation to Customs should be in the following form:

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

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

_____

(insert relevant line numbers)

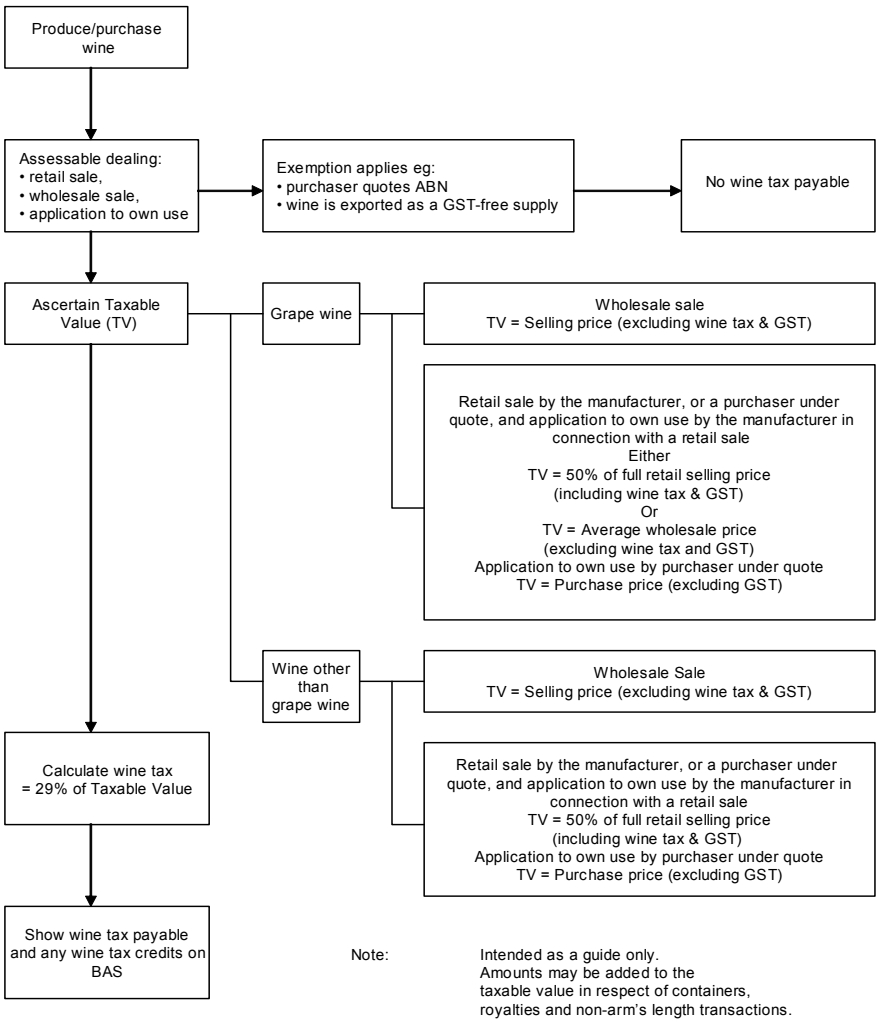
Note:

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

Appendix B

How the Wine Tax Works

Determining Liability



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.