WETR 2009/2EC4 - Compendium

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Public advice and guidance compendium – WETR 2009/2

This is a compendium of responses to the issues raised by external parties to draft WETR 2009/2 *Wine equalisation tax: operation of the producer rebate for other than New Zealand participants*.

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	Questions whether a Romalpa clause prevents a producer from owning the source product and therefore be unable to satisfy the 85% source product ownership test where the source product is further manufactured prior to payment. Has provided information from *Associated Alloys Pty Ltd v. ACN 001 452 106 Pty Ltd* (in liq) (2000) 46 ATR 91; (2000) 202 CLR 588; [2000] HCA, 25, which considers the application of a Romalpa clause where the raw material is used by the purchaser before it is paid for to manufacture other goods.	For the purposes of entitlement to the producer rebate, where an agreement between the supplier and producer contains a Romalpa clause, prima facie, this will indicate the producer does not own the source product prior to crushing (fermentation where relevant), and the producer will not be entitled to the rebate.
2	Requests the ruling provide clarification on whether wine blended after 1 January 2018, made from more than 50% 2017 or earlier vintage owned prior to 1 January 2018, can meet the transitional provision around 85% source product ownership given they did not own '**the wine'** (ie the wine on which they seek to claim rebate) from immediately before 1 January 2018 (as it did not exist prior to 1 January 2018). A strict interpretation of the law would indicate this wine could not access the transitional provision. A narrow interpretation of this provision was not the intention and request a view that *'2017 or earlier wine can*	Clarification provided. Where more than 50% of the total volume of the wine originated from source product crushed before 1 January 2018 and the producer owned that portion of the end product immediately before 1 January 2018 wine, the transitional provision would apply.

Issue No.	Issue raised	ATO Response/Action taken
	be blended at any time with other wine that the producer owned before 1 January 2018 or purchased after this date and still qualify as transitional wine, provided that the 2017 or earlier wine consists of more than 50% of the total wine volume and provided that the other tests are met.'	
3	Co-mingling (pooling) of grapes should not preclude a producer meeting the source product ownership test where the practice of co-mingling can be distinguished from the MIS considered in ATO ID 2009/98	No change made. We consider that the principle set out in the ATO ID does apply – that is, to be considered the producer of the wine, the wine resulting directly from the producer's inputs must be able to be separately identified. Further, producers must be able to substantiate that, of the end product, they owned at least 85% as source product. By virtue of co-mingling the source product, we do not believe the percentage of the final product resulting from source product owned by individual contributors immediately prior to crushing can be ascertained with certainty.