



# ***WETR 2008/D2 - Wine equalisation tax: operation of the producer rebate for other than New Zealand participants***

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This document has been finalised by WETR 2009/2.

 There is a Compendium for this document: **WETR 2009/2EC** .



## Wine Equalisation Tax Ruling

### Wine equalisation tax: operation of the producer rebate for other than New Zealand participants

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#### **Preamble**

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

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

### What this Ruling is about

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1. The *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) deals with a 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 draft Ruling as the wine tax although it is also known as the wine equalisation tax or WET.
2. The WET Act provides for a producer rebate in the form of a wine tax credit from 1 October 2004. This draft Ruling explains how the wine tax producer rebate operates for producers of wine other than New Zealand participants<sup>1</sup>. This draft Ruling also explains eligibility to claim the rebate, how the rebate is calculated and when and how a claim for the rebate may be made.
3. Unless otherwise stated, all legislative references in this draft Ruling are to the WET Act and all references to the WET Regulations are to the *A New Tax System (Wine Equalisation Tax) Regulations 2000* (WET Regulations).

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<sup>1</sup> See WETR 2006/1 *Wine Equalisation Tax: the operation of the producer rebate for producers of wine in New Zealand* for an explanation of how the wine tax producer rebate operates for producers of wine in New Zealand that have their wine exported to Australia.

## Date of effect

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

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

## Background

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### How does the wine tax work?

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

7. 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 Australian goods and services tax (GST).<sup>2</sup> If wine is not the subject of a wholesale sale, for example, it is sold by retail by the manufacturer at the cellar door or used by the manufacturer for tastings or promotional activities, alternative values are used to calculate the tax payable.

8. Normally for retailers (including bottle shops, hotels, restaurants and cafes) wine tax is included in the price for which the retailers 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.

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<sup>2</sup> 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.

9. Refer to Wine Equalisation Tax Ruling WETR 2004/1 Wine equalisation tax: the operation of the wine equalisation tax system<sup>3</sup> for a detailed discussion on how the wine tax works.

### **Producer rebates**

10. The WET Act provides a rebate of wine tax for producers of rebatable wine that are registered or required to be registered for GST in Australia. From 1 October 2004 to 30 June 2006, the maximum amount of rebate that an Australian producer (or group of associated producers)<sup>4</sup> could claim in a full financial year was A\$290,000, effectively offsetting wine tax on A\$1 million (wholesale value) of eligible sales and applications to own use per annum.

11. From 1 July 2006, the maximum amount of rebate an Australian producer (or group of associated producers) can claim in a full financial year is A\$500,000, which equates to approximately A\$1.7 million (wholesale value) of eligible sales and applications to own use per annum.<sup>5</sup>

12. The amount of the producer rebate is:

- (a) for wholesale sales,<sup>6</sup> 29% of the price for which the wine is sold<sup>7</sup> (excluding wine tax and GST).
- (b) for retail sales<sup>8</sup> and AOUs,<sup>9</sup> 29% of the notional wholesale selling price of the wine.<sup>10</sup>

13. From 1 July 2005, access to the producer rebate was extended to eligible New Zealand wine producers that have their wine exported to Australia. The operation of the producer rebate for New Zealand participants is described in Wine Equalisation Tax Ruling WETR 2006/1.

## **Previous Rulings**

14. When finalised this draft Ruling will replace paragraphs 121 to 135 inclusive of Wine Equalisation Tax Ruling WETR 2004/1. Until such time as WETR 2004/1 is withdrawn you will be protected under section 105-60 of the TAA to the extent that you have relied on paragraphs 121 to 135 of WETR 2004/1 to ascertain your entitlement to the producer rebate.

<sup>3</sup> Draft Ruling WETR 2008/D1 when finalised will replace WETR 2004/1.

WETR 2004/1 will be withdrawn upon publication of the final replacement Ruling.

<sup>4</sup> Section 19-20.

<sup>5</sup> Subsections 19-15(2) and 19-20(3).

<sup>6</sup> See paragraphs 22 to 26 of WETR 2004/1 for a discussion of 'wholesale sales'.

<sup>7</sup> Paragraph 19-15(1)(a).

<sup>8</sup> See paragraphs 27 to 28 of WETR 2004/1 for a discussion of 'retail sales'.

<sup>9</sup> AOU means application to own use. See paragraphs 32 to 35 of WETR 2004/1 for a discussion of 'application to own use'.

<sup>10</sup> Paragraph 19-15(1)(b). See paragraphs 85 to 99 of WETR 2004/1 for a discussion of 'notional wholesale selling price'.

## Ruling and Explanation

### Rebatable wine

15. *Producers of rebatable wine* may be entitled to a producer rebate.<sup>11</sup>

16. *Rebatable wine*<sup>12</sup> means grape wine, grape wine products, fruit or vegetable wine, cider or perry, mead or sake as defined in the WET Act.<sup>13</sup>

17. The definitions and examples of these various products are set out in Appendix A of this draft Ruling and are discussed in paragraphs 6 to 9 of WETR 2004/1.<sup>14</sup>

### Producer of rebatable wine

18. An entity is entitled to a producer rebate for *rebatable wine* if it is the producer of the wine.<sup>15</sup> Producer (of rebatable wine) is defined in section 33-1 and means an entity that:

manufactures the wine or supplies to another entity the grapes, other fruit, vegetable or honey from which the wine is manufactured.<sup>16</sup>

19. In broad terms, an entity is the producer of rebatable wine if it manufactures the wine from the base constituents (for example grapes for grape wine, fruit or vegetables for fruit or vegetable wine, honey for mead or rice for sake or grape wine for grape wine products).

20. An entity (the first entity) is also the producer of rebatable wine if it provides another entity with the base constituents (that is grapes, fruit or vegetables or honey) and the other entity manufactures the wine on behalf of the first entity.

21. Although rice is not specifically mentioned in the definition of producer of rebatable wine, the Commissioner considers rice falls within the meaning of fruit or vegetable.<sup>17</sup> Therefore, an entity that provides rice to another entity to make sake on its behalf will also be the producer of that rebatable wine.

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<sup>11</sup> Subsection 19-5(1).

<sup>12</sup> As defined in section 33-1.

<sup>13</sup> Sections 31-1, 31-2, 31-3, 31-4, 31-5, 31-6 and 31-7. See also WET Regulations 31-2.01, 31-4.01 and 31-6.01

<sup>14</sup> WETR 2004/1 is being revised and replaced. When the final replacement Ruling is published these references will be updated.

<sup>15</sup> Subsection 19-5(1).

<sup>16</sup> Section 33-1.

<sup>17</sup> In the context of the wine industry fruit or vegetable wine includes wine made from the complete or partial fermentation of fruit, vegetable, grains and/or cereals. See the *Australia New Zealand Food Standards Code*.

**Manufacture wine**

22. Manufacture is defined<sup>18</sup> in the WET Act to include:
- (a) production
  - (b) combining parts or ingredients so as to form an article or substance that is commercially distinct from the parts or ingredients
  - (c) applying treatment to foodstuffs as a process in preparing them for human consumption.

23. The definition of manufacture is an inclusive definition and extends the ordinary meaning of manufacture. In commenting on the similarly inclusive definition of 'manufacture' in section 3 of the *Sales Tax Assessment Act (No. 1) 1930*, Murray J stated in *Deputy Commissioner of Taxation v. Cohn's Industries Pty Ltd*:

...I am quite unable to see anything which should lead me to the view that the word 'includes' is intended to be, insofar as it is followed by para. (b) exhaustive. It seems to me that para. (a), (b) and (c) of the definition can all be fairly read as intended to extend the ordinary meaning of the term 'manufacture'.<sup>19</sup>

24. The definition of 'manufacture' in the WET Act also uses identical words to the first three paragraphs of the definition of manufacture in the sales tax legislation. The meaning of 'manufacture' has been considered in a number of sales tax cases. The Commissioner considers that the cases that examined that part of the sales tax definition as replicated in the WET Act apply equally to wine tax.

25. In *McNichol and Anor v. Pinch*<sup>20</sup> Darling J stated at page 361:

...the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made.<sup>21</sup>

26. This statement was quoted with approval in *Federal Commissioner of Taxation v. Jack Zinader Pty Ltd*.<sup>22</sup> In that case it was held that articles which resulted from the remodelling of fur garments were goods manufactured and sold within the meaning of the *Sales Tax Assessment Act (No. 1) 1930-1942* and were liable to tax under that Act. In his judgment Dixon J stated:

The argument is answered by the consideration that, according to the conclusion already stated, the process produces a different article. When that consideration is added to the fact that the actual work done and the procedure employed in producing the new, that is the distinct, article is characteristically a manufacturing process, it must follow that the 'goods' are 'manufactured' within the ordinary meaning of that term.<sup>23</sup>

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<sup>18</sup> Section 33-1.

<sup>19</sup> (1978) 9 ATR 479 at 480; 79 ATC 4025 at page 4027.

<sup>20</sup> [1906] 2 KB 352.

<sup>21</sup> [1906] 2 KB 352 at page 361.

<sup>22</sup> (1949) 78 CLR 336; (1949) 9 ATD 46.

<sup>23</sup> (1949) 78 CLR 336 at page 345.

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27. Whether or not the processes carried out by a particular entity constitute manufacture will be a matter of fact and degree. An entity that makes, from the base constituents, for example grapes, fruit or vegetables, honey or a rice, a beverage that satisfies the meaning of wine in section 31-1 manufactures wine. However, an entity that purchases bottled wine or bulk wine for bottling does not manufacture that wine and is not eligible for the producer rebate in relation to that wine.

28. The first limb of the definition of ‘manufacture’ refers to production.

29. *The Australian Oxford Dictionary*, 2004, Second Edition, Oxford University Press, Melbourne relevantly defines ‘production’ as:

1. the act or instance of producing; the process of being produced.

30. Produce is relevantly defined as:

2. manufacture (goods) from raw materials etc.

31. The meaning of ‘production’ in the definition of manufacture was considered by the High Court in *Federal Commissioner of Taxation v. Riley*.<sup>24</sup> Rich, Dixon and McTiernan JJ in their joint judgement stated:

By the statutory definition, manufacture includes production. This description is very wide. It appears to cover all operations conducted for the purpose of bringing tangible things into existence for sale.<sup>25</sup>

32. 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. The Commissioner’s view is that these are processes in the production of wine and that entities that carry out all these processes manufacture wine.

33. An entity that carries out only one or some of the above mentioned processes may not manufacture wine. Whether a particular process, or combination of processes that an entity conducts in relation to wine constitutes production, and therefore manufacture, requires examination of the relevant facts and circumstances. However filtering wine as part of the bottling process on its own would not be the manufacture of the wine.

34. The second limb of the definition of ‘manufacture’ refers to combining parts or ingredients so as to form an article or substance that is commercially distinct from the parts or ingredients.

35. The mixing together of two or more different wines (the inputs) to produce another wine, for example a blended wine satisfies the second limb of the definition of ‘manufacture’. The person who mixes the inputs together does not have to have produced the inputs.

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<sup>24</sup> (1935) 53 CLR 69.

<sup>25</sup> (1935) 53 CLR 69 at page 78.

*Example 1 – manufacture by combining two or more different wines*

36. *Feekle Wines Pty Ltd purchases bulk Cabernet Sauvignon wine from Winemaker A and bulk Merlot wine from Winemaker B. Feekle Wines blends the wines to produce their own distinctive Cabernet Merlot wine.*
37. *Feekle Wines Pty Ltd manufactures the Cabernet Merlot wine.*
38. The mixing of wine with other substances to produce another wine, for example a beverage that meets the requirements of a grape wine product, will also meet the second limb of the definition of manufacture.

*Example 2 – manufacturing a grape wine product*

39. *Good Drinks Pty Ltd makes a beverage that meets the definition of grape wine product. The beverage consists of 85% white wine, 10% lemonade and 5% flavours. Good Drinks Pty Ltd purchases the white wine from other wine makers and combines the ingredients to make the grape wine product.*
40. *Good Drinks Pty Ltd is the manufacturer of the grape wine product.*
41. The Commissioner also considers that an entity manufactures wine when it engages a contract wine maker who makes the wine on behalf of the entity, provided that the inputs and the resulting wine remains the property of the entity. The owner does not physically manufacture the wine, however the owner provides the requisite materials and specifications for wine to be manufactured, and the engagement of the contract winemaker is akin to engaging an employee to undertake the physical tasks of manufacture.
42. Although the entity that owns the wine does not carry out any of the physical processes of manufacture personally, by causing the wine to be manufactured on their behalf, the owner has undertaken the manufacture of the wine. In these circumstances the owner of the wine is the producer of that rebatable wine for the purposes of Division 19.
43. Having regard to the views expressed in paragraphs 41 and 42 of this draft Ruling the Commissioner considers that an owner of grape wine that supplies to a contract winemaker the grape wine and other materials and specifications to make a beverage that meets the definition of grape wine product, manufactures the grape wine product as defined in section 33-1. Therefore the owner of the grape wine is the producer of that rebatable wine for the purposes Division 19.



44. The third limb of the definition of manufacture is not relevant for the purposes of determining if an entity is a *producer of rebatable wine*. It is relevant in determining if a person is entitled to quote<sup>26</sup> for an assessable dealing because they will use the wine in manufacture or other treatments or processes which may not relate to, or result in other wine.<sup>27</sup> For example sherry may be used in the manufacture of cakes.

## Eligible sales and applications to own use

45. To be eligible to claim a producer rebate the producer must either:
- be liable for wine tax on taxable dealings during the financial year; or
  - sell wine in a dealing that would have incurred wine tax if the purchaser had not quoted at or before the time of the sale.<sup>28</sup>

### *Example 3 – incur wine tax*

46. *Tim's Tasty Wines Pty Ltd makes chardonnay. Tim's Tasty Wines is registered for GST and sells the chardonnay via cellar door sales.*

47. *Tim's Tasty Wines incurs wine tax on those sales and therefore satisfies the producer rebate requirements.*

### *Example 4 – would have incurred wine tax*

48. *Winemaker A is the producer of Cabernet Sauvignon wine. Feekle Wines Pty Ltd purchases bulk Cabernet Sauvignon wine from Winemaker A. Winemaker A is registered for GST. Feekle Wines quotes for the purchase from Winemaker A.*

49. *Winemaker A would have incurred wine tax if Feekle Wines had not quoted and therefore Winemaker A satisfies the producer rebate requirements for this dealing.*

## Exceptions

50. An entity is not entitled to the producer rebate if:<sup>29</sup>
- the purchaser quotes for the sale and notifies the entity at or before the time of the sale that they intend to make a GST-free supply of the wine; or
  - the entity has claimed a wine tax credit,<sup>30</sup> or a wine tax credit subsequently arises for the entity (other than a producer rebate), for the dealing with the wine.

<sup>26</sup> See paragraphs 53 to 60 of WETR 2004/1 for a discussion of eligibility to 'quote' in relation to a sale of wine.

<sup>27</sup> Paragraph 13-5(1)(c).

<sup>28</sup> Subsection 19-5(1).

<sup>29</sup> Section 19-10.

51. The approved form for quoting has provision for the purchaser to notify a producer that the purchaser intends to make a GST-free supply of the wine. This is not the only way in which the purchaser can notify a producer that the purchaser intends to make a GST-free supply of the wine. It is sufficient that they provide the producer with the information necessary to conclude that they will make a GST-free supply. For example, exporting wine is a GST-free supply, therefore, if a purchaser provides the producer with information that the wine will be exported they have notified the producer that they intend to make a GST-free supply.

52. Where an entity purchases wine from a producer and they intend to make a GST-free supply of the wine, the purchaser commits an offence if they do not notify the producer of that intention either at or before the time of the purchase.<sup>31</sup>

### **Amount of producer rebate**

53. The amount of a producer rebate is calculated as follows:<sup>32</sup>

- for wholesale sales – 29% of the price (excluding wine tax and GST) for which the wine was sold; and
- for retail sales and applications to own use – 29% of the notional wholesale selling price of the wine.

54. The maximum amount of producer rebate to which a producer is entitled for a financial year as from 1 July 2006 is \$500,000. However, if the producer is an associated producer (refer to paragraph 55 of this draft Ruling) of one or more other producers for a financial year, the maximum amount of producer rebates to which those producers are entitled as a group for each financial year as from 1 July 2006 is \$500,000.

### **Associated producer**

55. A producer is an associated producer of another producer for a financial year if, at the end of the financial year:<sup>33</sup>

- they are 'connected with'<sup>34</sup> each other. Generally they are 'connected with' each other if:
  - one controls the other;
  - both are controlled by the same third entity; or
  - one producer controls a second entity and the second entity controls the other producer;

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<sup>30</sup> See paragraphs 136 to 137 of WETR 2004/1 for a discussion of 'wine tax credits'.

<sup>31</sup> Section 19-30. The maximum penalty is 20 penalty units.

<sup>32</sup> Section 19-15.

<sup>33</sup> Section 19-20.

<sup>34</sup> 'Connected with' takes its meaning from section 328-125 of the *Income Tax Assessment Act 1997* but subsection 328-125(8) is omitted for these purposes.

- one is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions of the other in relation to their financial affairs;
- each of them is under an obligation (formal or informal), or might reasonably be expected to, act in accordance with the directions of the same third entity in relation to their financial affairs;
- one is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions of a third producer and the third producer is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions of the second producer in relation to their financial affairs.

## Claiming the producer rebate

56. The producer rebate is claimed in the activity statement for the tax period to which the wine tax on the dealing is attributed<sup>35</sup> by adding the rebate to the total amount of wine tax credits claimed and entering this total amount against Label 1D (wine equalisation tax refundable).

57. Any subsidy payable by the States or Territories is claimable from the relevant State or Territory department or authority. It must not be claimed on the activity statement.

## What happens if the producer rebate is over-claimed

58. If the amount of producer rebate that an entity claims exceeds the amount to which the entity is entitled for a financial year, the entity is liable to pay an amount equal to that excess.<sup>36</sup> The amount payable is treated as if it is wine tax payable and is attributable to the last tax period of the financial year in which the excess claim was made.<sup>37</sup>

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<sup>35</sup> Subsection 17-10(1), read in conjunction with the fourth column in the Wine Tax Credit Table in relation to CR9 and with section 21-15, indicates that producer rebates are claimed in the final tax period for the year. However, subsection 19-25(1) seems to contemplate (and arguably would otherwise be otiose) that producer rebates are claimed progressively throughout the year in the activity statement for each tax period. Accordingly, the Commissioner accepts that producer rebates may be claimed in the activity statement for the tax period to which the wine tax on the dealing is attributed. Where the entitlement for the producer rebate arises because you would have incurred wine tax if the purchaser had not quoted for the sale then the producer rebate is claimed in the period in which it would have been attributable if the purchaser had not quoted.

<sup>36</sup> Subsection 19-25(1).

<sup>37</sup> Subsection 19-25(4).

59. If an entity is a member of a group of associated producers and the rebate claimed by the group for a financial year is more than the maximum amount of producer rebates to which the group is entitled for the financial year, each member of the group is jointly and severally liable to pay an amount equal to the excess.<sup>38</sup> However, an entity will not be liable to pay an amount that exceeds the sum of the amounts of producer rebates that the entity claimed for the financial year.<sup>39</sup>

### ***Impact of volume rebates and discounts***

60. If an entity has allowed volume rebates or discounts which effectively reduce the price for which the wine is sold (refer paragraphs 112 to 116 of WETR 2004/1)<sup>40</sup> the entity will need to adjust the amount of the producer rebate it has claimed for these sales.

61. Where the volume rebate or discount is allowed after the end of the financial year in which the rebatable sale was made it may result in the entity over-claiming the producer rebate for the financial year. If this is the case, any amount of producer rebate over-claimed should be included as wine tax payable in the final tax period of the financial year in which the rebatable sale was made. If the entity has already lodged its activity statement for the final tax period of the financial year in which the rebatable sale was made, the entity will need to revise this activity statement.

## **Your comments**

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

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

- provide responses to persons providing comments; and
- publish on the Tax Office website at [www.ato.gov.au](http://www.ato.gov.au).

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<sup>38</sup> Subsections 19-25(2) and 19-25(3).

<sup>39</sup> Subsection 19-25(3).

<sup>40</sup> WETR 2004/1 is being revised and replaced. When the final replacement Ruling is published these references will be updated.

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

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## **Detailed contents list**

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**Commissioner of Taxation**

17 December 2008

*Previous drafts:*

Not previously issued as a draft

*Related Rulings/Determinations:*WETR 2002/1; WETR 2006/1;  
WETR 2008/D1*Previous Rulings/Determinations:*

WETR 2004/1

*Subject references:*

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

*Legislative references:*

- ANTS(WET)A 1999
- ANTS(WET)A 1999 13-5(1)(c)
- ANTS(WET)A 1999 17-10(1)
- ANTS(WET)A 1999 Div 19
- ANTS(WET)A 1999 19-5(1)
- ANTS(WET)A 1999 19-10
- ANTS(WET)A 1999 19-15
- ANTS(WET)A 1999 19-15(1)(a)
- ANTS(WET)A 1999 19-15(1)(b)
- ANTS(WET)A 1999 19-15(2)
- ANTS(WET)A 1999 19-20
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- ANTS(WET)A 1999 19-25(3)
- ANTS(WET)A 1999 19-25(4)
- ANTS(WET)A 1999 19-30
- ANTS(WET)A 1999 21-15
- ANTS(WET)A 1999 31-1

- ANTS(WET)A 1999 31-2
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- ANTS(WET)A 1999 31-7
- ANTS(WET)A 1999 33-1
- ANTS(WET)R 2000
- ANTS(WET)R 2000 31-2.01
- ANTS(WET)R 2000 31-4.01
- ANTS(WET)R 2000 31-6.01
- ITAA 1997 328-125
- ITAA 1997 328-125(8)
- Sales Tax Assessment Act (No. 1) 1930-1942
- Sales Tax Assessment Act (No. 1) 1930 3
- TAA 1953 Sch 1 105-60

*Case references:*

- Deputy Commissioner of Taxation v. Cohn's Industries Pty Ltd (1978) 9 ATR 479; 79 ATC 4025
- Federal Commissioner of Taxation v. Riley (1935) 53 CLR 69
- Federal Commissioner of Taxation v. Jack Zinader Pty Ltd (1949) 78 CLR 336; (1949) 9 ATD 46
- McNichol and Anor v. Pinch [1906] 2 KB 352

*Other references:*

- The Australian Oxford Dictionary, 2004, Second Edition, Oxford University Press, Melbourne

## ATO references

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 ATOLaw topic: Wine Equalisation Tax

**Appendix A****Rebatable Wines**

Set out below are the definitions of products for the purposes of the WET Act. The definitions incorporate the requirements of the regulations set out in the WET Regulations. The wine tax applies to alcoholic products which satisfy the definitions and contain more than 1.15% by volume of ethyl alcohol. Some examples of products that satisfy the various definitions and products that do not are provided – the examples are only covered by the definitions where they meet the requirements in the column on the left. Alcoholic products containing more than 1.15% by volume of ethyl alcohol that are not covered by the wine equalisation tax are subject to the excise/duty regime.

<b>Definitions</b>	<b>Examples</b>
<p><b>Grape wine</b></p> <p><i>Grape wine is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>is the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes; and</i></li> <li>• <i>does not contain more than 22% of ethyl alcohol by volume.</i></li> </ul> <p><i>Note: 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.</i></p>	<p>Grape wine includes:</p> <ul style="list-style-type: none"> <li>• table wines (red, white and rosé);</li> <li>• sparkling wines;</li> <li>• fortified wines; and</li> <li>• dessert wines.</li> </ul>
<p><b>Grape wine products</b></p> <p><i>A grape wine product is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>contains at least 70% grape wine;</i></li> <li>• <i>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) for example, in producing vermouth; and</i></li> <li>• <i>contains between 8% and 22% (inclusive) of ethyl alcohol by volume.</i></li> </ul>	<p>Grape wine products are generally traditional products that have been produced by the wine industry for many years. They include:</p> <ul style="list-style-type: none"> <li>• vermouth;</li> <li>• marsala;</li> <li>• green ginger wine (except green ginger wine with spirits such as scotch added);</li> <li>• wine based cocktails and creams that satisfy the requirements in the column on the left; and</li> <li>• imitation liqueurs (wine based).</li> </ul> <p>Grape wine products do not include:</p> <ul style="list-style-type: none"> <li>• wine coolers (unless they satisfy the requirements in the column on the left);</li> </ul>

	<ul style="list-style-type: none"> <li>• ready to drink (RTD) or designer drinks that contain a wine base (unless they satisfy the requirements in the column on the left);</li> <li>• RTDs or designer drinks that contain spirits (other than grape spirit). RTDs or designer drinks containing grape spirit must also satisfy the requirements in the column on the left in order to be included; and</li> <li>• spirit based (other than grape spirit) cocktails, creams and liqueurs.</li> </ul>
<p><b>Fruit or vegetable wine</b></p> <p><i>Fruit or vegetable wine is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>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;</i></li> <li>• <i>has not had added to it any ethyl alcohol from any other source except grape spirit or neutral spirit;</i></li> <li>• <i>has not had added to it any liquor or substance that gives colour or flavour except grape spirit or neutral spirit; and</i></li> <li>• <i>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) of ethyl alcohol by volume (Note: a product is only a fruit or vegetable wine after the addition of grape spirit or neutral spirit if that product met the definition of fruit or vegetable wine before the spirit was added).</i></li> </ul>	<p>Fruit or vegetable wines include:</p> <ul style="list-style-type: none"> <li>• table wine;</li> <li>• sparkling wine; and</li> <li>• fortified wine.</li> </ul> <p>Fruit or vegetable wines do not include:</p> <ul style="list-style-type: none"> <li>• ready to drink (RTD) or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges, et cetera. (unless they satisfy the requirements in the column on the left).</li> </ul>



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<p><b>Cider and Perry</b></p> <p><i>Cider or perry is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>is the product of the complete or partial fermentation of the juice or must of apples or pears;</i></li> <li>• <i>has not had added to it any ethyl alcohol from any other source; and</i></li> <li>• <i>has not had added to it any liquor or substance (other than water or the juice or must of apples or pears) that gives colour or flavour.</i></li> </ul>	<p>Cider and perry include:</p> <ul style="list-style-type: none"> <li>• traditional cider and perry;</li> <li>• draught cider and perry;</li> <li>• dry cider and perry; and</li> <li>• sweet cider and perry.</li> </ul> <p>Cider and perry do not include:</p> <ul style="list-style-type: none"> <li>• cider or perry that has had lemon, black currant or other fruit flavourings added; and</li> <li>• cider or perry that has had cola or other flavourings added.</li> </ul>
<p><b>Mead</b></p> <p><i>Mead is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>is the product of the complete or partial fermentation of honey;</i></li> <li>• <i>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit;</i></li> <li>• <i>has not had added to it any liquor or substance that gives colour or flavour other than:</i> <ul style="list-style-type: none"> <li>- <i>grape spirit or neutral spirit;</i></li> <li>- <i>honey, herbs and spices, all of which can be added at any time;</i></li> <li>- <i>caramel, provided it is added after the fermentation process is complete; or</i></li> <li>- <i>fruit or product derived entirely from fruit, provided:</i> <ul style="list-style-type: none"> <li>• <i>the fruit or product has not been fermented;</i></li> <li>• <i>the fruit or product is added to the mead before fermentation of the mead; and</i></li> <li>• <i>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;</i></li> </ul> </li> </ul> </li> <li>• <i>if fruit or product is added the mead contains between 8% and 22% (inclusive) of ethyl alcohol by volume, and</i></li> </ul>	<p>Mead includes:</p> <ul style="list-style-type: none"> <li>• honey mead;</li> <li>• fortified mead;</li> <li>• liqueur mead; and</li> <li>• spiced mead.</li> </ul>

<ul style="list-style-type: none"> <li>• <i>if grape spirit or neutral spirit has been added contains between 15% and 22% (inclusive) of ethyl alcohol by volume. 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.</i></li> </ul> <p><i>Note: 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.</i></p>	
<p><b>Sake</b></p> <p><i>Sake is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>is the product of the complete or partial fermentation of rice;</i></li> <li>• <i>has not had added to it any ethyl alcohol from any other source;</i> <i>and</i></li> <li>• <i>has not had added to it any liquor or substance that gives colour or flavour.</i></li> </ul>	<p>Sake includes:</p> <ul style="list-style-type: none"> <li>• fermented sake; and</li> <li>• rice wine.</li> </ul> <p>Distilled sake does not satisfy the definition and is not included.</p>