

TA 2009/6 - Use of uncommercial indirect marketing arrangements to reduce wine equalisation tax (WET)

⚠ This cover sheet is provided for information only. It does not form part of *TA 2009/6 - Use of uncommercial indirect marketing arrangements to reduce wine equalisation tax (WET)*

⚠ The Taxation Office view on this arrangement is set out in Wine Equalisation Tax Determination WETD 2010/1

⚠ This document has changed over time. This version was published on *1 April 2009*



Taxpayer Alert

TA 2009/6

The Taxation Office view on this arrangement is set out in Wine Equalisation Tax Determination [WETD 2010/1](#)

FOI status: may be released

Taxpayer Alerts are intended to be an "early warning" of significant new and emerging higher risk tax planning issues or arrangements that the Australian Taxation Office has under risk assessment, or where there are recurrences of arrangements that have been previously risk assessed.

Taxpayer Alerts will provide information that is in the interests of an open tax administration to taxpayers. Taxpayer Alerts are written principally for taxpayers and their advisers and they also serve to inform tax officers of new and emerging higher risk tax planning issues. Not all potential tax planning issues that the Tax Office has under risk assessment will be the subject of a Taxpayer Alert, and some arrangements that are the subject of a Taxpayer Alert may on further examination be found not to be of concern to the Tax Office. In these latter cases the Taxpayer Alert will be withdrawn and a notification published which will be referenced to that Taxpayer Alert.

Taxpayer Alerts will give the title of the issue (which may be a scheme, arrangement or particular transaction), briefly describe the issue and will highlight the features which are of concern to the Tax Office. These issues will generally require more detailed analysis to provide the Tax Office view to taxpayers.

Taxpayers who have entered into or are contemplating entering into an arrangement similar to that described in this Taxpayer Alert can seek a formal determination of the Tax Office's position through a private ruling (noting that the Taxation Administration Act 1953 sets out circumstances where the Commissioner may decline to issue such a ruling). Such taxpayers might also contact the tax officer named in the Taxpayer Alert and/or obtain their own advice.

Where a Taxpayer Alert provides guidance that a particular arrangement is or will be ineffective and that guidance is subsequently found to be incorrect and the taxpayer had relied on that guidance, the taxpayer is protected from paying a shortfall penalty and any interest charge that would otherwise be payable under the law.

This Taxpayer Alert is issued under the authority of the Commissioner.

TITLE: Use of uncommercial indirect marketing arrangements to reduce wine equalisation tax (WET)

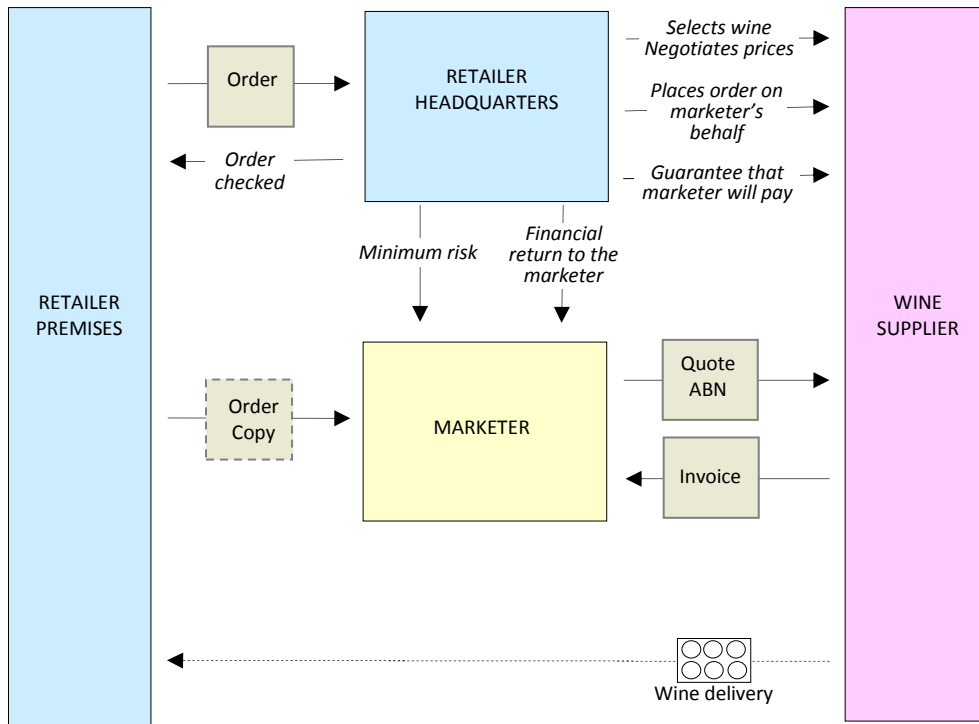
This Taxpayer Alert describes uncommercial and collusive arrangements that seek to reduce WET liability by using an interposed entity and an agency relationship to shift the point where WET liability is determined and to manipulate which methodology is used in determining it.

DESCRIPTION

This alert applies to arrangements with features substantially equivalent to the following:

1. A retailer either purchased, or would purchase, wine directly from suppliers to on-sell directly to customers through its retail outlets. WET would be imposed on the supplier calculated on the wholesale selling price.
2. An entity is interposed ('the marketer') between the suppliers and the retailer purportedly to purchase the wine that is to be sold by the retailer. The retailer then sells the wine through its retail outlets as agent for the marketer. WET is now imposed on the marketer for a lesser amount (under the half retail price method).
3. Under the terms of the arrangement, there are minimal requirements placed upon the marketer and the marketer bears little or no economic risk.
4. Suppliers are aware that they are contracting with the marketer and invoice the marketer for their supplies of wine.
5. The wine may be transported directly from the suppliers to the retailer's premises.
6. The retailer selects the wine to be purchased, and negotiates the prices to be paid, by the marketer. The retailer also sets the sale price of the wine sold from its retail outlets on behalf of the marketer.
7. The retailer guarantees that the marketer will pay the suppliers for the wine.
8. The marketer is entitled to receive some percentage of the sale price charged at the retailer's outlets. A significant part of this amount may be retained by the retailer as an agent's commission, and/or other charges making the actual amount received by the marketer relatively small.
9. Where the retail price mark up is relatively low, calculating WET using the half retail price method can result in a lower WET liability than if the WET liability arose on the prior wholesale sale. This enables the retailer to sell the wine to its customers at a lower price and/or retain a higher profit.

Figure: Use of uncommercial indirect marketing arrangements to reduce wine equalisation tax (WET)



FEATURES WHICH CONCERN US

The Tax Office considers that an arrangement of the type described above gives rise to taxation issues that include whether:

- (a) The sale of wine by the marketer is an indirect marketing sale as defined in section 5-20 of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act).
- (b) The marketer is entitled to quote its Australian Business Number (ABN) pursuant to section 13-5(1) of the WET Act.
- (c) The taxable value of the wine sold by the marketer is correctly based upon the notional wholesale selling price of the wine; calculated using the half retail price method.
- (d) The anti-avoidance provisions in Division 165 of the *A New Tax System (Goods and Services Tax) Act 1999* may apply.
- (e) Any entity involved in the arrangement may be a promoter of a tax exploitation scheme for the purposes of Division 290 of Schedule 1 to the *Taxation Administration Act 1953*.

The Tax Office is currently reviewing these arrangements.

Note 1: *Base penalties of up to 50% of the tax avoided can apply where Division 165 is applied. Base penalties of up to 75% of the tax avoided can apply where you make a false and misleading statement to the Commissioner. Reductions in base penalty will be available if the taxpayer makes a voluntary disclosure to the Tax Office. If you have any information about the current arrangement, phone us on 1800 177 006. Tax agents wanting to provide information about people or companies who may be promoting arrangements covered by this alert should call the tax practitioner integrity service on 1800 639 745.*

Note 2: *Penalties of up to 5,000 penalty units for individuals, 25,000 penalty units for bodies corporate or up to twice the amount of consideration received or receivable may apply to promoters of tax exploitation schemes under Division 290 of Schedule 1 to the Taxation Administration Act 1953. The Commissioner can also apply to the Federal Court of Australia for restraining and performance injunctions against promoters where prohibited conduct has occurred, is occurring or is proposed.*

Subject References:

Wine Equalisation Tax
Indirect marketing
General anti-avoidance rule
Promoter penalties

Legislative References:

A New Tax System (Wine Equalisation Tax) Act 1999
Section 5-5, AD2d
Section 5-20
Subdivision 9-B
Section 7-10
Subsection 13-5(1)

A New Tax System (Goods and Services Tax) Act 1999
Division 165

Taxation Administration Act 1953

[Schedule 1 Div 290](#)

Related Rulings/Determinations:

[WETD 2010/1](#)

Related Taxpayer Alerts:

[PS LA 2008/15](#) - Taxpayer Alerts

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