

TA 2009/7 - Uncommercial contract manufacture arrangements to claim the wine equalisation tax (WET) producer rebate

! This cover sheet is provided for information only. It does not form part of *TA 2009/7 - Uncommercial contract manufacture arrangements to claim the wine equalisation tax (WET) producer rebate*

! The ATO view on the arrangement described in TA 2009/7 is set out in WETD 2011/1.

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



Taxpayer Alert

TA 2009/7

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 In these latter cases the Taxpayer Alert will be withdrawn and a notification published which will be referenced to that Taxpayer Alert.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: Uncommercial contract manufacture arrangements to claim the wine equalisation tax (WET) producer rebate

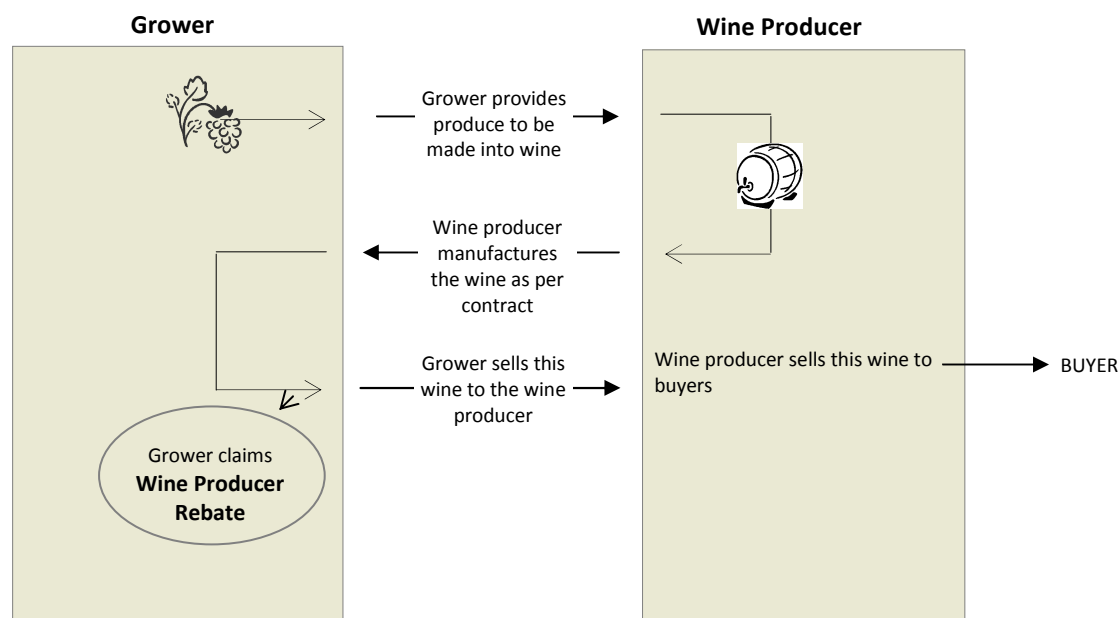
This Taxpayer Alert describes uncommercial and collusive arrangements where one or more growers use a contract winemaker, so each such grower can attempt to claim the WET producer rebate by retaining title to their produce and resulting wine, until a pre-arranged sale to the winemaker.

DESCRIPTION

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

1. A winemaker either purchased, or would purchase, grapes (or fruit or vegetables) from one or more growers to make wine. Such growers would not be eligible for the producer rebate. However, the winemaker may be eligible to the producer rebate subject to a maximum of \$500,000 per annum.
2. The winemaker enters into contracts with the grower/s to make wine from their produce on their behalf, on the basis that the grower/s retain ownership of that produce and resulting wine.
3. At or around the time of entering into the contract with the grower/s, the winemaker commits to buy the resulting wine (possibly at a predetermined price). This removes the majority of commercial risk to the grower/s from the winemaking process, such as that which may arise from the quality of the wine produced.
4. Once the wine is made by the winemaker, the winemaker pays the purchase price and the title of the wine is transferred to them.
5. The winemaker then sells the wine to a buyer in a transaction that is or would be liable to WET (i.e. if the purchaser had not quoted their ABN).
6. Each such grower claims a wine producer rebate of up to \$500,000 per annum each for the wine that they have 'sold' to the winemaker. The sum of the rebates claimed by the grower/s and the winemaker is likely to exceed the maximum that the winemaker would be entitled to claim from the production of wine in that year.
7. The basic features of this arrangement can be summarised diagrammatically as follows:

Figure: Uncommercial contract manufacture arrangements to claim the wine equalisation tax (WET) producer rebate



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 grower satisfies the definition of 'producer' as defined in section 33-1 of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act).
- (b) The grower is eligible for a producer rebate under Division 19 of the WET Act.
- (c) The anti-avoidance provisions in Division 165 of the *A New Tax System (Goods and Services Tax) Act 1999* may apply.
- (d) 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
Producer Rebate
Wine
Wine producer
General anti-avoidance rule
Promoter penalties

Legislative References:

A New Tax System (Wine Equalisation Tax) Act 1999
Division 19
33-1

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

Taxation Administration Act 1953
[Schedule 1 Div 290](#)

Related Taxpayer Alerts:

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

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