



# ***WETR 2002/1 - Wine Equalisation Tax: the WET rulings system***

 This cover sheet is provided for information only. It does not form part of *WETR 2002/1 - Wine Equalisation Tax: the WET rulings system*

 This document has changed over time. This is a consolidated version of the ruling which was published on *23 December 2009*



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## **Wine Equalisation Tax Ruling**

### **Wine Equalisation Tax: the WET rulings system**

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#### ***Preamble***

*This document is a public ruling for the purposes of section 105-60 of Schedule 1 to the Taxation Administration Act 1953.*

*If a statement in this ruling is later found to be incorrect or misleading and you make a mistake as a result of relying on this ruling, you will not have to pay any resulting underpaid tax nor will you have to pay any penalty. In addition, if you have relied on this ruling reasonably and in good faith you will not have to pay interest charges. You can rely on the information presented in this document which provides advice on the operation of the Wine Equalisation Tax system.*

*[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]*

#### **What this Ruling is about**

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1. This Ruling sets out the Commissioner's interpretation of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) in regard to the Wine Equalisation Tax (wine tax).
2. This Ruling considers:
  - how we will rule;
  - when you can rely on a ruling;
  - how to apply for a wine tax private ruling;
  - when we will not rule;
  - withdrawal of rulings; and
  - review rights.
3. All legislative references are to the TAA 1953 unless otherwise stated.

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## Date of effect

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4. This Ruling explains the Commissioner's view of the law as it applied from 1 July 2006, the date from which the amendments to Schedule 1 have effect. You can rely upon the Ruling on and from its date of issue for the purposes of section 105-60 of Schedule 1.

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## Definitions

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5. 'Net amount' has the meaning given by section 33-1 of the *A New Tax System (Wine Equalisation Tax) Act 1999* ('the WET Act') which relies on the meaning given by section 17-5 and section 126-5 of the *A New Tax System (Goods and Services Tax) Act 1999* ('the GST Act'). Amounts payable or refundable under the wine tax are adjustments to the net amount.

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## Ruling

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6. Although the WET rulings system has a legislative basis, the procedures are administratively based. Section 105-60 of Schedule 1 sets out the binding nature of rulings. However, it does not provide a mechanism for the release of WET public rulings or the procedures for applying for a WET private ruling. The WET rulings procedures outlined in this Ruling have their basis in section 356-5 of Schedule 1 that gives the Commissioner the general administration of each indirect tax law.

### How the Commissioner will rule

7. A 'ruling' for the purposes of section 105-60 of Schedule 1 means any ruling or advice given or published by the Commissioner including one that has been previously altered, but not including one given orally or by an assessment.

### *WET private rulings*

8. A letter or any other written advice we give to a particular entity is a WET private ruling.

### *WET public rulings*

9. All forms of written advice involving the interpretation of WET law that we issue other than WET private rulings are public

rulings within the terms of the TAA 1953 and are binding on the Commissioner.

10. WET public rulings, as defined in the TAA 1953, include WET public rulings and determinations identified on the Public Rulings Program. In addition, WET Bulletins, general information booklets, guides and fact sheets published by the Tax Office in relation to the WET Act and notices in the Government Gazette or special publications of the Australian Government Printer about the WET Act are also WET public rulings. However, WET Practice Statements and WET ATO Interpretative Decisions are not WET public rulings. The Commissioner considers that these documents are not 'rulings' for the purposes of section 105-60 of Schedule 1 because they do not constitute 'advice given or published by the Commissioner'.<sup>1</sup> As WET Practice Statements and WET ATO Interpretative Decisions are not public rulings they do not prevail over any earlier private rulings to the extent of any conflict.

11. WET rulings identified on the Public Rulings Program deal with issues which:

- are interpretative in nature;
- relate to the wine tax obligations of a particular industry or cross-section of taxpayers; or
- potentially affect a large number of taxpayers across a number of industries.

12. As with other rulings on the Public Rulings Program, WET public rulings on that Program are monitored regularly by the National Tax Liaison Group.

13. A draft WET ruling identified on the Public Rulings Program is not a ruling for the purposes of section 105-60 of Schedule 1 as it is not a 'ruling' or 'advice'. It is a consultative document which sets out the Commissioner's preliminary (but considered) view only.

14. The whole of the public ruling identified on the Public Rulings Program is binding under section 105-60 of Schedule 1, not just the 'Ruling' part.

15. A list of all WET rulings and publications are available on the Tax Office's website at [www.ato.gov.au](http://www.ato.gov.au). We will update this list regularly.

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<sup>1</sup> Practice statements do not contain interpretative advice (see Law Administration Practice Statement PS LA 1998/1), and ATO Interpretative Decisions (ATO IDs) are an indication only of the Commissioner's view on a particular issue (see Law Administration Practice Statement PS LA 2001/8). ATO IDs are instructions to Tax Office staff that the *Freedom of Information Act 1982* requires are circulated to the public and in the interests of transparency the Commissioner makes them available to the public through the Legal Database on the Tax Office website [www.ato.gov.au](http://www.ato.gov.au).

## When you can rely on our interpretation

16. All our WET public and WET private rulings will contain one of the following sets of words:

### *Specific advice private ruling*

This advice is a private ruling for the purposes of section 105-60 of Schedule 1 of the *Taxation Administration Act 1953*. You (the entity to which this advice relates) can rely on this ruling unless you have misstated or suppressed a material fact.

### *General advice private ruling*

This general advice is based upon a previously published ATO view about the operation of the WET law that may apply to your circumstances. This advice is a private ruling for the purposes of section 105-60 of Schedule 1 of the *Taxation Administration Act 1953* and to the extent that this general view of the law applies to your circumstances, the Commissioner will be bound by that advice. If you require specific advice dealing with your individual circumstances you should apply for a further private ruling using the 'Application for GST Private Ruling' form available on the Tax Office's website at [www.ato.gov.au](http://www.ato.gov.au) or by calling 13 28 66.

### *Public Ruling*

You can rely on the information presented in this document which provides advice on the operation of the Wine Equalisation Tax system; or

Businesses can rely on the information presented in this publication which provides advice on the operation of the Wine Equalisation Tax system.

However, the inclusion or non-inclusion of these words cannot override the legislation.

17. If you rely on a WET ruling that says that the law applies to you in one way and another WET ruling is subsequently issued advising that the law actually applies in a different way, you will not be liable for any more tax than would have been payable under the original WET ruling for the period prior to the alteration.

18. If you have underpaid a net amount, the amount underpaid will cease to be payable if the underpayment occurred in reliance on a WET ruling. Similarly, an amount overpaid as a wine tax refund by

the Commissioner will be taken to have been payable if the overpayment occurred in reliance on a WET ruling.

19. However, the underpaid amount will remain payable, or you will be liable to pay the overpaid refund, if we are satisfied that you made a material misstatement of fact or suppressed an important fact causing the first ruling to be given or continued.

20. If a WET private ruling is given to an entity and a subsequent WET public ruling is issued which conflicts with the WET private ruling, the WET public ruling will prevail from the date of issue of the WET public ruling.

21. If a WET private ruling is issued which conflicts with an earlier WET public ruling then the WET private ruling will prevail.

22. If you have an existing WET private ruling and there is a change in the law, you will be protected in respect of what you have done up to the date of that change.

23. You should take care to ensure that the information in the WET public ruling is the latest advice from the Tax Office. Where a change occurs, the Tax Office will take steps to alert taxpayers to that change.

### **How to apply for a WET private ruling**

24. WET rulings are an important part of the wine tax system. Although there is no provision in the legislation requiring us to issue a private ruling, we will not refuse a request without good reason. Where we decide not to give a WET private ruling, we will provide you with the reasons for that decision.

25. You do not need to seek confirmation that the terms of a WET public ruling apply to you unless you believe there is some reason why your particular circumstances differ from those outlined in the WET public ruling. If you seek such advice, we will give you a WET private ruling clarifying how the WET public ruling applies to you.

26. You may seek a WET private ruling on how the general anti-avoidance provisions in Division 165 of the GST Act apply to transactions you enter into or arrangements you undertake (see Division 21 of the WET Act). In these cases, you should be especially careful to explain all material facts, to set out why you think they do not fall within the specified terms of the provision, and to ensure that you implement the arrangement (if approved) as described.

27. You can make a request for a WET private ruling by using the form 'Application for GST private ruling'. Alternatively, you can submit a written request which must contain the following information:

- your name, address and a telephone contact number (this should be a business hours number to enable us to clarify details with you quickly);
- your Australian Business Number, if you have one, or your Tax File number;
- the facts on which your request is based including, where relevant, the tax period;
- the industry you operate in;
- whether you are aware of any WET private rulings given to anyone else on the topic;
- whether you have sought a previous ruling on the matter before; and
- whether the matter to be ruled on is subject of an audit or dispute.

28. If you are a professional adviser seeking a ruling on behalf of another person, you should also state that you are authorised by that person to act on their behalf in relation to wine tax matters.

## **When we will not rule**

29. We will not give a WET private ruling if:

- you already have a ruling on the issue and we consider the particular request to be unnecessary;
- you are, at the time of the request, the subject of an audit relating to the particular question being raised. (Note, however, that this will not usually prevent you seeking clarification from the auditor);
- it relates to a ‘reviewable wine tax decision’ under section 111-50 of Schedule 1;
- the topic to be covered is, at the time of the request, the subject of a formal dispute with the Commissioner (for example, an objection); or
- we have decided the matter for the purposes of an assessment.

**Withdrawal of rulings**

30. We may withdraw either the whole or a part of a WET public ruling by publishing a new ruling which is inconsistent with it, or part of it, and identifying that it is inconsistent, or by publishing a notice of withdrawal.

31. A WET public ruling has effect until such time as it is withdrawn or replaced by another WET public ruling. However, as outlined in paragraph 30 above, part of it may be withdrawn by a subsequent inconsistent ruling or by partial withdrawal of the ruling.

32. You can request that we withdraw a WET private ruling at any time.

**Review rights**

33. A WET ruling cannot be reviewed under the TAA 1953 as it is not a reviewable decision under subsection 111-50(2) of Schedule 1. Nor can it be reviewed under the *Administrative Decisions (Judicial Review) Act 1977*.

34. However, where you carry out a transaction that results in a net amount for a tax period, you can, under section 105-10 of Schedule 1, request the Commissioner to make an assessment under section 105-5 of Schedule 1 of your net amount for that tax period. Under section 111-50 of Schedule 1, you may object to the making of that assessment in the manner set out in Part IVC.

**Detailed contents list**

35. Below is a detailed contents list for this Ruling:

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## Commissioner of Taxation

18 December 2002

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*Previous draft:*

Not previously issued in draft form

*Subject references:*

- net amount
- public rulings
- reviewable decision
- taxation administration
- WET private ruling
- WET public ruling

- TAA 1953 Sch 1 105-10
- TAA 1953 Sch 1 105-60
- TAA 1953 Sch 1 111-50
- TAA 1953 Sch 1 111-50(2)
- TAA 1953 Sch 1 356-5
- ANTS(GST)A99 17-5
- ANTS(GST)A99 126-5
- ANTS(GST)A99 Division 165
- FOI 1982

*Other references*

*Legislative references:*

- ANTS(WET)A99 33-1
- ANTS(WET)A99 Div 21
- TAA 1953 Pt IVC
- TAA 1953 Sch 1 105-5

- PS LA 1998/1
- PS LA 2001/8

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ATO references:

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