

WETR 2004/1 - Wine equalisation tax: the operation of the wine equalisation tax system

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 This document has changed over time. This is a consolidated version of the ruling which was published on *22 November 2006*



Wine Equalisation Tax Ruling

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Preamble

*This document is a ruling for the purposes of section 37 of the **Taxation Administration Act 1953**. You can rely on the information presented in this document which provides advice on the operation of the Wine Equalisation Tax and Goods and Services Tax systems.*

[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

1. The *A New Tax System (Wine Equalisation Tax) Act 1999* (the WET Act) imposes 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 Ruling as the *wine tax* although it is also known as the wine equalisation tax.
2. This Ruling explains how the wine tax system operates and which alcoholic products are covered by the wine tax.
3. This Ruling replaces the Wine Equalisation Tax Ruling WETR 2002/2 which is withdrawn from the date of issue of this Ruling.
4. Unless otherwise stated, all legislative references in this Ruling are to the WET Act or the *A New Tax System (Wine Equalisation Tax) Regulations 2000* (the WET Regulations).

Date of effect

5. This Ruling explains the Commissioner's view of the law as it applied from 1 July 2000, except for the wine producer rebate measure¹ which has a date of effect of 1 October 2004 and the compliance improvement (repackaged wine) measure² which has a date of effect of 31 August 2004. These measures were introduced by the *Tax Laws Amendment (Wine Producer Rebate and Other Measures) Act 2004*. You can rely upon this Ruling on and from 15 December 2004 for the purposes of section 37 of the *Taxation Administration Act 1953* (TAA 1953). However, to the extent of any

¹ See paragraphs 62, 67, 69, 121 to 135.

² See paragraphs 19 and 28 (final dot point), Attachment B.

inconsistency between this Ruling and WETR 2002/2, you can still rely on WETR 2002/2 for the period from 1 July 2000 to the date of issue of this Ruling, subject to the wine producer rebate measure which has a date of effect of 1 October 2004 and the compliance improvement (repackaged wine) measure which has a date of effect of 31 August 2004. Wine Equalisation Tax Ruling WETR 2002/1 explains the WET rulings system and our view of when you can rely on our interpretation of the law in WET public and private rulings.

Note: the Addendum to this Ruling that issued on 22/11/2006 explains:

- the Commissioner's view of the law from 1 July 2005 in relation to the New Zealand producer rebate;
- the Commissioner's view of the law from 9 June 2005 in relation to the changes to the WET Regulations in respect of mead;
- the Commissioner's view of the law from 1 July 2006 in relation to the amount of the producer rebate.

You can rely on these amendments to WETR 2004/1, for the purposes of section 105-60 of Schedule 1 to the Taxation Administration Act (formerly section 37), from the date of issue of the Addendum.

Ruling and Explanation

Which alcoholic products are affected?

6. The wine tax applies to the following alcoholic products provided they contain more than 1.15% by volume of ethyl alcohol:

- grape wine;
- grape wine products (such as marsala, vermouth, wine cocktails and creams);
- fruit wines or vegetable wines; and
- cider, perry, mead and sake.

7. In this Ruling all of the above are commonly referred to as *wine*. However, in some circumstances, *grape wine* is treated differently, in which case it is referred to separately in this Ruling.

8. The alcoholic products listed above are defined in the WET Act.³ Their definitions and examples of the treatment of various types of products are set out in **Appendix A** to this ruling.

9. Alcoholic products with an alcohol content of more than 1.15% by volume of ethyl alcohol which do not meet the definitions are

³ 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 in relation to the requirements for some of the products listed in paragraph 6 of this Ruling.

subject to either excise duty (if they are locally produced) or customs duty (if they are imported). Designer drinks and pre-mixed alcoholic products commonly referred to as Ready-to-Drink products do not usually fall within the definitions of the above products. They are subject to excise or customs duty.

What is the rate of the wine tax?

10. The rate of the wine tax is 29%.⁴

How does the wine tax work?

11. The broad aim of the WET Act is to impose wine tax on dealings with wine in Australia. Dealings which attract wine tax are called *assessable dealings* and can include selling wine, using wine, or making a local entry of imported wine at the customs barrier.

12. 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 reseller, 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 GST).⁵ 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.⁶

13. Wine tax is imposed on *assessable dealings* with wine, unless an exemption applies. If the dealing is taxable, wine tax is calculated on the *taxable value*⁷ of the dealing. If the wine, or some part of the wine, has already been subject to wine tax, then a credit for that earlier tax may be claimed as an offset against the tax payable on the later dealing.

14. *Assessable dealings* (other than a customs dealing) will only be taxable if the entity which has the dealing is registered or is required to be registered for GST.

15. With the exception of some applications to own use, GST applies to all taxable *assessable dealings* with wine. The most common *assessable dealing* is a *wholesale sale* and for this type of dealing the *taxable value* is the selling price (exclusive of wine tax and GST).⁸ In this case, GST is calculated on the selling price of the wine including the wine tax.

⁴ Subsection 5-5(3).

⁵ 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.

⁶ See footnote 5.

⁷ See footnote 5.

⁸ See footnote 5.

16. An *assessable dealing* may be exempted from wine tax because the purchaser has a ground for quoting and has made a quote (see paragraphs 53 to 76 and **Appendix B**). The purchaser's Australian Business Number (ABN) is used for quoting.

17. Normally, wine tax is included in the price for which retailers (including bottle shops, hotels, restaurants and cafes) 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. This does not affect the entitlement of the retailer to claim an input tax credit for GST.

18. **Appendix C** sets out a schematic diagram showing the basics of how the wine tax works in relation to the more common assessable dealings with wine.

When does the wine tax apply from?

19. In most cases if the time of a taxable dealing with wine is on or after 1 July 2000, the wine tax applies to the dealing. An exception to this is a sale of wine by a retailer, for example a bottle shop, that purchased bulk wine at a price which included wine tax and then placed the wine in bottles or other containers on or after 31 August 2004 – see paragraph 28, final dot point.

Do you need to register for wine tax?

20. There is no separate registration requirement under the WET Act. Registration relates to registration under the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

21. You do not have a liability to pay wine tax on any *assessable dealing* with wine (other than a customs dealing) unless you are registered or are required to be registered for GST.⁹

What are assessable dealings?

Wholesale sales

22. The most common *assessable dealing* is a wholesale sale. A wholesale sale is a sale to an entity which purchases the wine for the purposes of resale.¹⁰ A wholesale sale of wine is taxable¹¹ even if the wine has been taxed previously (although there is a credit¹² for the earlier tax). This ensures that tax is imposed on the final wholesale sale.

23. Examples of the most common wholesale sales are:

⁹ Subsection 5-5(2).

¹⁰ Section 33-1.

¹¹ Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.

¹² Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

- a sale of wine by a winery to a retailer, for example, a bottle shop, hotel or restaurant; and
- a sale of wine by a distributor to a retailer, for example, a bottle shop, hotel or restaurant.

24. A sale of wine from stock in a retail store (or retail section of a store) to make up for a temporary shortage of stock of the purchaser is **not** a wholesale sale if the wine is of a kind that:

- is usually manufactured by the purchaser; or
- is usually purchased by the purchaser for resale.¹³

Example 1 – sale of wine that is not a wholesale sale

25. Restaurant A sells a small quantity of wine to a nearby restaurant, Restaurant B, which is experiencing a temporary shortage of stock of that particular wine. Restaurant B usually purchases its supplies of wine from a wholesaler but on this occasion needs the wine immediately.

26. The sale by Restaurant A to Restaurant B is not a wholesale sale, and if the wine is bought inclusive of wine tax by Restaurant A, no further wine tax is payable.¹⁴

Retail sales

27. A retail sale is a sale that is not a wholesale sale¹⁵ – usually a sale to a person who does not purchase the wine for the purpose of resale. There are a number of situations where retail sales of wine are *assessable dealings*.

28. Examples of the most common situations where retail sales (that is, sales to the end user of the wine) are *assessable dealings* are:

- cellar door sales by the winery which produced the wine;¹⁶
- sales of wine which was obtained by the seller wine tax free under quotation of the seller's ABN;¹⁷
- sales of wine by a retailer, for example, a bottle shop, hotel or restaurant, which purchased the wine from a winery which was not registered and was not required

¹³ Section 33-1.

¹⁴ If Restaurant A is registered or is required to be registered for GST, it has a liability to GST on the sale of wine to Restaurant B. If Restaurant B is registered or is required to be registered for GST it is entitled to an input tax credit for the GST paid when it purchased the wine.

¹⁵ Section 33-1.

¹⁶ Assessable Dealing AD2a in the Assessable Dealings Table in section 5-5.

¹⁷ Assessable Dealings AD2b and AD12b in the Assessable Dealings Table in section 5-5. If the sale is an *indirect marketing sale* (see paragraph 30) assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5.

to be registered for GST and did not include wine tax in the price to the retailer. These sales by the retailer are referred to as *untaxed sales*.¹⁸ If the winery is not registered or required to be registered for GST, it is not liable for wine tax or GST and therefore does not include wine tax or GST in the price to the retailer. Where the retailer is registered or is required to be registered for GST, it is liable for wine tax on the *untaxed sales*. The retailer is also liable for GST on the sale of the wine;

- sales by a grapegrower of wine produced by a contract winemaker from grapes supplied by the grapegrower to the contract winemaker. These sales by the grapegrower are also referred to as *untaxed sales*.¹⁹ Where the grapegrower is registered or is required to be registered for GST the grapegrower is liable for wine tax on the *untaxed sales*. The supply of the services of the contract winemaker to the grapegrower is not an *assessable dealing* as the charge is for the services provided by the contract winemaker and not for the sale of wine. The charge by the contract winemaker to the grapegrower is not subject to wine tax, but is subject to GST if the contract winemaker is registered or is required to be registered for GST; and
- sales of wine by a retailer, for example, a bottle shop, that purchased bulk wine at a price which included wine tax and then placed the wine in bottles or other containers on or after 31 August 2004²⁰ (this does not include the situation where the retailer places packaged wine into a paper bag, carry bag or similar container at the time of the retail sale or places unpackaged wine into a container supplied by a customer).

Indirect marketing sales and royalty-inclusive sales

29. There are several types of retail sales of wine that are assessable dealings even though the purchaser of the wine may have borne wine tax. These include *indirect marketing sales*²¹ and *royalty-inclusive sales*.²² The reason for taxing these retail sales is to

¹⁸ Assessable Dealings AD2e and AD12e in the Assessable Dealings Table in section 5-5.

¹⁹ Assessable Dealing AD2e in the Assessable Dealings Table in section 5-5; section 5-20.

²⁰ Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.

²¹ Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5; section 5-20.

²² Assessable Dealings AD2c and AD12c in the Assessable Dealings Table in section 5-5; section 5-15.

ensure that wine is taxed on a full wholesale value. In these circumstances, there is a credit available for the wine tax previously borne on the wine.

30. There is an *indirect marketing sale* if the sale is a retail sale by an entity which is not the manufacturer of the wine and the sale occurs in either of the following circumstances:

- the sale is made by the seller through another entity, other than an employee of the seller, who is acting for the seller under an arrangement to that effect; or
- the sale is made from premises that are:
 - used by an entity, other than the seller, mainly for making retail sales of wine; and
 - are held out to be the premises of, or premises used by, that other entity.²³

31. A *royalty-inclusive sale* occurs if the following conditions are met:

- the sale is a retail sale;
- the sale occurs in the course of a business;
- the sale is not covered by another category of *assessable dealing*;
- the seller incurs a royalty, that is paid or payable, in connection with the wine; and
- the seller incurs a royalty at or before the time of the sale, or might reasonably be expected to incur such royalty after that time. Alternatively, the royalty is incurred by an associate of the seller or by an entity (except the manufacturer of the wine) under an arrangement with either the seller or an associate of the seller.²⁴

Application to own use

32. The following entities, if they are registered or are required to be registered for GST purposes, will have a liability to wine tax on wine which they apply to their own use:

- the manufacturer of the wine;²⁵
- a person who obtained the wine under quote (see paragraphs 53 to 76);²⁶ or

²³ Section 5-20.

²⁴ Section 5-15.

²⁵ Assessable Dealing AD3b, in the Assessable Dealings Table in section 5-5.

²⁶ Assessable Dealings AD3c, AD13c in the Assessable Dealings Table in section 5-5; section 31-15.

- a person who obtained the wine as untaxed wine (for example purchased wine from a manufacturer who is not registered and is not required to be registered for GST).²⁷

33. The most common examples of wine being applied to own use are:

- wine used for cellar door tastings;
- wine used for tastings at exhibitions;
- wine used for wine shows;
- wine used for promotions;
- wine donated to charity;
- wine given to retailers, restaurants and so on, as samples;
- wine given to staff; and
- wine taken for personal consumption.

34. The definition of *application to own use*²⁸ excludes a sale of wine, consigning wine for sale on consignment and anything done with imported wine after importation but before it is locally entered. *Application to own use* also excludes using the wine as part of the process of manufacture or other treatment or processing of wine or other goods. This means that no liability to wine tax arises where wine, which has not previously been taxed, is used in this way. Examples of wine being used as part of the process of manufacture or other treatment or processing are where it is used for:

- blending with other wine;
- analysis and comparison;
- testing and checking in the manufacturing process (including maturation); and
- quality control in the manufacturing process (including maturation).

35. Wine included as bonus wine with the sale of other wine as part of a contract of sale is not considered to be applied to the seller's own use. The bonus wine is sold with the other wine and the price attributable to the bonus wine is accepted as being included in the sale price of the wine. An example of this is where a bonus bottle of wine is included with the sale of a dozen bottles. In this case it is accepted that 13 bottles of wine are sold for the price of 12 bottles.

²⁷ Assessable Dealings AD3a and AD13a in the Assessable Dealings Table in section 5-5; section 5-25.

²⁸ Section 33-1.

Royalty-inclusive application to own use

36. An application to own use of wine may be an assessable dealing even though someone has already borne wine tax on that particular wine. An example of this is a *royalty-inclusive application to own use*.²⁹ The reason for taxing this assessable dealing is to ensure that wine is taxed on the full wholesale value. In this circumstance, there is a credit available for the tax previously borne on the wine by the applier.³⁰

37. A *royalty-inclusive application to own use* occurs if the following conditions are met by the entity that applied the wine to its own use (the applier):

- the application to own use occurs in the course of a business;
- the application to own use is not covered by another category of assessable dealing;
- the applier incurs a royalty, that is paid or payable, in connection with the wine; and
- the applier incurs a royalty at or before the time of the application to own use, or might reasonably be expected to incur such royalty after that time. Alternatively, the royalty is incurred by an associate of the applier or by an entity (except the manufacturer of the wine) under an arrangement with either the applier or an associate of the applier.³¹

Local entry

38. A local entry of wine at the customs barrier is an *assessable dealing*.³²

Removal from a customs clearance area

39. Removal, from the customs clearance area, of wine purchased from an inwards duty free shop is an *assessable dealing*.³³

Do you need to specify the amount of wine tax on invoices?

40. Where you sell wine by wholesale, that is, to a reseller, for a price that includes wine tax, you must specify the amount of the wine

²⁹ Assessable Dealings AD3d and AD13d in the Assessable Dealings Table in section 5-5; section 5-15.

³⁰ Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

³¹ Section 5-15.

³² Assessable Dealing AD10 in the Assessable Dealings Table in section 5-5; section 5-30.

³³ Assessable Dealing AD14b in the Assessable Dealings Table in section 5-5.

tax on the invoice given to the purchaser.³⁴ The wine tax can be specified as a separate amount for each item of taxable wine on the invoice on a line by line basis or as a total amount for all the taxable wine on the invoice.

41. You do not have to specify the amount of wine tax where you sell wine by retail, that is, to the end user, even if wine tax is payable on that transaction.

What exemptions can apply?

42. In some circumstances an assessable dealing with wine is exempt from wine tax. There are 5 categories of exemption:

- the dealing is a supply that is GST-free³⁵ or is a local entry that is a non-taxable importation for the purposes of the GST Act;³⁶
- there is a quote given in respect of the dealing (see paragraphs 53 to 76);³⁷
- the dealing is a customs dealing covered by one of the specified items in Schedule 4 to the *Customs Tariff Act 1995*.³⁸
- there is a local entry of wine that has been taxed while in bond or under the control of Customs;³⁹ and
- there is a local entry of wine which was exported from Australia and is subsequently returned to Australia in an unaltered condition.⁴⁰ This exemption applies where the importer has not previously received a refund of wine tax related to the export of the wine under the tourist refund scheme and is either the manufacturer of the wine or has previously paid wine tax when the wine was purchased or imported.⁴¹

43. If an exemption applies to an *assessable dealing*, wine tax is not imposed on that dealing.⁴²

³⁴ Section 27-5.

³⁵ Other than because of Subdivision 38-D (child care) of the GST Act.

³⁶ Section 7-5.

³⁷ Section 7-10.

³⁸ Section 7-15. The specified items in Schedule 4 to the *Customs Tariff Act 1995* are items 4, 8, 15, 18A, 18B, 18C, 21, 21A, 24 and 33B.

³⁹ Section 7-20.

⁴⁰ That is, without having been subject to any treatment, industrial processing, alteration or any other process since its export.

⁴¹ Section 7-25.

⁴² Subsection 5-5(2).

Are sales to overseas travellers exempt?

44. Sales to overseas travellers who take delivery of the wine in Australia are subject to wine tax and GST⁴³ unless all of the following conditions are met:

- the purchaser is not registered or required to be registered for GST;
- the purchaser exports the wine from Australia;
- the wine has been entered for export within the meaning of section 113 of the *Customs Act 1901*;
- since the supply to the purchaser, the wine has not been altered or used in any way, except to the extent (if any) necessary to prepare it for export;
- the supplier has sufficient documentary evidence to show that the wine was exported; and
- the wine is exported within 60 days (or such further period as the Commissioner allows) after the earlier of:
 - the day on which the seller of the wine receives consideration for supply of the wine; or
 - the day on which the seller gives an invoice for the supply of the wine.⁴⁴

45. Overseas travellers may be entitled to a refund of the wine tax and GST under the Tourist Refund Scheme at the point of departure from Australia if they still have the wine with them.⁴⁵ The Tourist Refund Scheme is administered by the Australian Customs Service.

46. An overseas traveller may be eligible for a refund under the Tourist Refund Scheme if they:

- have borne wine tax on the wine;⁴⁶
- purchase at least \$300 (including wine tax and GST) of eligible goods from the one registered person (the purchase does not have to be entirely of wine);⁴⁷
- hold a single tax invoice for the goods;⁴⁸
- export the goods as accompanied baggage within 30 days after the day on which they were acquired;⁴⁹ and

⁴³ Unless the wine is supplied under the sealed bag system.

⁴⁴ Subsections 38-185(1) and (3) of the GST Act.

⁴⁵ Section 25-5; Division 25 of the WET Regulations; Division 168 of the A New Tax System (Goods and Services Tax) Regulations 1999 (the GST Regulations).

⁴⁶ Paragraph 25-5(1)(a) of the WET Act.

⁴⁷ Paragraph 25-5(1)(b) of the WET Act; Regulation 168-5.04 of the GST Regulations.

⁴⁸ Regulation 168-5.05 of the GST Regulations.

⁴⁹ Regulation 168-5.09 of the GST Regulations.

- leave Australia at an airport or seaport that has a Tourist Refund Scheme facility.⁵⁰

47. A refund under the Tourist Refund Scheme is not available if the wine has been partly consumed.⁵¹ A refund is also not available where the purchaser is leaving Australia in the course of their employment as either the person in charge or command of an aircraft or ship, or as a member of the crew of an aircraft or ship.⁵²

48. The amount of wine tax to be refunded under the Tourist Refund Scheme is calculated as 29% of half the purchase price of the wine (including wine tax and GST).⁵³ For example, if wine is purchased by the overseas traveller for \$320 including wine tax and GST the amount of wine tax to be refunded is calculated as follows:

$$29\% \times (\$320 \div 2) = \$46.40$$

49. Overseas travellers can purchase wine from a Duty Free Store free of wine tax and GST under the sealed bag system.⁵⁴

Is a sale of wine taxable where you export the wine on behalf of the purchaser?

50. Where you export the wine on behalf of the purchaser (including overseas travellers) and you do not reimport the wine, exemption from wine tax and GST applies provided you export the wine within 60 days⁵⁵ after the earlier of:

- the day on which you receive any consideration for the supply of the wine; or
- the day you give an invoice for the supply of the wine.⁵⁶

51. Where the consideration is provided in instalments, exemption from wine tax and GST applies provided you export (and you do not re-import) the wine within 60 days⁵⁷ after the earlier of:

- the day on which you receive any of the final instalment of the consideration for the supply of the wine; or
- the day you give an invoice for the final instalment for the supply of the wine.⁵⁸

⁵⁰ Paragraph 25-5.02(1)(b) of the WET Regulations; regulation 168-5.07 of the GST Regulations.

⁵¹ Sub-regulation 25-5.02(2) of the WET Regulations.

⁵² Paragraph 25-5.02(1)(b) of the WET Regulations; regulation 168-5.06 of the GST Regulations.

⁵³ Regulation 25-5.03 of the WET Regulations.

⁵⁴ Section 7-5 of the WET Act; item 7 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act; Regulation 38-185.01 and Schedule 5 of the GST Regulations.

⁵⁵ The Commissioner may allow a further period.

⁵⁶ Section 7-5; item 1 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act.

⁵⁷ The Commissioner may allow a further period.

52. You should retain evidence of the export in your records to support treating the wine as exempt.

What is quoting?

53. Quoting is a mechanism to relieve or defer wine tax on wine to a later *assessable dealing* or to give effect to exemption from wine tax for a particular supply of wine.⁵⁹

54. If a quote is made in respect of an *assessable dealing*, then that dealing is exempt from wine tax. A quote for a sale must be made at or before the time of the sale, and for a customs dealing at or before the time of the dealing. In each case the quote is only effective if made in the form approved by the Commissioner.

55. The only form of quotation is the quotation by an entity registered for GST of their ABN. Although quoting an ABN enables wine to be supplied without wine tax being payable, the supply may still be subject to GST.

Grounds for quoting

56. There are four standard grounds for quoting an ABN. There is a quoting ground if, at the time of quoting, the quoter intends to:

- sell the wine by wholesale or indirect marketing sale while the wine is in Australia;
- sell the wine by any kind of sale while it is in Australia and the quoter is, at the time of quoting, mainly a wholesaler (see paragraph 59 for an explanation of when you are mainly a wholesaler);
- use the wine as a material in manufacture or other treatment or processing, whether or not it relates to or results in other wine; or
- make a supply of wine that will be GST-free.⁶⁰

However, you are not entitled to quote unless you are registered.⁶¹

57. There is no quoting ground if the purchaser purchases the wine with the intention of applying the wine to the purchaser's own use. Application to own use does not include using the wine as a material in manufacture or other treatment or processing of wine or other goods so if the wine is purchased for this purpose it can still be purchased under quote.⁶²

⁵⁸ Section 7-5 of the WET Act; item 2 in the GST-free Exports of Goods table in subsection 38-185(1) of the GST Act.

⁵⁹ Sections 7-10 and 13-5.

⁶⁰ Subsection 13-5(1).

⁶¹ Subsection 13-5(2).

⁶² Section 33-1.

58. There is also no quoting ground if the purchaser intends to place the wine in containers and sell it by retail, unless the purchaser is mainly a wholesaler.

59. You are mainly a wholesaler at the time of quoting only if:

- wholesale sales and indirect marketing sales account for more than half the total value of all sales of assessable wine by you during the 12 months ending at the time of quoting; or
- you have an expectation (based on reasonable grounds) that wholesale sales and indirect marketing sales will account for more than half of the total value of all sales of assessable wine by you during the 12 months starting at the time of quoting.⁶³

For the purpose of determining whether you are mainly a wholesaler, the value of a sale of wine is the price for which the wine is sold (including wine tax and GST).⁶⁴

60. A registered entity may also quote in special circumstances that fall outside the quoting grounds if the entity has received authorisation from the Commissioner.⁶⁵

Form of quoting

61. A quotation of an ABN must be made in writing, in the approved form, at or before the time of the dealing.⁶⁶ The quotation can be made on the order for the wine, or any other document that contains definite identification of the wine that is the subject of the quotation and which is kept by the supplier, for example, delivery slip, acknowledgment of receipt, duplicate invoice and so on.

62. From 1 October 2004, if you are purchasing wine from a producer you must indicate in the quotation if you intend to make a GST-free supply of the wine you are purchasing. Failure to notify the producer of this is an offence.⁶⁷ You will not need to notify the producer if you purchase wine into stock and subsequently make a GST-free supply of that wine unless you had the intention at the time of purchase of making a GST-free supply of that particular wine. For example, you may have established local and overseas customers and, although you know that some of the wine you purchase as a common stock for local or export sale as occasion demands will be exported as GST-free supplies, when you purchase the wine you do not know which particular wine will be used to supply the local or the overseas customers. In this situation, you do not need to notify the producer when purchasing the wine for the common stock.

⁶³ Subsection 13-5(3).

⁶⁴ Subsection 13-5(3).

⁶⁵ Section 13-10.

⁶⁶ Section 13-20.

⁶⁷ Section 19-30.

63. If you are importing wine and are entitled to and wish to obtain it free of wine tax under quote, you must quote your ABN to Customs. You can authorise your Customs Broker to quote your ABN on your behalf.

64. Purchasers who are permitted to quote can quote on each purchase or, where appropriate, give a periodic quote to each supplier to cover their purchases of wine for periods up to one year.⁶⁸

65. There is no need to ask for approval from the Tax Office before using a periodic quotation. Purchasers and suppliers can agree on any period, not exceeding one year that best suits their needs.⁶⁹

66. A periodic quotation of an ABN can be accepted by any supplier.

67. The forms of quotation of your ABN which should be used from 1 October 2004 are set out in **Appendix B**.

68. If you have given your supplier a periodic quotation and then make a purchase on which you are not entitled to quote, you must notify your supplier that you are not quoting for the purchase.⁷⁰ Failure to do so is an offence.⁷¹

69. If you have given a periodic quotation that does not notify the producer that you intend to make a supply of the wine that will be GST-free, and at the time of purchase you do intend to make a supply of the wine that will be GST-free, you must notify the producer accordingly. Failure to do so is an offence.⁷²

70. The notification in each case should be in the form shown in **Appendix B**.

Quoting by telephone, fax and electronic orders

71. The Tax Office will accept a two-stage quoting process when wine is ordered and exemption is claimed over the telephone. This process consists firstly of an oral reference to the ABN when ordering the wine, followed up by the written quotation within a reasonable time.

72. In practice, this will allow a purchaser to claim exemption over the telephone, and provide the signed written quotation when paying the account. A single written statement that the wine was bought under quotation can cover all wine quoted for during the whole billing period, either by listing the invoice numbers on the quotation or by referring to the statement which includes the invoice numbers.

73. Where wine is ordered by facsimile, the full form of quotation should be used.

⁶⁸ Section 13-15.

⁶⁹ Subsection 13-15(1).

⁷⁰ Subsection 13-15(3).

⁷¹ Subsection 13-15(4).

⁷² Section 19-30.

74. Where wine is purchased from a particular supplier by means of electronic data interchange, there is no need for a written quotation of ABN provided the following conditions are satisfied:

- the purchaser indicates on the electronic order that their ABN is being quoted;
- the supplier agrees to accept an electronic order; and
- if the electronic order is lost or there are any other problems, the supplier must be able to provide evidence to the Tax Office that a quotation has taken place, for example, keep a hard copy.

Who can sign the quotation?

75. Quotations of ABN should be made by the proprietor of the business or a person authorised to act for the proprietor. Persons authorised must have enough knowledge of the business so that they can speak with authority for the proprietor of the business about how the wine being acquired free of wine tax will be used. It is not necessary to advise the Tax Office who is authorised to sign the quotation but a record must be kept.

Situations where the purchaser is entitled to quote

76. The following are examples of situations where the purchaser is entitled to quote (in all cases it is assumed that the purchaser is registered for GST):

- The purchaser is a wine wholesaler (who sells exclusively or mainly by wholesale) and intends to sell the wine.⁷³
- The purchaser is a winemaker who intends to blend the wine with other wine.⁷⁴
- The purchaser is a winemaker who intends to use the wine for analysis and comparison with wine they are manufacturing.⁷⁵
- The purchaser, although selling wine mainly by retail, intends to sell the wine being purchased exclusively by wholesale.⁷⁶
- The purchaser intends to export the wine as a GST-free supply. An example of an export of wine being a GST-free supply is where it is exported (and is not re-imported) within 60 days (or such further period

⁷³ Paragraph 13-5(1)(b).

⁷⁴ Paragraph 13-5(1)(c).

⁷⁵ Paragraph 13-5(1)(c).

⁷⁶ Paragraph 13-5(1)(a).

allowed by the Commissioner) after the earlier of the day any of the consideration is received or an invoice is issued for the sale of the wine.⁷⁷

- The purchaser is a Duty Free Store which sells to travellers who export the wine as accompanied baggage and the Duty Free Store operates under the sealed bag system (these sales are GST-free supplies by the Duty Free Store).⁷⁸
- The purchaser is a hospital which provides the wine to patients as part of a hospital meal (these sales are GST-free supplies by the hospital as provision of the wine is directly related to hospital treatment).⁷⁹
- The purchaser is a religious organisation which intends to supply the wine as an integral component of a religious service (this is a GST-free supply by the religious organisation).⁸⁰ Note: If the supplier is the producer of the wine, the religious organisation must advise the supplier of their intention to make a GST-free supply of the wine.⁸¹
- The purchaser is a University/TAFE College which will supply the wine to students as part of course materials for a winemaker's course (this a GST-free supply by the University/TAFE College).⁸² Note: If the supplier is the producer of the wine, the University/TAFE College must advise the supplier of their intention to make a GST-free supply of the wine.⁸³

What value do you use to calculate the wine tax?

77. Wine tax is calculated on the taxable value of a taxable dealing.⁸⁴ The discussion below refers to the normal taxable values which apply to arm's length transactions. These normal taxable values may be increased, for example, where the transaction is not at arm's length⁸⁵ or to include the value of royalties or containers.⁸⁶

⁷⁷ Paragraph 13-5(1)(d).

⁷⁸ Paragraph 13-5(1)(d).

⁷⁹ Paragraph 13-5(1)(d).

⁸⁰ Paragraph 13-5(1)(d).

⁸¹ Section 19-30.

⁸² Paragraph 13-5(1)(d).

⁸³ Section 19-30.

⁸⁴ Subsection 5-5(3).

⁸⁵ See paragraphs 107 to 108.

⁸⁶ See paragraphs 101 to 102.

Wholesale sales

78. For a taxable dealing with wine that is a wholesale sale, that is, a sale to a reseller, the taxable value is the price for which the wine is sold (excluding wine tax and GST).⁸⁷

Example 2 – wine tax and GST payable where taxable value is the price for which the wine is sold (excluding wine tax and GST)

79. Good Wines Winery Ltd sells a dozen bottles of wine to a restaurant for \$120 (excluding wine tax and GST). The taxable value is \$120.

80. The wine tax and GST payable on the wine by the winery are calculated as follows:

1 dozen wine	\$120.00	
Wine tax at 29%	<u>\$34.80</u>	
Sub total	\$154.80	
GST at 10%	\$15.48	(calculated on the price including the wine tax)
Total price	\$170.28	

Other taxable dealings including retail sales and applications to own use

81. For most other taxable dealings, the taxable value is the *notional wholesale selling price*.⁸⁸

82. In the wine industry, retail sales by a wine manufacturer are a regular occurrence. Sales by cellar door and by mail order are the most common retail sales. Wine is also regularly applied to the manufacturer's own use when tastings are given at cellar door or promotional work is undertaken.⁸⁹ The taxable value specified in the WET Act for these dealings with wine is the *notional wholesale selling price*.⁹⁰

83. The *notional wholesale selling price* is also used to determine the taxable value for retail sales which are *indirect marketing sales*⁹¹ and retail sales of wine which is placed in containers at a time after

⁸⁷ Assessable Dealings AD1a, AD1b and AD11b in the Assessable Dealings Table in section 5-5.

⁸⁸ Assessable Dealings Table in section 5-5.

⁸⁹ This would normally be an application to own use connected with retail sales of wines – defined in section 33-1 to mean an application to own use that is constituted by consuming or giving away wine, and is connected with making or attempting to make retail sales of wine.

⁹⁰ Assessable Dealings Table in section 5-5. A different taxable value applies where the application to own use is not connected with retail sales (see paragraph 95).

⁹¹ Assessable Dealings AD2d and AD12d in the Assessable Dealings Table in section 5-5.

wine tax became payable on the wine by a person other than the seller.⁹²

84. Where the wine has been purchased free of wine tax under quote and applied to own use the taxable value is the purchase price (excluding GST).⁹³ However, where the wine is imported under quote by the applier, the taxable value is the GST importation value.⁹⁴

Notional wholesale selling price for grape wine

85. There are two methods available for working out *the notional wholesale selling price* for a taxable dealing that is either a retail sale (including an *indirect marketing sale* and a retail sale of wine that is placed in containers at a time after wine tax became payable on the wine by a person other than the seller) of grape wine or an application to own use which is connected with retail sales of grape wine.⁹⁵ The *half retail price method* is used unless the *average wholesale price method* is chosen.⁹⁶

The half retail price method

86. Under this method, the *notional wholesale selling price*:

- for retail sales of grape wine, is 50% of the price (including wine tax and GST) of those sales; and
- for applications to own use connected with retail sales of grape wine, is 50% of the price (including wine tax and GST) for which you would normally have sold the wine if the sale were a retail sale.⁹⁷

Example 3 – wine tax and GST payable under half retail price method

87. *Good Wines Winery Ltd sells a bottle of grape wine at the cellar door to a retail customer, that is, the end user of the wine, for \$22 (including wine tax and GST). The winery chooses to use the half retail price method to calculate the notional wholesale selling price for its retail sales.*

88. *Wine tax payable by the winery is:*

$$(50\% \times \$22) \times 29\% = \$3.19$$

89. *GST payable by the winery is:*

⁹² Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.

⁹³ Assessable Dealings AD3c and AD13c in the Assessable Dealings Table in section 5-5.

⁹⁴ Assessable Dealing AD13c in the Assessable Dealings Table in section 5-5. See paragraph 96 for an explanation of 'GST importation value'.

⁹⁵ Section 9-25.

⁹⁶ Subsection 9-25(2).

⁹⁷ Section 9-35.

$$\$22.00 \div 11 = \$2.00$$

The average wholesale price method

90. You can choose to use this method if, during the tax period in respect of which the liability to pay wine tax arises, at least 10% by value of all sales of grape wine that:

- is of the same vintage as the grape wine to which the dealing relates; and
- is produced from the same grape varieties, or the same blend of grape varieties, as the grape wine to which the dealing relates,

are wholesale sales.⁹⁸

91. The average wholesale price is worked out using the weighted average of the prices (excluding wine tax and GST) for wholesale sales (including exports) of grape wine that fall into the above category for the tax period.⁹⁹ When calculating the average wholesale price you may take into account any discounts, incentives, rebates and other payments that reduce the price for which the wine is sold.

Example 4 – wine tax and GST payable under average wholesale price method

92. *Good Wines Winery Ltd sells 1 dozen bottles of grape wine at the cellar door to a retail customer for \$190 (including wine tax and GST). During the same tax period more than 10% of the winery's sales of wine of the same vintage and produced from the same grape varieties are wholesale sales. The winery chooses to use the average wholesale price method to calculate the notional wholesale selling price for its retail sales.*

93. *Good Wines Winery Ltd calculates that during the tax period 70% of wholesale sales of the same wine are at \$80 per dozen (excluding wine tax and GST), and the remaining 30% are at \$90 per dozen (excluding wine tax and GST). On this basis, the weighted average of the wholesale prices for wholesale sales made by the winery during the tax period is:*

$$(70\% \times \$80) + (30\% \times \$90) = \$83 \text{ per dozen}$$

94. *The wine tax payable by the winery under the average wholesale price method on the cellar door retail sale of 1 dozen bottles is:*

$$29\% \times \$83 = \$24.07$$

95. *The GST payable on the cellar door sale is:*

⁹⁸ Subsection 9-25(3).

⁹⁹ Section 9-40.

$$\$190 \div 11 = \$17.27$$

Grape wine sold by the glass

96. If you are a wine producer who sells grape wine by the glass at:

- cellar door;
- a winery restaurant; or
- wine shows and festivals and so on,

you can calculate the taxable value of the wine as follows:

- using the half retail price method: the taxable value of a glass of wine is 50% of the price (including wine tax and GST) for which the wine is sold by the glass; or
- using the average wholesale price method: ascertain the number of bottles used to sell wine by the glass and use a taxable value per bottle equal to the average wholesale price for a bottle of the same wine (that is, of the same vintage and produced from the same grape varieties or blend of grape varieties). N.B. You can only use this method if you satisfy the requirements set out in paragraphs 90 and 91.

Notional wholesale selling price for wine other than grape wine

97. The *half retail price method* must be used as the *notional wholesale selling price* for a taxable dealing that is either a retail sale of wine that is not grape wine or an application to own use connected with retail sales of wine that is not grape wine.¹⁰⁰

Wine other than grape wine sold by the glass

98. If you produce wine that is not grape wine and you sell the wine by the glass at:

- cellar door;
- a winery restaurant; or
- wine shows and festivals and so on,

you must calculate the wine tax using a taxable value of 50% of the price (including wine tax and GST) of the glass of wine.

¹⁰⁰ Section 9-30.

Notional wholesale selling prices for other dealings

99. The *notional wholesale selling price* for a taxable dealing with wine that is neither a retail sale of wine, nor an application to own use connected with retail sales of wine, is the price (excluding wine tax and GST) for which the wine could reasonably have been expected to be sold by wholesale under an arm's length transaction.¹⁰¹

Imported wine

100. An assessable dealing with wine which is taxable at the customs barrier – that is, a local entry – has a taxable value equal to the GST importation value of the wine.¹⁰² The GST importation value is the customs value plus the costs of transport, insurance and duty.¹⁰³

Additional amounts included in taxable value

101. Sometimes, not all the costs associated with wine are reflected in the taxable value. Where these costs are not already included, the WET Act requires amounts to be specifically added to the taxable value. Royalty payments associated with the wine and the value of the container in which the wine is sold are examples of costs which must be added to the taxable value of the wine where they have not already been included.¹⁰⁴

Royalty-inclusive sales and royalty-inclusive applications to own use

102. The taxable value for *royalty-inclusive sales* and *royalty-inclusive applications to own use* is the amount that would be the price (excluding wine tax and GST) for which you could reasonably have been expected to purchase the wine by wholesale under an arm's length transaction if the manufacturer or importer of the wine had incurred the royalty costs.¹⁰⁵

Apportionment of amounts where wine and other goods are sold together

103. If wine and other goods are packaged and sold together for one inclusive price, then the other goods will be treated separately for the purpose of calculating the amount for which the wine was sold. The amount for which the wine was sold is the price (excluding wine

¹⁰¹ Section 9-45.

¹⁰² Assessable Dealing AD10 in the Assessable Dealings Table in section 5-5.

¹⁰³ Section 33-1; section 195-1 of the GST Act; section 13-20 of the GST Act.

¹⁰⁴ Section 9-65; section 9-70.

¹⁰⁵ Assessable Dealings AD2c, AD3d, AD12c and AD13d in the Assessable Dealings Table in section 5-5.

tax and GST) for which the wine could reasonably have been expected to have sold for separately.¹⁰⁶

104. Sometimes where wine is packed with other goods and sold together for one inclusive price, that sale price is less than the sum of the individual prices of the goods. Effectively, the individual prices of the goods are discounted by being sold as a package in comparison to what the prices would have been had the items been sold separately. In the absence of evidence to show a different apportionment would be more appropriate, the discount allowed for the package should be applied on a pro rata basis to establish the prices of the individual items.

Example 5 – apportionment of amounts where wine and other goods are sold together

105. *Good Wines Winery Ltd sells wine with a wholesale price of \$30 (excluding wine tax and GST), a corkscrew with a wholesale price of \$15 (excluding GST) and a glass with a wholesale price of \$5 (excluding GST) by wholesale in a package for \$40 (excluding wine tax and GST). The total of the individual wholesale prices is \$50. This means that Good Wines Winery Ltd gives a discount from the sum of the individual wholesale prices of 20%. This discount is applied to the normal wine price to produce a taxable value of \$24 for calculation of the wine tax on the wholesale sale of the package by Good Wines Winery Ltd.*

106. *The wine tax and GST payable by Good Wines Winery Ltd is calculated as follows:*

<i>Price of package</i>	<i>\$40.00</i>
<i>Wine tax (29% × \$24)</i>	<i>\$6.96</i>
<i>GST (10% × [\$40 + \$6.96])</i>	<i><u>\$4.70</u></i>
<i>Total price (including wine tax and GST)</i>	<i>\$51.66</i>

Non-arm's length transactions (including staff sales, shareholder sales and sales to grape growers)

107. The wine tax liability on a non-arm's length transaction must be at least equal to the amount it would have been if the transaction had been an arm's length equivalent transaction.¹⁰⁷

¹⁰⁶ Subsection 27-15(1).

¹⁰⁷ Section 27-10.

108. Sales to staff, shareholders and grape growers at discounted prices are considered to be non-arm's length sales. Accordingly, wine tax for these sales is required to be paid based on prices that would be used in a similar arm's length transaction. For example, staff may be charged \$100 (including wine tax and GST) per dozen for a quantity of wine while the normal retail price for the same wine sold in the same quantity is \$150 (including wine tax and GST) per dozen. Wine tax on the staff sale should be calculated by reference to the normal retail price of \$150 per dozen (wine tax payable is \$21.75 per dozen using the half retail price method).

Delivery charges: freight and insurance costs

109. Normally, the price for which wine is sold includes charges for freight, postage or insurance where the wine is sold under a contract that provides that the sale price includes delivery. In these circumstances, property in the wine usually passes to the purchaser when it is delivered to the purchaser. The treatment of the charges in these circumstances is as follows:

- the charges for freight, postage or insurance are included in the taxable value used to calculate the wine tax for wholesale sales of wine;
- the charges for freight, postage or insurance are included in the retail selling price of the wine when calculating the *notional wholesale selling price* for retail sales of the wine using the *half retail price method*; and
- when calculating the *notional wholesale selling price* for retail sales of grape wine using the *average wholesale price method*, the wholesale prices on which the *average wholesale price method* is based includes charges for freight, postage and insurance where these charges form part of the wholesale selling price of the wine.

110. However, where delivery is the subject of a separate contract, charges for freight, postage or insurance will not usually form part of the sale price. It will be clear that charges for freight, postage or insurance will not form part of the sale price when:

- the parties to the contract of sale genuinely intend property in the wine to pass without delivery at the price stated (for example, there are no additional charges to customers who arrange for their own delivery and reasonable access is provided for them to collect the wine themselves); and
- the amount for delivery is a competitive commercial charge, rather than reflecting a reduction in the price of the wine. That is, the charge does not exceed the amount that would have been charged to the buyer by an independent carrier (taking into account all the

circumstances surrounding the transaction, including the buyer's ability to negotiate discounts).

111. The treatment of the charges for freight, postage and insurance in circumstances where they do not form part of the sale price is as follows:

- The charges for freight, postage or insurance do not need to be included in the taxable value used to calculate the wine tax for wholesale sales of wine.
- The charges for freight, postage or insurance do not need to be included in the retail selling price of the wine when calculating the *notional wholesale selling price* for retail sales of the wine using the *half retail price method*.
- When calculating the *notional wholesale selling price* for retail sales of grape wine using the *average wholesale price method*, the wholesale prices on which the *average wholesale price method* is based will not need to include charges for freight, postage and insurance where these charges do not form part of the wholesale selling price of the wine.

Trade incentives

112. Trade incentives are allowed by suppliers to their customers in many different circumstances. Some of these incentives affect the price for which the wine was sold and hence the taxable value on which wine tax is payable, while others do not. Examples of trade incentive payments are trade discounts, settlement discounts, volume rebates, promotional rebates, co-operative advertising allowances and deferred credits.

113. In order to reduce the taxable value, the trade incentive must relate to the sale and the selling price of the wine, so as to bring about a reduction in that price. Factors relevant to determining whether or not an incentive reduces the sale price of the wine include:

- the circumstances surrounding the provision of the incentive;
- the accounting treatment of the incentive in the financial records of both the supplier and the customer;
- the terms of trading between the parties and other sales documentation, such as invoices, incentive claim forms and credit notes; and
- an objective assessment of the intention of the parties.

114. Examples of incentives which reduce the sale price of wine include:

- Trade discounts – these are discounts allowed to trade customers.
- Volume rebates and deferred credits – these are rebates that relate directly and solely to the volume or value of the wine sold and are calculated accordingly.
- Settlement discounts – these are discounts which relate to the value of the wine provided by the supplier and are allowed because payment is made in cash or is made promptly.

115. However, incentives that are provided to subsidise, compensate, reimburse, or reward a customer for carrying out activities or performing services for the supplier do not reduce the selling price of the wine. This will be the case even if they are based on volume or value and however they may be described.

116. Examples of payments which do not usually reduce the sale price of wine include:

- Promotional rebates, advertising rebates and cooperative advertising rebates – these are payments to purchasers to subsidise, compensate or reimburse them for advertising expenditure incurred in marketing the supplier's product.
- Gondola end payments – these are payments made by the supplier for the retailer to provide end-of-aisle display space to promote the supplier's wine.

How do you pay the wine tax?

117. If you engage in taxable dealings with wine (other than the local entry of imported wine) you must add the wine tax payable to your net amount under the GST Act.¹⁰⁸ This is done by entering the total amount of wine tax payable against Label 1C on the activity statement. The total of any wine tax credits is entered against Label 1D on the activity statement.

118. If you import wine you are required to pay the wine tax to Customs at the time of the customs dealing unless you quote your ABN. This is so even where you have received approval from the Commissioner to defer the payment of GST on taxable importations.

¹⁰⁸ Section 21-5.

When do you pay the wine tax?

119. For a taxable dealing with wine that is a supply for GST purposes, the wine tax payable is attributable to the same tax period or tax periods as it would be for GST.¹⁰⁹ However, if the time of the dealing occurs after the end of that tax period or periods, the wine tax payable by you may be treated as being attributable to the tax period in which the time of the dealing occurs.¹¹⁰

120. For a taxable dealing that is not a supply for GST purposes (for example, an application to own use), the wine tax payable is attributable to the tax period in which the time of the dealing occurs.¹¹¹

Producer rebates***Can you claim a rebate?***

121. The Commonwealth operates a rebate scheme which provides a rebate of wine tax for eligible producers of wine.

121A. When the rebate scheme commenced on 1 October 2004, the maximum amount of the rebate a producer (or group of associated producers) could claim in a full financial year was \$290,000, pro-rated in the 2004-05 financial year.¹¹² The maximum amount of producer rebate a producer (or group of associated producers) may claim in a full financial year increased from \$290,000 to \$500,000 from 1 July 2006.

121B. Prior to 1 July 2005, only eligible producers of rebatable wine in Australia were able to claim the producer rebate. However, from 1 July 2005, eligible producers of wine in New Zealand that have their wine exported to Australia and in respect of which they can demonstrate WET has been paid, are able to claim the rebate. The following paragraphs of this Ruling explain how the producer rebate applies to Australian wine producers only. Wine Equalisation Tax Ruling WETR 2006/1 Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand, provides a detailed explanation of how the wine tax producer rebate operates for New Zealand wine producers.

¹⁰⁹ Section 21-10.

¹¹⁰ Paragraph 5-5(2)(c) and section 21-10.

¹¹¹ Subsection 21-10(2).

¹¹² Transitional rules set out in item 8 in Schedule 1 to the *Tax Laws Amendment (Wine Producer Rebate and Other Measures) Act 2004* apply for the 2004-05 financial year. These rules provide that the maximum amount of producer rebate for the 2004-05 financial year for dealings in wine in the period 1 October 2004 to 30 June 2005 is \$217,500. For dealings in wine that are made in the period 1 July 2004 to 30 September 2004 the amount of producer rebate is worked out under section 19-10 of the WET Act (as in force immediately before the commencement of Schedule 1) as if 30 September 2004 were the end of the financial year. This means the maximum producer rebate for dealings in wine in the period 1 July 2004 to 30 September 2004 under the scheme in operation at that time is \$42,000.

Rebatable wine

122. Wine covered by the WET Act is eligible for the rebate (refer to **Appendix A** for definitions of wine) and is referred to as *rebtable wine*.¹¹³

Eligible producers

123. To be eligible for the producer rebate you must be a *producer* of *rebtable wine*.¹¹⁴ A producer is defined as an entity that:

- manufactures the wine, or supplies to another entity the grapes, other fruit, vegetables or honey from which the wine is manufactured.¹¹⁵

124. You are the *producer* of *rebtable wine* if you manufacture the wine from grapes, other fruit, vegetables or honey you produce or purchase. You are also the *producer* of *rebtable wine* if you supply grapes, other fruit, vegetables or honey you produce or purchase to a contract winemaker to be made into the wine. However, you are not the *producer* of *rebtable wine* if you merely purchase bottled wine or bulk wine for bottling and you are not eligible for the producer rebate for this wine.

124A. The word 'producer' for the purposes of section 19-20 of the WET Act includes a 'New Zealand participant' as defined in section 33-1 of the WET Act. How the producer rebate applies to New Zealand participants is discussed in WETR 2006/1.

Eligible sales and applications to own use

125. You are entitled to the rebate for sales and applications to own use of *rebtable wine* that are made on or after 1 October 2004 if you are the producer of the *rebtable wine* and:

- you are liable to pay wine tax for the dealing; or
- you would have been liable to pay wine tax had the purchaser not quoted for the sale at or before the time of the sale.¹¹⁶

126. However, you are not entitled to the producer rebate if:

- the purchaser quotes for the sale and notifies you at or before the time of the sale that they intend to make a GST-free supply of the wine; or

¹¹³ Section 33-1.

¹¹⁴ Section 19-5.

¹¹⁵ Section 33-1.

¹¹⁶ Section 19-5.

- you have claimed a wine tax credit, or a wine tax credit subsequently arises for you, for the dealing with the wine.¹¹⁷

Amount of producer rebate

127. The amount of a producer rebate is calculated as follows:

- for wholesale sales – 29% of the price (excluding wine tax and GST) for which the wine was sold;¹¹⁸ and
- for retail sales and applications to own use – 29% of the notional wholesale selling price of the wine.¹¹⁹

128. The maximum amount of producer rebate to which a producer is entitled for a financial year is \$290,000 up until 30 June 2006, and \$500,000 from 1 July 2006.¹²⁰ However, if the producer is an *associated producer* (refer to paragraph 129 of this 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 the financial year is \$290,000 until 30 June 2006, and \$500,000 from 1 July 2006.¹²¹

Associated producers

129. A producer is an associated producer of another producer for a financial year if, at the end of the financial year:

- they are 'connected'.¹²² They are 'connected' 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, including where the second entity is a public entity;¹²³
- 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;¹²⁴

¹¹⁷ Section 19-10.

¹¹⁸ Paragraph 19-15(1)(a).

¹¹⁹ Paragraph 19-15(1)(b).

¹²⁰ Subsection 19-15(2).

¹²¹ Subsection 19-15(3).

¹²² Subsection 19-20(1).

¹²³ Subsection 152-30(2) of the *Income Tax Assessment Act 1997*.

¹²⁴ Paragraphs 19-20(1)(b) & (c).

- 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;¹²⁵ or
- 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.¹²⁶

Claiming the producer rebate

130. The producer rebate is claimed in the activity statement for the tax period to which the wine tax on the dealing is attributed¹²⁷ 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).

131. 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.

Producer rebate over-claimed

132. If the amount of producer rebate that you claim exceeds the amount to which you are entitled for a financial year, you are liable to pay an amount equal to that excess.¹²⁸ 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.¹²⁹

¹²⁵ Subsection 19-20(2).

¹²⁶ Subsection 19-20(3).

¹²⁷ Subsection 17-10(1), read in conjunction with the fourth column in 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, we accept that producer rebates may be claimed in the activity statement for the tax period to which the wine tax on the dealing is attributed.

¹²⁸ Subsection 19-25(1).

¹²⁹ Subsection 19-25(4).

133. If you are a member of a group of associated producers and the rebate claimed by the group for a financial year is more than 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.¹³⁰ However, you will not be liable to pay an amount that exceeds the sum of the amounts of producer rebates that you claimed for the financial year.¹³¹

134. If you have allowed volume rebates or discounts which effectively reduce the price for which the wine is sold (refer paragraphs 112 to 116) you will need to adjust the amount of producer rebate you have claimed for these sales.

135. 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 you 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 you have already lodged your activity statement for the final tax period of the financial year in which the rebatable sale was made you will need to revise this activity statement.

When can you claim wine tax credits?

136. There are 6 broad categories of grounds for wine tax credits available under the WET Act:

- credits for overpaid wine tax;
- credits to avoid wine being taxed twice;
- producer rebates;
- export-related credits;
- import-related credits; and
- credits for bad debts.¹³²

137. Examples of situations where credit claims commonly arise are as follows:

- A wholesaler purchases wine to sell by wholesale and, although satisfying the requirements to quote, the wholesaler forgets to quote its ABN and wine tax is included in the purchase price. The wholesaler is entitled to a credit for the wine tax borne on the wine when it was purchased.¹³³

¹³⁰ Subsections 19-25(2) and 19-25(3).

¹³¹ Subsection 19-25(3).

¹³² The Wine Tax Credit Table in section 17-5.

¹³³ Credit Ground CR2 in the Wine Tax Credit Table in section 17-5.

- A wine manufacturer purchases wine to blend with other wine and although satisfying the requirements to quote, the manufacturer forgets to quote its ABN and wine tax is included in the purchase price. The wine manufacturer is entitled to a credit for the wine tax borne on the wine when it was purchased.¹³⁴
- A retailer/wholesaler sells wine by wholesale from stock the retailer/wholesaler purchased at prices which included the wine tax. The retailer/wholesaler is required to pay wine tax on the wine sold by wholesale, but is entitled to a credit for the wine tax borne on the wine when it was purchased by the retailer/wholesaler.¹³⁵
- A retailer with stock which was purchased at prices which included wine tax sells wine to a purchaser who quotes an ABN. The retailer is entitled to a refund of the wine tax borne on the wine when it was purchased, provided the wine tax is excluded from the retailer's sale price.¹³⁶
- A wholesaler sells wine by wholesale in taxable circumstances and pays wine tax on the sale. Subsequently the wholesaler allows a settlement discount on the sale. The wholesaler is entitled to a credit for the amount of wine tax included in the discount allowed.¹³⁷
- A retailer with stocks of wine purchased at prices including wine tax sells wine to a customer overseas and exports the wine to the customer as a GST-free supply. The retailer is entitled to a credit for the amount of the wine tax borne on the exported wine provided the wine tax is excluded from the retailer's sale price.¹³⁸
- A wholesaler sold wine by wholesale and paid wine tax on the sale. Part of the amount of the sale is later written off as a bad debt. The wholesaler is entitled to a credit for a proportion of the wine tax paid equal to the proportion of the debt written off.¹³⁹

¹³⁴ Credit Ground CR2 in the Wine Tax Credit Table in section 17-5.

¹³⁵ Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

¹³⁶ Credit Ground CR6 in the Wine Tax Credit Table in section 17-5.

¹³⁷ Credit Ground CR1 in the Wine Tax Credit Table in section 17-5.

¹³⁸ Credit Ground CR11 in the Wine Tax Credit Table in section 17-5.

¹³⁹ Credit Ground CR15 in the Wine Tax Credit Table in section 17-5.

- A wine exporter who purchased wine from a person registered for GST at a price which included wine tax sells the wine to a customer overseas and exports the wine as a GST-free supply. The exporter is entitled to a credit of the wine tax they have borne on the exported wine provided the wine tax is excluded from the exporter's sale price.¹⁴⁰ Where the exporter is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:
29% of half the purchase price of the wine (including wine tax and GST) less any wine tax included in the price that has been refunded or credited to the exporter.
- A person purchases wine from a wine producer or from a retail bottle shop and exports the wine whilst retaining ownership of the wine. The person is entitled to a credit of the wine tax they have borne on the exported wine.¹⁴¹ Where the person is not in a position to know the amount of wine tax they have actually borne on the wine, they may calculate the amount borne as follows:
29% of half the purchase price (including wine tax and GST) less any wine tax included in the price that has been refunded or credited to the purchaser.
- A retailer purchases bulk wine at a price which includes wine tax, bottles the wine after 31 August 2004 and sells the bottled wine by retail. The retailer has a liability to pay wine tax on the bottled wine when it is sold by retail¹⁴² and is entitled to a credit of the wine tax previously borne on the wine.¹⁴³

How do you claim wine tax credits?

138. If you are a registered entity, you may claim wine tax credits as a reduction in your net amounts due under the GST Act.¹⁴⁴ This is done by entering the total amount of wine tax credits being claimed against label 1D on your activity statement. There is no monetary limit for credits claimed as reductions in a registered entity's GST liability.

¹⁴⁰ Credit Ground CR11 in the Wine Tax Credit Table in section 17-5.

¹⁴¹ Credit Ground CR10 in the Wine Tax Credit Table in section 17-5.

¹⁴² Assessable Dealings AD2f and AD12f in the Assessable Dealings Table in section 5-5.

¹⁴³ Credit Ground CR4 in the Wine Tax Credit Table in section 17-5.

¹⁴⁴ Subsection 17-10(1) and section 21-15.

139. If you are an entity that is not registered or required to be registered for GST, you may claim credits as a direct refund from the Tax Office.¹⁴⁵ Direct refunds are not available for amounts totalling less than \$200.¹⁴⁶ However, individual claims may be aggregated to reach the \$200 minimum amount.

140. In the case of a credit arising in relation to a sale of wine, to be refundable, most of the credit grounds require that the wine tax must not have been passed on to the purchaser or, if passed on, have since been refunded to the purchaser.¹⁴⁷

141. If it would otherwise be greater than the arm's length amount, the wine tax credit on a non-arm's length transaction must be reduced to the amount it would have been if the transaction had been an arm's length transaction.¹⁴⁸

142. For persons registered or required to be registered for GST claims for credits of wine tax must be made within 4 years of the end of the tax period in which the wine tax credit arises.¹⁴⁹

143. For persons not registered and not required to be registered for GST claims for wine tax credits must be made within 4 years of the time when the wine tax credit arises.¹⁵⁰

What records do you need to keep and how long do you need to keep them?

144. If you are liable to wine tax on a taxable dealing or are entitled to a wine tax credit, you are required to keep records of all transactions that relate to the dealing or credit claim for a period of 5 years after completion of the transactions or acts to which they relate.¹⁵¹

145. The records must be in English or readily accessible and convertible into English. Your wine tax liability must also be able to be readily determined from your records.¹⁵²

¹⁴⁵ Subsection 17-10(2).

¹⁴⁶ Section 17-15.

¹⁴⁷ Credit ground CR5 is an example where there is no requirement that there be a passing on of the wine tax.

¹⁴⁸ Section 27-10.

¹⁴⁹ Subsection 17-10(1) and section 21-15; and subsection 36(1) of the *Taxation Administration Act 1953*.

¹⁵⁰ Subsection 17-10(2) & (3).

¹⁵¹ Paragraph 70(1)(e) of the TAA 1953.

¹⁵² Subsection 70(2) of the TAA 1953.

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Appendix A**Wine Equalisation Tax**

Set out below are the definitions of alcoholic products for the purposes of the WET Act. The definitions incorporate the requirements of the regulations set out in the *A New Tax System (Wine Equalisation Tax) Regulations 2000*. The wine equalisation 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 not covered by the wine equalisation tax are subject to the excise/duty regime.

Definitions	Examples
Grape wine <i>Grape wine is a beverage that:</i> • <i>is the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes; and</i> • <i>does not contain more than 22% of ethyl alcohol by volume.</i> NB. <i>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>	Grape wine includes: • table wines (red, white and rose); • sparkling wines; • fortified wines; and • dessert wines.
Grape wine products <i>A grape wine product is a beverage that:</i> • <i>contains at least 70% grape wine;</i> • <i>has not had added any ethyl alcohol from any other source, except grape spirit or alcohol used in preparing vegetable extracts (including spices, herbs and grasses) e.g. in producing vermouth; and</i> • <i>contains between 8% and 22% (inclusive) of ethyl alcohol by volume.</i>	Grape wine products are generally traditional products that have been produced by the wine industry for many years. They include: • vermouth; • marsala; • green ginger wine (except green ginger wine with spirits such as scotch added); • wine based cocktails and creams that satisfy the requirements in the column on the left; and • imitation spirits (wine based).

	Grape wine products do not include: • wine coolers (unless they satisfy the requirements in the column on the left); • ready to drink (RTDs) or designer drinks that contain a wine base (unless they satisfy the requirements in the column on the left); • 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 • spirit based (other than grape spirit) cocktails, creams and liqueurs.
Fruit or vegetable wine <i>Fruit or vegetable wine is a beverage that:</i> • <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> • <i>has not had added any ethyl alcohol from any other source except grape spirit or neutral spirit;</i> • <i>has not had added any liquor or substance that gives colour or flavour (other than grape spirit or neutral spirit); and</i> • <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 (NB grape spirit or neutral spirit can only be added if the beverage meets the definition of fruit or vegetable wine before the spirit is added).</i>	Fruit or vegetable wines include: • table wine; • sparkling wine; and • fortified wine. Fruit or vegetable wines do not include: • ready to drink (RTDs) or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges etc. (unless they satisfy the requirements in the column on the left).

Cider and Perry <i>Cider or Perry is a beverage that:</i> • <i>is the product of the complete or partial fermentation of the juice or must of apples or pears;</i> • <i>has not had added any ethyl alcohol from any other source; and</i> • <i>has not had added any liquor or substance (other than water or the juice or must of apples or pears) that gives colour or flavour.</i>	Cider and Perry include: • traditional cider and perry; • draught cider and perry; • dry cider and perry; and • sweet cider and perry. Cider and perry do not include: • cider or perry that has had lemon, black currant or other fruit flavourings added; and • cider or perry that has had cola or other flavourings added.
Mead <i>Up to and including 8 June 2005, mead is defined for WET purposes as a beverage that:</i> • <i>is the product of the complete or partial fermentation of honey;</i> • <i>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit;</i> • <i>has not had added any liquor or substance (other than honey, grape spirit or neutral spirit) that gives colour or flavour; and</i> • <i>if grape spirit or neutral spirit has been added contains between 15% and 22% (inclusive) of ethyl alcohol by volume.</i>	Mead includes: • honey mead; • fortified mead; and • liqueur mead.
Mead <i>From 9 June 2005, mead is defined for WET purposes as a beverage that:</i> • <i>is the product of the complete or partial fermentation of honey;</i> • <i>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit;</i> • <i>has not had added any liquor or substance that gives colour or flavour other than:</i> - o <i>grape spirit or neutral spirit;</i> - o <i>honey, herbs and spices, all of which can be added at any time;</i> - o <i>caramel, provided it is added after the fermentation</i>	Mead includes: • honey mead; • fortified mead; • liqueur mead; and • spiced mead.

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<i>process is complete;</i> - o <i>fruit or product derived entirely from fruit, provided:</i> ▪ <i>the fruit or product has not been fermented;</i> ▪ <i>the fruit or product is added to the mead before fermentation of the mead;</i> ▪ <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> ▪ <i>if fruit or product is added the mead contains between 8% and 22% (inclusive) of ethyl alcohol by volume; and</i> • <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> <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>	
Sake <i>Sake is a beverage that:</i> • <i>is the product of the complete or partial fermentation of rice;</i> • <i>has not had added any ethyl alcohol from any other source; and</i> • <i>has not had added any liquor or substance that gives colour or flavour.</i>	Sake includes: • fermented sake; and • rice wine. Distilled sake does not satisfy the definition and is not included.

Appendix B

A quotation of an ABN should be in the following form:

Quotation under the *A New Tax System (Wine Equalisation Tax) Act 1999*.

The entity named below hereby quotes Australian Business Number (insert number) _____

The entity hereby notifies you that it **intends/does not intend*** to make a GST-free supply of the wine.

***Cross out whichever is not applicable if wine is being purchased from a wine producer.**

Name of entity quoting

Name of individual authorised to quote

Signature of individual authorised to quote

Date _____

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A periodic quotation of an ABN should be in the following form:

Quotation under the *A New Tax System (Wine Equalisation Tax) Act 1999*.

The entity named below hereby quotes Australian Business Number (insert number) _____ in respect of all wine purchased during the period _____ to _____ inclusive, except wine in respect of which the entity notifies you to the contrary at or before the time of the relevant assessable dealing with that wine.

- ☐ The entity declares that at the time of making this periodic quote it does **not intend to make a GST-free supply** of any of the wine it purchases, however, it undertakes to notify you at or before the time of the relevant assessable dealing if this intention changes for a particular purchase.*
- ☐ The entity declares that at the time of making this periodic quote it **intends to make a GST-free supply** of all the wine it purchases, however, it undertakes to notify you at or before the time of the relevant assessable dealing if this intention changes for a particular purchase.*

***If the entity is purchasing wine from a wine producer it must indicate which of the above is applicable to it by placing a cross in the relevant box. Only one box should be completed.**

Name of entity to whom quote is made

ABN of entity to whom quote is made

Name of entity making quote

Name of individual authorised to quote

Signature of individual authorised to quote

Date

Note: The maximum period that can be covered by a periodic quotation is one year.

Where an entity has a periodic quotation in place but it is not entitled to quote on a particular transaction it should provide the supplier with a notification in the following form:

Notification for the purposes of subsection 13-15(3) of the <i>A New Tax System (Wine Equalisation Tax) Act 1999</i>. The entity named below hereby notifies you that it is not quoting for the purchase of the following wine: Description of wine Date of transaction ABN of entity to whom periodic quote was made Name of entity which made the periodic quote ABN of entity which made the periodic quote Name of individual authorised to make this declaration Signature of individual authorised to make this declaration Date

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Where an entity has a periodic quotation in place with a wine producer indicating that it does not intend to make a GST-free supply of any of the wine it purchases but now intends to make a GST-free supply of particular wine it is purchasing it should provide the wine producer with a notification in the following form:

Notification for the purposes of section 19-30 of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

The entity named below hereby notifies you that it **intends to make a GST-free supply** of the following wine:

Description of wine

Date of transaction

ABN of entity to whom periodic quote was made

Name of entity which made the periodic quote

ABN of entity which made the periodic quote

Name of individual authorised to make this declaration

Signature of individual authorised to make this declaration

Date

Where an entity has a periodic quotation in place with a wine producer indicating that it intends to make a GST-free supply of all the wine it purchases but now does not intend to make a GST-free supply of particular wine it is purchasing it should provide the wine producer with a notification in the following form:

Notification for the purposes of section 19-30 of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

The entity named below hereby notifies you that it **does not intend to make a GST-free supply** of the following wine:

Description of wine

Date of transaction

ABN of entity to whom periodic quote was made

Name of entity which made the periodic quote

ABN of entity which made the periodic quote

Name of individual authorised to make this declaration

Signature of individual authorised to make this declaration

Date

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A quotation to Customs should be in the following form:

Quotation under the A New Tax System (Wine Equalisation Tax) Act 1999.

Australian Business Number _____ is hereby quoted in relation to the importation of wine as described above at line number(s) (insert relevant line numbers) _____

Note:

- The Customs Broker **must** enter the client's Australian Business Number in the space provided in the quotation form.
- The Customs Broker **must** specify in writing, (in the space provided in the quotation form), the particular wine for which they are quoting their client's ABN.

Appendix C

How the Wine Tax Works

Determining Liability

