


WETR 2006/1A2 - Addendum - Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand

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Addendum

Wine Equalisation Tax Ruling

Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand

This Addendum amends Wine Equalisation Tax Ruling WETR 2006/1 to:

- update the table at Appendix A of the Ruling to reflect a modification to the definition of 'grape wine product' by A New Tax System (Wine Equalisation Tax) Regulations 2000. The modified definition of 'grape wine product', which applies on and after 10 September 2009, ensures that a wine based beverage that has had the flavour of an alcoholic beverage, other than wine, added to it will not satisfy the definition of 'grape wine product' for the purposes of *A New Tax System (Wine Equalisation Tax) Act 1999*;
- expand the explanation of the meaning of 'manufacture', consistent with the discussion of 'manufacture' in Wine Equalisation Tax Ruling WETR 2009/2;
- clarify that wine is not produced 'in New Zealand' where some additional manufacturing processes in the production of the wine occur in Australia, subsequent to its export from New Zealand;
- make other minor non-technical amendments.

WETR 2006/1 is amended as follows:

1. Preamble

Omit the preamble; substitute:

This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 105-60 of Schedule 1 to the Taxation Administration Act 1953.

From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the Taxation Administration Act 1953.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

2. Paragraph 4

Omit the paragraph; substitute:

4. This Ruling explains the Commissioner's view of the law as it applied from 1 July 2005. You can rely upon this ruling on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

Note 1: The Addendum to this Ruling that issued on 6 July 2011, explains our view of the law as it applies from 1 July 2005.

3. Paragraph 20

Omit 'A 'producer' of rebatable wine is defined as an entity that:'; substitute:

20. A 'producer' of rebatable wine^{8A} is defined as an entity that:

4. Paragraph 21

Omit '; 'Manufacture' is defined in section 33-1 to include'; substitute:

21. 'Manufacture'^{9A} is defined in section 33-1 to include:

5. Paragraph 33

Omit the second dot point; substitute:

- grape wine products;

^{8A} See paragraphs 18 to 25 of WETR 2009/2 for a discussion of the meaning of producer of rebatable wine.

^{9A} See paragraphs 26 to 55 of WETR 2009/2 for a detailed discussion and examples relating to the meaning of 'manufacture', as defined in section 33-1.

9. Paragraph 38

After the paragraph; insert:

38A. A wine is not produced 'in New Zealand' if some additional manufacturing processes in the production of the wine occur in Australia, subsequent to its export from New Zealand. For example, if raw wine manufactured 'in New Zealand' undergoes stabilisation, fining, filtering and secondary fermentation in Australia before its bottling for sale, the resultant, finished wine is not produced 'in New Zealand'. The finished bottled wine is not the same wine as that manufactured in New Zealand and exported to Australia.

10. Paragraph 73

Omit the paragraph; substitute:

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

- they are 'connected with' each other. They are connected with each other if they would be 'connected with' each other under section 328-125 of the *Income Tax Assessment Act 1997* (ITAA 1997) if subsection 328-125(8) of the ITAA 1997 were omitted; or³⁵
- one producer is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the other in relation to their financial affairs.³⁶

73A. Two producers are associated producers if:

- each of them is under an obligation (formal or informal), or might reasonably be expected to, act in accordance with the directions, instructions or wishes of the same third entity in relation to their financial affairs.³⁷

³⁵ Paragraph 19-20(1)(a).

³⁶ Paragraphs 19-20(1)(b) and (c).

³⁷ Subsection 19-20(2).

73B. Furthermore, a producer is an associated producer of another producer if:

- one producer is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes 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, instructions or wishes of the second producer in relation to their financial affairs.³⁸

11. Paragraph 102

After the second sentence, insert:

‘Claim forms and supporting documentation sent to New Zealand Inland Revenue will be taken to have been lodged with the Commissioner on the day that they are received by New Zealand Inland Revenue.’

12. Table in Appendix A under definitions and examples for grape wine products

(1) After ‘*A New Tax System (Wine Equalisation Tax) Regulations 2000*.’ insert the footnote reference:

⁶⁷ Refer to paragraphs 10 to 36 of WETR 2009/1 for further explanation of the definitions of alcoholic products for the purposes of the WET Act.

(2) Omit the second row of the table; substitute:

<p>Grape wine products <i>Up to and including 9 September 2009, a grape wine product is a beverage that:</i></p> <ul style="list-style-type: none"> • <i>contains at least 70% grape wine; and</i> • <i>has not had added to it any ethyl alcohol from any other source, except grape spirit or alcohol used in preparing vegetable extracts (including spices, herbs and grasses) for example, in producing vermouth; and</i> • <i>contains between 8% and 22% (inclusive) of ethyl alcohol by volume.</i> 	<p>Grape wine products are traditional products that have been produced by the wine industry for many years. <i>Up to and including 9 September 2009, grape wine products include:</i></p> <ul style="list-style-type: none"> • vermouth; • marsala; • green ginger wine (except green ginger wine with spirits such as scotch added); • wine based cocktails and creams; and • imitation liqueurs (wine based); but only where they satisfy the requirements in the column on the left. <p><i>Up to and including</i></p>
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³⁸ Subsection 19-20(3).

<p><i>From 10 September 2009, a grape wine product is a beverage that:</i></p> <ul style="list-style-type: none"> • <i>contains at least 70% grape wine; and</i> • <i>has not had added to it any ethyl alcohol from any other source, except</i> <ul style="list-style-type: none"> • <i>grape spirit; or</i> • <i>alcohol used in preparing vegetable extracts (including spices, herbs and grasses) where the alcohol:</i> <ul style="list-style-type: none"> – <i>is only used to extract flavours from vegetable matter;</i> – <i>is essential to the extraction process; and</i> – <i>adds no more than one percentage point to the overall alcoholic strength by volume of the beverage; and</i> • <i>has not had added to it the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial; and</i> • <i>contains between 8% and 22% (inclusive) of ethyl alcohol by volume.</i> 	<p>9 September 2009, grape wine products do not include:</p> <ul style="list-style-type: none"> • wine coolers (unless they satisfy the requirements in the column on the left); • ready to drink (RTD) 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); and • spirit based (other than grape spirit) cocktails, creams and liqueurs. <p>From 10 September 2009 grape wine products include:</p> <ul style="list-style-type: none"> • vermouth; • marsala; • green ginger wine (except green ginger wine with spirits such as scotch added); • wine based cocktails and creams that do not contain the flavour of any alcoholic beverage (other than wine) whether the flavour is natural or artificial; and • imitation liqueurs (wine based) that do not contain the flavour of any alcoholic beverage (other than wine) whether the flavour is natural or artificial; <p>but only where they satisfy the requirements in the column on the left.</p> <p>From 10 September 2009, grape wine products do not include:</p> <ul style="list-style-type: none"> • wine coolers (unless they satisfy the requirements in the column on the left); • ready to drink (RTD) 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); and • Spirit based (other than grape spirit) cocktails, creams and liqueurs.
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17. Related Rulings

Omit: 'WETR 2002/1; WETR 2004/1'; substitute 'TD 2006/10; WETR 2009/1; WETR 2009/2'.

18. Legislative references

Omit:

- ANTS(WET)A 1999 19-20(1)
- ITAA 1997 152-30(2)
- TAA 1953 Sch 1 105-60

Insert:

- ITAA 1997 152-30(a) (repealed)
- ITAA 1997 152-30(b) (repealed)
- ITAA 1997 152-30(c) (repealed)
- ITAA 1997 152-30(d) (repealed)
- ITAA 1997 152-30(e) (repealed)
- ITAA 1997 328-125
- ITAA 1997 328-125(8)
- TAA 1953 Sch 1 105-60 (repealed)
- TAA 1953 Sch 1 357-60
- TAA 1953 Sch 1 Div 358

Date of effect

This Addendum amends WETR 2006/1 to state the Commissioner's view of the law as it applied from 1 July 2005. However, an entity may rely upon WETR 2006/1, in its form prior to its amendment by this Addendum, with respect to WET producer rebate claims made prior to the date of issue of this Addendum.

Commissioner of Taxation

6 July 2011

ATO references

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