WETR 2006/1A4 - 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 is a public ruling for the purposes of the *Taxation Administration Act 1953* (TAA). It amends Wine Equalisation Tax Ruling WETR 2006/1 to remove the explanation about marketing and promotional fees that is not relevant for New Zealand wine producers.

This Addendum also amends Wine Equalisation Tax Ruling WETR 2006/1 to better align it with the views expressed in Wine Equalisation Tax Ruling WETR 2009/2 to the extent those views apply to New Zealand wine producers in relation to:

- amendments made to the producer rebate provisions of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act), that came into effect on 10 December 2012
- clarifying the Commissioner's view with respect to what happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed, and
- the application of amendments made to the *A New Tax System (Goods and Services Tax) Act 1999,* the WET Act and the TAA as a result of the *Indirect Tax Laws Amendment (Assessment) Act 2012*, which introduced a self-assessment regime for indirect taxes.

WETR 2006/1 is amended as follows:

1. Paragraph 4

After note 1; insert:

> **Note 2:** The Addendum to this Ruling that issued on 30 April 2014 explains our view of the law as it applies:
>
> - both before and after its date of issue to the extent that it deals with the treatment of marketing and promotional fees;
> - on and from 10 December 2012 to the extent that it aligns with the view expressed in WETR 2009/2 in relation to amendments made to the producer rebate provisions of the WET Act, that came into effect on 10 December 2012;

- both before and after its date of issue to the extent that it aligns with the view expressed in WETR 2009/2 and clarifies the Commissioner's view with respect to what happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed;
- where it is aligned with the view expressed in WETR 2009/2 in relation to amendments made to the *A New Tax System (Goods and Services Tax) Act 1999,* the WET Act and the TAA as a result of the *Indirect Tax Laws Amendment (Assessment) Act 2012*, which introduced a self-assessment regime for indirect taxes and applies:
  - to payments of refunds that relate to tax periods starting on or after 1 July 2012; or
  - liabilities and entitlements that do not relate to any tax periods that arose on or after 1 July 2012.

2. Paragraph 5

At the beginning of the paragraph; insert 'You can rely on the Addendum on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the TAA.'.

3. Paragraph 74

After the paragraph, insert:

What happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed

Not entitled to the producer rebate

74A. If a New Zealand participant has claimed a rebate to which it is not entitled, in whole or in part, they should arrange to pay an amount equal to the amount claimed that should not have been claimed by contacting New Zealand Inland Revenue to refer the details of the claim to the Australian Taxation Office. If payment is not made, the Commissioner will seek to recover the debt.[38A]

74B. Circumstances where an entity is not entitled to a rebate include the following:

[38A] Refer to paragraph 15 of this Ruling. NZ producers who are registered for GST can claim via their BAS and they can claim their rebate entitlement throughout the year see WETR 2009/2 footnote 37. NZ producers who claim through the NZ rebate claim form can only do so after the end of the financial year in which WET was paid in Australia in relation to the wine that was the subject of the claim.

- the entity was not approved as a New Zealand participant;[38B]
- the wine was not produced by the New Zealand participant in New Zealand or was not exported to Australia;[38C]
- the New Zealand participant, or another entity, did not pay wine tax for a taxable dealing;[38D]
- the New Zealand participant calculated the amount of producer rebate incorrectly;[38E]
- the New Zealand participant is not entitled because one of the exceptions in section 19-10 applies.

4. Paragraph 75

(a) Omit the associated heading; substitute:

Excess claim – single producer

(b) After the paragraph; insert:

75A. Therefore a New Zealand participant, who is not an associated producer, can correct an excess claim by arranging to pay an amount equal to the excess. They can do this by contacting New Zealand Inland Revenue, who will refer the details of the excess claim to the Australian Taxation Office.

75B. However, if the Commissioner discovers the excess claim (for example through compliance activity) and the New Zealand participant has not corrected the excess claim, then the Commissioner will seek to recover the excess amount.[40A]

5. Paragraphs 76 and 77

Omit the paragraphs and footnotes.

6. Paragraph 78

(a) Before the paragraph, insert the heading

[38B] paragraph 19-5(2)(a).
[38C] paragraph 19-5(2)(a).
[38D] paragraph 19-5(2)(c)].
[38E] section 19-15.
[40A] Subsection 19-25(1A).

Excess claim - associated producer

(b) After the paragraph; insert:

78A. Therefore, if a New Zealand participant is an associated producer of one or more other producers for a financial year[44A] and the rebate claimed by the group for a financial year is more than the maximum amount of rebates to which the group is entitled for the financial year, each producer member of the group is jointly and severally liable to pay an amount equal to the excess claim.[44B] This means that one or more members of the group can correct the excess claim by arranging to pay an amount equal to the excess. They can do this by contacting New Zealand Inland Revenue, who will refer the details of the excess claim to the Australian Taxation Office.

78B. However, if the Commissioner discovers the excess claim (for example through compliance activity) and it has not been corrected by one or more members of the group, the Commissioner will seek to recover the excess claim from the group (if appropriate), as each producer member is jointly and severally liable to pay an amount equal to the excess. The excess amount will be recovered as a debt.[44C]

7. Paragraphs 79 and 80

Omit the paragraphs; substitute:

79. If a New Zealand participant has allowed volume rebates or discounts which effectively reduce the price for which wine is sold (see paragraphs 88 to 90 of this Ruling) and the volume rebate or discount has not been factored into the calculation of the producer rebate claimed the New Zealand participant will need to adjust their producer rebate accordingly.

80. Consistent with other claims to which a New Zealand participant is not entitled,[44D] in these circumstances, the New Zealand participant should arrange to pay an amount equal to the incorrect amount claimed by contacting New Zealand Inland Revenue to refer the details of the claim to the Australian Taxation Office (if payment is not made, the Commissioner will seek to recover the debt).

[44A] Section 19-20.
[44B] Subsection 19-25(3).
[44C] The Commissioner will ensure the aggregate amount recovered from the group of associated producers does not exceed the excess claim of the group.
[44D] Refer to paragraphs 74A to 74D of this Ruling.

80A. If any amount of the excess claimed or amounts claimed which should not have been claimed remains unpaid after the time by which it is due to be paid, the New Zealand participant will be also liable to GIC on the unpaid amount.[44E] The GIC will continue to accrue on a daily compounding basis up to and including the end of the last day on which the excess and the GIC on the excess claim remains unpaid.[44F]

80B. The Australian Taxation Office may take action to recover these amounts. This will include offsetting future entitlements to the producer rebate against any amount that remains unpaid.

8. Paragraphs 91 and 92

Omit the paragraphs.

9. Paragraphs 92C to 92J

Omit the paragraphs; substitute:

92C. The amount of the producer rebate to which a New Zealand participant is entitled is reduced by the sum of the amount of earlier producer rebates relating to the wine. Subsection 19-17(2) provides that the amount by which a rebate claim for blended or further manufactured wine will be reduced, depends on whether notification of an earlier rebate amount was provided to the purchaser for the purchased wine and if so, the amount so notified.

Wine lost during manufacture

92D. If bulk wine, for which there is a producer rebate entitlement for the supplying producer, is lost by evaporation or some other means prior to being used in blending or further manufacture, it follows that the amount that is lost was never used in the manufacture of the wine, as required by subsection 19-17(2). Therefore, the earlier producer rebate for the manufactured wine does not include any producer rebate relating to the lost wine.

92E. However, wine that is lost during the manufacturing process, whether by spillage or any other production loss, is wine that is used to manufacture the wine. Therefore the earlier producer rebate for the manufactured wine includes any producer rebate relating to the lost wine.[48C]

[44E] Section 105-80 of Schedule 1 to the TAA.
[44F] Subsection 105-80(1) of Schedule 1 to the TAA.
[48C] Refer to Appendix B of WETR 2009/2 for examples relating to earlier producer rebates.

92F. From 10 December 2012 a supplier of wine may choose to notify the purchaser whether the producer of the wine is entitled to a producer rebate and, if they are, the amount of the rebate entitlement. Where a supplier chooses to provide notice of a rebate entitlement to a purchaser, the notice must be in the approved form.[48D]

92G. Notice of an earlier rebate will be given in the approved form where it contains **all** of the following information:

- The name and ABN of the wine supplier or, for New Zealand wine suppliers who do not have an ABN, the name and address of the wine supplier and the Company Number (if applicable);
- The name and ABN of the wine recipient;
- A description of the wine being supplied (including the quantity and the price);
- Sufficient information to identify the relevant supply- for example, the tax invoice number; and
- The date that the wine was supplied.

92H. It must also include **one** of the following:

- notification that the producer of the wine being supplied to the recipient is entitled to a producer rebate for the wine, and the monetary amount of producer rebate that the producer of the wine has claimed or is entitled to claim for the wine; or
- notification that the producer of the wine that is being supplied to the recipient is not entitled to claim a producer rebate for the wine.[48E]

92I. Notice can be given on any document that contains a definite identification of the wine that is the subject of the notice and which is kept by the recipient, for example:

- on a tax invoice;
- in an email; or
- in a letter.

[48D] Subsection 19-7(3).
[48E] Refer to Appendix F for an example of an acceptable notification form.

92J. Where a supplier of wine to a New Zealand participant provides notice in the approved form of an earlier rebate for the wine, the producer rebate for the New Zealand participant is reduced for wine they have manufactured in New Zealand using the purchased wine. The amount of reduction is the amount of the earlier rebate that is attributable to the wine used to manufacture the wine.[48F]

92K. Where a supplier of wine to a New Zealand participant provides notice in the approved form to the New Zealand participant that the producer of the wine is not entitled to the rebate for the wine, the producer rebate for the New Zealand participant is not reduced for wine they have manufactured in New Zealand using the purchased wine.[48G]

92L. Where a New Zealand participant uses wine acquired from an Australian supplier (that is,. the producer of the wine or an entity that is not the producer of the wine) in blending or further manufacture in New Zealand, and the New Zealand participant does not receive notification of any earlier rebate entitlement, the producer rebate for any wine manufactured using the purchased wine is reduced. The amount of the reduction is 29% of the GST exclusive purchase price of the wine used in the manufacturing process.[48H]

Example 7 – Calculating reduction of rebate amount

92M. Australian Winemaker A makes a wholesale sale of 20,000 litres of wine that it has manufactured to Australian Wholesaler B under quote for $33,000 (including GST). Australian Winemaker A provides Australian Wholesaler B with a notice of a rebate entitlement for the wine in the amount of $8,700 (that is 29% x $33,000 – 1/11 x ($33,000)).

92N. Australian Wholesaler B sells the wine to NZ Winemaker C for A$50,000 (GST-free export excluding WET and GST). Australian Wholesaler B does not provide NZ Winemaker C with a notice of rebate entitlement in relation to the wine.

92O. NZ Winemaker C blends all of the wine purchased from Australian Wholesaler B with 20,000 litres of its own wine in New Zealand to manufacture 40,000 litres of wine. NZ Winemaker C sells all of the blended wine to Wholesale Distributor D in Australia. The approved selling price of the blended wine is A$120,000.

92P. NZ Winemaker C's rebate for the A$120,000 sale of 40,000 litres to the Australian distributor is reduced by the earlier rebate attributable to the purchased 20,000 litres. The rebate would then be:

[48F] Subsection 19-17(2).
[48G] Subsection 19-17(2).
[48H] Subsection 19-17(2).

(29% x $120,000) – (29% x $50,000)

= $34,800 – $14,500

Therefore, the amount of rebate NZ Winemaker C will be entitled to claim (assuming all other requirements are met) is $20,300.

10. Detailed contents list

(a) Omit:

Excess claims and offsets 75

Example 7 – Calculating reduction of rebate amount 92G

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(b) Substitute:

What happens when the producer rebate is claimed when it should not be claimed or when it is over-claimed 74A

Not entitled to the producer rebate 74A

Excess claims – single producer 75

Excess claim – associated producer 78

Wine lost during manufacture 92D

Example 7 – Calculating reduction of rebate amount 92M

Providing notice of rebate entitlement 113A

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11. Legislative References

Insert

- ANTS(WET)A 1999 19-5(2)(a)
- ANTS(WET)A 1999 19-7(3)
- TAA 1953 Sch 1 105-80

12. Appendix E

After the appendix; insert:

Appendix F:

Example of an acceptable notification form for the purposes of section 19-17 of the WET Act

Where an Australian or New Zealand producer supplies wine to another entity the producer can choose to notify the other entity of the rebate amount to which the producer is entitled in the following form:

Notification for the purposes of section 19-17 of the *A New Tax System (Wine Equalisation Tax) Act 1999*
The wine producer named below hereby notifies you of the amount of the rebate to which they are entitled in respect of wine supplied to you: Date the wine was supplied --- Description of the wine supplied (including quantity and price) --- Sufficient information to identify the relevant supply - for example, the tax invoice number --- Name of the entity to whom the wine was supplied --- Address of the entity to whom the wine was supplied --- Australian Business Number (ABN) of the entity to whom the wine was supplied or for a New Zealand entity, the Company Number, if they have one (as applicable)

Name of the wine producer who supplied the wine

Australian Business Number (ABN) of the wine producer who supplied the wine or for a New Zealand wine producer, the Company Number, if they have one (as applicable)

The wine producer who supplied the wine provides the following relevant notification to the recipient (only one notification should be provided):

☐ notification that the producer of the wine that is being supplied to the recipient is entitled to a producer rebate for the wine (and the amount of the rebate to which the producer is entitled)

☐ notification that the producer of the wine that is being supplied to the recipient is not entitled to claim a producer rebate for the wine.

Name of individual authorised to provide this notification

Signature of the individual authorised to provide this notification

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Date

This Addendum applies:

- both before and after its date of issue to the extent that it deals with the treatment of marketing and promotional fees.
- on and from 10 December 2012 to the extent that it aligns with the view expressed in WETR 2009/2 in relation to amendments made to the producer rebate provisions of the WET Act, that came into effect on 10 December 2012.
- both before and after its date of issue to the extent that it aligns with the view expressed in WETR 2009/2 and clarifies the Commissioner's view with respect to what happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed.
- where it is aligned with the view expressed in WETR 2009/2 in relation to amendments made to the *A New Tax System (Goods and Services Tax) Act 1999,* the WET Act and the TAA as a result of the *Indirect Tax Laws Amendment (Assessment) Act 2012*, which introduced a self-assessment regime for indirect taxes and applies:
  - to payments of refunds that relate to tax periods starting on or after 1 July 2012, or
  - liabilities and entitlements that do not relate to any tax periods that arose on or after 1 July 2012.

Commissioner of Taxation
30 April 2014

ATO references

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