

# ***WETR 2009/1A1 - Addendum - Wine equalisation tax: the operation of the wine equalisation tax system***

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## Addendum

### Wine Equalisation Tax Ruling

#### Wine equalisation tax: the operation of the wine equalisation tax system

This Addendum amends Wine Equalisation Tax Ruling WETR 2009/1 to:

- reflect a modification to the definition of 'grape wine product' by the *A New Tax System (Wine Equalisation Tax) Regulations 2000* (WET Regulations). The modified definition of 'grape wine product', which applies from 10 September 2009, ensures that a wine based beverage that has had the flavour of an alcoholic beverage, other than wine, added to it does not satisfy the definition of 'grape wine product' for the purposes of *A New Tax System (Wine Equalisation Tax) Act 1999*; and
- reflect the amendments to the *A New Tax System (Wine Equalisation Tax) Act 1999* resulting from the introduction of *Tax Laws Amendment (2009 GST Administration Measures) Act 2010*. The amendments extend the Tourist Refund Scheme and allow residents of Australia's External Territories to claim refunds of wine equalisation tax (WET) through the tourist refund scheme for wine they export back to their home territory as unaccompanied baggage.

#### **WETR 2009/1 is amended as follows:**

##### **1. Preamble**

Omit the text; 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 5

Omit the paragraph; substitute:

5. This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue, except for the compliance improvement (repackaged wine) measure<sup>1</sup> which has a date of effect of 31 August 2004. 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 applied both before and after its date of issue.

## 3. Paragraph 13

Omit the paragraph; substitute:

13. Up to and including 9 September 2009 grape wine product is a beverage that contains at least 70% grape wine and:

- 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); and
- contains between 8% and 22% (inclusive) by volume of ethyl alcohol.<sup>4A</sup>

13A. From 10 September 2009 grape wine product is a beverage that contains at least 70% grape wine and:

- has not had added to it any ethyl alcohol from any other source, except:
  - grape spirit; or

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<sup>1</sup> See paragraphs 53 and 63 (final dot point) of this Ruling.

<sup>4A</sup> Section 31-3.

- alcohol used in preparing vegetable extracts (including spices, herbs and grasses) where the alcohol:
  - is only used to extract flavours from vegetable matter;<sup>4B</sup>
  - is essential to the extraction process;<sup>4C</sup> and
  - adds no more than one percentage point to the overall alcoholic strength by volume of the beverage.<sup>4D</sup>
- has not had added to it the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial;<sup>4E</sup> and
- contains between 8% and 22% (inclusive) by volume of ethyl alcohol.

#### **4. Paragraph 14**

Omit the paragraph, substitute:

14. As per section 31-3 the exclusion of the addition of ethyl alcohol from any other source means that if ethyl alcohol other than grape spirit or alcohol used in preparing vegetable extracts is added then the resulting beverage is not a grape wine product. As referred to in paragraph 13A of this Ruling, subregulation 31-3.01(3), which applies from 10 September 2009, introduces some additional and specific criteria that must be satisfied with respect to the addition of alcohol used in preparing vegetable extracts, in order for a beverage to be a grape wine product.

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<sup>4B</sup> Paragraph 31-3.01(3)(a) of the WET Regulations.

<sup>4C</sup> Paragraph 31-3.01(3)(b) of the WET Regulations.

<sup>4D</sup> Paragraph 31-3.01(3)(c) of the WET Regulations.

<sup>4E</sup> Sub-regulation 31-3.01(2) of the WET Regulations.

## 5. Paragraph 15

Omit the paragraph; substitute:

15. The Commissioner considers that the reference to 'alcohol used in preparing vegetable extracts' in section 31-3, is limited to alcohol used in the extraction of flavours from vegetable matter that is essential to the extraction process. It does not extend to alcohol that has been used as a carrying medium for flavours made from vegetable extracts. The specific criteria set out in subregulation 31-3.01(3),<sup>4F</sup> which apply from 10 September 2009, are consistent with this view.

## 6. Paragraph 16

After paragraph; insert:

16A. From 10 September 2009, subregulation 31-3.01(2) amended the definition of 'grape wine products' to provide that a grape wine product must not have added to it the flavour of any alcoholic beverage<sup>5A</sup> (other than wine) whether that added flavour is natural or artificial. It is the Commissioner's view that the preclusion of the addition of the 'flavour of any other alcoholic beverage' includes more than one added flavour that, when combined together, is the flavour of an alcoholic beverage (other than wine) whether such flavours are natural or artificial.

*Example 1A – addition of the flavour of an alcoholic beverage to wine*

16B. *An entity manufactures alcoholic beverages by adding flavours to wine. One of the flavours is a strawberry daiquiri flavour. The strawberry daiquiri flavour does not contain alcohol. The strawberry daiquiri flavour is the flavour of an alcoholic cocktail, and is therefore the flavour of an alcoholic beverage. The addition of the strawberry daiquiri flavour to the wine means that the resulting beverage is not a grape wine product.*

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<sup>4F</sup> See paragraph 13A of this Ruling for a list of the specific criteria.

<sup>5A</sup> The flavour of an alcoholic beverage includes the flavour of one or more spirits, liqueurs, alcoholic cocktails and/or beer, which may or may not be combined with other flavourings.

**7. Paragraph 17**

Omit the paragraph; substitute:

17. It is inherent in the definition of grape wine product in section 31-3, the further explanation in the EM, and the specific criteria set out in regulation 31-3.01 that for the purposes of the WET Act grape wine products are to be limited to beverages where the alcohol content is attributable to grape wine and/or grape spirit. The allowance of alcohol in preparing vegetable extracts<sup>5B</sup> recognises that in making flavours from vegetable matter alcohol is often used in the process. For example, in the manufacture of a flavour infused grape wine product, such as vermouth, herbs, spices or other vegetable matter could be added as an infusion. Alternatively, they could be macerated and steeped in alcohol as a means of extracting the flavours and then added to wine or an existing grape wine product.

**8. Paragraph 18**

Omit the paragraph; substitute:

18. When flavours are extracted from vegetable matter using alcohol (for example, by the vegetable matter being macerated and steeped in alcohol) and the alcohol is essential to the extraction processes, its addition will not preclude the resulting beverage from being a grape wine product. However, from 10 September 2009, the addition of alcohol essential to the flavour extraction processes must add no more than one percentage point to the overall alcoholic strength of the beverage.<sup>5C</sup>

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<sup>5B</sup> Subparagraph 31-3(b)(ii).

<sup>5C</sup> Paragraph (c) of sub-regulation 31-3.01(3).

## 9. Paragraph 19

Omit the paragraph; substitute:

19. In contrast to the flavouring process described above, concentrated flavours may be made from vegetable matter. Before being added to wine or an existing grape wine product, these concentrated flavours are combined with additional ethyl alcohol which acts as a carrying medium for the flavour. The combined flavour and additional ethyl alcohol is then added to the wine or existing grape wine product. In these circumstances if the ethyl alcohol with which the flavour is combined before being added to the wine or an existing grape wine product is not grape spirit, the resulting beverage will not be a grape wine product as defined in section 31-3 and subregulation 31-3.01(3), as the additional ethyl alcohol into which the flavour was incorporated was not used in the process of preparing the vegetable extract, and was not essential to the extraction process.

## 10. Paragraph 20

Omit the paragraph; substitute:

20. Up to and including 9 September 2009, grape wine products included the following:

- vermouth, marsala and green ginger wine (except green ginger wine with spirits such as scotch added);
- wine based cocktails and creams; and
- wine based imitation liqueurs,

but only where the specific requirements set out in paragraph 13 of this Ruling are met.

20A. From 10 September 2009, grape wine products include the following:

- vermouth, marsala and 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 an alcoholic beverage (other than wine), whether the flavour is natural or artificial; and
- wine based imitation liqueurs that do not contain the flavour of an alcoholic beverage (other than wine), whether the flavour is natural or artificial,

but only where the specific requirements set out in paragraph 13A of this Ruling are met.

**11. Paragraph 21**

Omit the paragraph; substitute:

21. Grape wine products do not include the following:

- wine coolers where they do not satisfy the requirements set out in paragraph 13 of this Ruling or paragraph 13A of this Ruling (whichever is relevant);<sup>5D</sup>
- ready to drink (RTD) or designer drinks that include a wine base but do not satisfy the requirements set out in paragraph 13 of this Ruling or paragraph 13A of this Ruling (whichever is relevant);
- RTDs or designer drinks that contain spirits (other than grape spirit); and
- Spirit based (other than grape spirit) cocktails, creams and liqueurs.

**12. Paragraph 165**

Omit the paragraph (including heading); substitute:

***Are sales to overseas travellers exempt?***

*GST free and wine tax free exports of wine by overseas travellers*

165. Sales to overseas travellers who take delivery of the wine in Australia are subject to wine tax and GST<sup>92</sup> unless all of the following conditions are met:

- the overseas traveller is not registered or required to be registered for GST;
- the overseas traveller 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 overseas traveller, the wine has not been altered or used in any way, except to the extent (if any) necessary to prepare it for export;

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<sup>5D</sup> The requirements set out in paragraph 13 of this Ruling apply up until and including 9 September 2009, and the requirements set out at paragraph 13A of this Ruling apply from 10 September 2009.



- the supplier has sufficient documentary evidence to show that the wine was exported;<sup>92A</sup> and
- the wine is exported within 60 days<sup>93</sup> (or such further period as the Commissioner allows) after the earlier of:
  - the day on which the seller of the wine receives consideration for the supply of the wine; or
  - the day on which the seller gives an invoice for the supply of the wine.

### 13. Paragraph 166

Before the paragraph; insert the subheading

*Refunds under the Tourist Refund Scheme*

### 14. Paragraph 168

After the paragraph insert:

168A. From 1 July 2010, in addition to being able to claim a refund of WET through the Tourist Refund Scheme, for accompanied baggage, Australia's external Territory residents can purchase wine and claim a refund of WET when they export the wine back to their home territory as unaccompanied baggage, provided they are not registered or required to be registered for GST at the time the wine is purchased<sup>102A</sup>.

168B. An external Territory is Norfolk Island, Christmas Island or Cocos (Keeling) Islands. A resident of an Australian external Territory is an individual:

- who resides in an external Territory;
- whose domicile is an external Territory; or
- who has actually been in an external Territory, continuously or intermittently, during more than half of the last twelve months.<sup>102B</sup>

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<sup>92A</sup> Pursuant to paragraph 38-185(3)(f) of the GST Act, from 1 July 2010, overseas travellers who are residents of an External Territory of Australia are also required to provide a declaration to the supplier stating that a refund of WET and GST has not been sought through the Tourist Refund Scheme.

<sup>93</sup> The wine is exempt from WET under section 7-5 because it is GST-free under subsection 38-185(1) of the GST Act. See GSTR 2002/6 Goods and Services Tax: Export of goods, items 1 to 4 of the table in subsection 38-185(1) of the *A New Tax System (Goods and Services Tax) Act 1999* for how this operates.

<sup>102A</sup> Subsection 25-5(1A); Paragraph 168-5(1A)(d) of the GST Act.

<sup>102B</sup> Paragraph 168-5(1A)(c) of the GST Act.

168C. A resident of an Australian external Territory may be eligible for a refund under the Tourist Refund Scheme for wine exported as unaccompanied baggage if they:

- have borne wine tax on the wine;<sup>102C</sup>
- purchase at least \$300 (including wine tax and GST) of eligible goods from the one registered person (the purchase doesn't have to be entirely of wine);<sup>102D</sup>
- hold a single tax invoice for the goods;<sup>102E</sup>
- export the goods as unaccompanied baggage to an external Territory within 60 days after the day on which they were acquired;<sup>102F</sup>
- have sufficient documentary evidence to show that the wine has been exported or that arrangements have been made to export the goods to the external territory within 60 days of purchasing the goods;<sup>102G</sup>
- leave Australia at an airport or seaport that has a Tourist Refund Scheme facility;<sup>102H</sup> and
- are entitled to a payment equivalent to the amount of GST payable, or a proportion of the GST payable, on the taxable supply of the wine to them under subsection 168-5(1A) of the GST Act.<sup>102I</sup>

#### **15. Paragraph 170**

Before the paragraph; insert the subheading:

*Sales from duty free stores*

#### **16. Footnote 4**

Omit the text; substitute:

Section 31-3 and regulation 31-3.01.

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<sup>102C</sup> Paragraph 25-5(1A)(a).

<sup>102D</sup> Paragraph 25-5(1A)(b); Regulation 168-5.04 of the GST Regulations.

<sup>102E</sup> Paragraph 25-5(1A)(b); Regulation 168-5.05 of the GST Regulations.

<sup>102F</sup> Paragraph 25-5(1A)(b); Regulation 168-5.10B of the GST Regulations.

<sup>102G</sup> Paragraph 25-5(1A)(b); Regulation 168-5.10C(1)(c) of the GST Regulations.

<sup>102H</sup> Paragraph 25-5.02(1) of the WET Regulations; Regulation 168-5.07 of the GST Regulations.

<sup>102I</sup> Paragraph 25-5(1A)(c).

## 17. Legislative references

Omit the references; substitute:

- ANTS(WET)A 1999
- ANTS(WET)A 1999 5-5
- ANTS(WET)A 1999 5-5(2)
- ANTS(WET)A 1999 5-5(2)(c)
- ANTS(WET)A 1999 5-5(3)
- ANTS(WET)A 1999 5-10
- ANTS(WET)A 1999 5-15
- ANTS(WET)A 1999 5-20
- ANTS(WET)A 1999 5-25
- ANTS(WET)A 1999 5-30
- ANTS(WET)A 1999 Div 7
- ANTS(WET)A 1999 7-5
- ANTS(WET)A 1999 7-10
- ANTS(WET)A 1999 7-15
- ANTS(WET)A 1999 7-20
- ANTS(WET)A 1999 7-25
- ANTS(WET)A 1999 9-25
- ANTS(WET)A 1999 9-25(2)
- ANTS(WET)A 1999 9-25(3)
- ANTS(WET)A 1999 9-30
- ANTS(WET)A 1999 9-35
- ANTS(WET)A 1999 9-40
- ANTS(WET)A 1999 9-45
- ANTS(WET)A 1999 9-65
- ANTS(WET)A 1999 9-70
- ANTS(WET)A 1999 13-5
- ANTS(WET)A 1999 13-5(1)
- ANTS(WET)A 1999 13-5(1)(d)
- ANTS(WET)A 1999 13-5(2)
- ANTS(WET)A 1999 13-5(3)
- ANTS(WET)A 1999 13-10
- ANTS(WET)A 1999 13-15
- ANTS(WET)A 1999 13-15(1)
- ANTS(WET)A 1999 13-15(3)
- ANTS(WET)A 1999 13-15(4)
- ANTS(WET)A 1999 13-20
- ANTS(WET)A 1999 17-5
- ANTS(WET)A 1999 17-10(1)
- ANTS(WET)A 1999 17-10(2)
- ANTS(WET)A 1999 17-10(3)
- ANTS(WET)A 1999 17-15
- ANTS(WET)A 1999 17-40
- ANTS(WET)A 1999 19-30
- ANTS(WET)A 1999 21-5
- ANTS(WET)A 1999 21-10
- ANTS(WET)A 1999 21-10(2)
- ANTS(WET)A 1999 21-15
- ANTS(WET)A 1999 23-10
- ANTS(WET)A 1999 25-5
- ANTS(WET)A 1999 25-5(1)(a)
- ANTS(WET)A 1999 25-5(1)(b)
- ANTS(WET)A 1999 25-5(1A)
- ANTS(WET)A 1999 25-5(1A)(a)

- ANTS(WET)A 1999 25-5(1A)(b)
- ANTS(WET)A 1999 25-5(1A)(c)
- ANTS(WET)A 1999 27-5
- ANTS(WET)A 1999 27-10
- ANTS(WET)A 1999 27-15(1)
- ANTS(WET)A 1999 Div 31
- ANTS(WET)A 1999 31-1
- ANTS(WET)A 1999 31-2
- ANTS(WET)A 1999 31-3
- ANTS(WET)A 1999 31-3(b)(ii)
- ANTS(WET)A 1999 31-4
- ANTS(WET)A 1999 31-5
- ANTS(WET)A 1999 31-6
- ANTS(WET)A 1999 31-7
- ANTS(WET)A 1999 31-15
- ANTS(WET)A 1999 33-1
- ANTS(WET)R 2000
- ANTS(WET)R 2000 Div 25
- ANTS(WET)R 2000 25-5.02(1)
- ANTS(WET)R 2000 25-5.02(1)(b)
- ANTS(WET)R 2000 25-5.02(2)
- ANTS(WET)R 2000 25-5.03
- ANTS(WET)R 2000 31-2.01
- ANTS(WET)R 2000 31-3.01
- ANTS(WET)R 2000 31-3.01(2)
- ANTS(WET)R 2000 31-3.01(3)
- ANTS(WET)R 2000 31-3.01(3)(a)
- ANTS(WET)R 2000 31-3.01(3)(b)
- ANTS(WET)R 2000 31-3.01(3)(c)
- ANTS(WET)R 2000 31-4.01
- ANTS(WET)R 2000 31-6.01
- ANTS(GST)A 1999
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- ANTS(GST)A 1999 13-20
- ANTS(GST)A 1999 Div 17
- ANTS(GST)A 1999 Subdiv 38-D
- ANTS(GST)A 1999 38-185(1)
- ANTS(GST)A 1999 38-185(3)
- ANTS(GST)A 1999 38-185(3)(f)
- ANTS(GST)A 1999 38-185(4)(b)
- ANTS(GST)A 1999 Div 153B
- ANTS(GST)A 1999 Subdiv 153-B
- ANTS(GST)A 1999 Div 165
- ANTS(GST)A 1999 168-5(1A)
- ANTS(GST)A 1999 168-5(1A)(c)
- ANTS(GST)A 1999 168-5(1A)(d)
- ANTS(GST)A 1999 195-1
- ANTS(GST)R 1999 38-185.01
- ANTS(GST)R 1999 Div 168
- ANTS(GST)R 1999 168-5.04
- ANTS(GST)R 1999 168-5.05
- ANTS(GST)R 1999 168-5.06
- ANTS(GST)R 1999 168-5.07
- ANTS(GST)R 1999 168-5.09
- ANTS(GST)R 1999 168-5.10B
- ANTS(GST)R 1999 168-5.10C(1)(c)

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- ANTS(GST)R 1999 Sch 5
- TAA 1953
- TAA 1953 Sch 1 105-55(1)
- TAA 1953 Sch 1 105-60 (repealed)
- TAA 1953 Sch 1 357-60
- TAA 1953 Sch 1 Div 358
- TAA 1953 Sch 1 382-5
- STAA 1992
- STAA 1992 Sch 1
- Customs Act 1901 96B
- Customs Act 1901 113
- Customs Tariff Act 1995 Sch 4
- Copyright Act 1968
- Designs Act 2003
- Patents Act 1990
- Sales Tax Assessment Act (No 1) 1930
- Trade Marks Act 1995

## Date of effect

This Addendum amends WETR 2009/2 to state the Commissioner's view of the law as it applies both before and after the date of issue of this Addendum. However, an entity may rely on WETR 2009/1, in its form prior to its amendment by this Addendum, with respect to assessable dealings in wine prior to the date of issue of this Addendum.

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## Commissioner of Taxation

6 July 2011

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### ATO references

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