


WETR 2009/2A1 - Addendum - Wine equalisation tax: operation of the producer rebate for other than New Zealand participants

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Addendum

Wine Equalisation Tax Ruling

Wine equalisation tax: operation of the producer rebate for other than New Zealand participants

This Addendum amends Wine Equalisation Tax Ruling WETR 2009/2 to:

- clarify the explanation of when an entity is a producer of rebatable wine and is eligible for a producer rebate for the purposes of section 19-5 of the WET Act.
- update the table at Appendix A of the Ruling to reflect the modification to the definition of 'grape wine products' by *A New Tax System (Wine Equalisation Tax) Regulations 2000* ('WET Regulations'). The modified definition of 'grape wine products', 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 will not satisfy the definition of 'grape wine products' for the purposes of *A New Tax System (Wine Equalisation Tax) Act 1999* ('the WET Act');
- update the table at Appendix A of the Ruling to include a reference to the definition of 'mead', and the types of the products that would have satisfied the definition of 'mead', before its modification by the WET Regulations effective from 9 June 2005;
- make a minor technical amendment to the explanation of the meaning of 'associated producer' in accordance with section 19-20 of the WET Act; and
- make other minor non-technical amendments.

WETR 2009/2 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 applies both before and after its date of issue. 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 20

Omit the paragraph; substitute:

20. Secondly an entity (the first entity) is also the producer of rebatable wine if it supplies another entity with the base constituents (that is grapes, fruit or vegetables or honey) from which the wine is manufactured.

4. Paragraph 21

Omit the last sentence; substitute:

'Therefore, an entity that supplies rice to another entity to manufacture sake will also be a producer of the rebatable wine.'

5. Paragraph 23

Omit the paragraph; substitute:

23. The term 'supply' is defined very broadly in the GST Act and, in the context of the WET Act, includes a sale of grapes, fruit or vegetables or honey. Therefore an entity that provides another entity with the base constituents (fruit or vegetables) from which wine is manufactured is a producer of rebatable wine. However, to be entitled to a producer rebate an entity not only has to be the producer of rebatable wine but also:

- must be liable for wine tax for a taxable dealing in the wine during the financial year; or
- would have been liable for wine tax for a dealing in the wine during the financial year had the purchaser not quoted for the sale at or before the time of sale.

6. Paragraph 25

Omit the paragraph; substitute:

25. However an entity that provides grapes, fruit or vegetables or honey to another entity to make wine on their behalf, and subsequently has a dealing in the wine for which they are liable to wine tax, or would have been liable to wine tax had the purchaser not quoted for the sale, is a producer of rebatable wine and is entitled to a producer rebate.

7. Paragraph 36

At the end of the paragraph; insert:

'However, an entity that carries out only one or some of the above mentioned processes may not be considered to manufacture wine.'

8. Paragraph 37

Omit the first sentence.

9. Paragraph 46

Omit the second sentence; substitute:

The beverage consists of 85% white wine, 10% lemonade and 5% orange flavour.

10. Paragraph 66

(1) Omit the list; substitute:

- 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 were omitted;³⁶ or
- 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.^{36A}

(2) After paragraph 66 insert the following paragraphs:

66A. 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.^{36B}

66B. 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.^{36C}

11. Table in Appendix A under definitions for grape wine products

(1) At the end of the first sentence of the paragraph insert:

⁴² 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.

³⁶ Paragraph 19-20(1)(a)

^{36A} Subsection 19-20(1).

^{36B} Subsection 19-20(2).

^{36C} Subsection 19-20(3).

⁴² 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.

<p>Grape wine products</p> <p><i>Up to and including 9 September 2009, a grape wine product is a beverage that:</i></p> <ul style="list-style-type: none"> 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) for example, in producing vermouth; and contains between 8% and 22% (inclusive) of ethyl alcohol by volume. <p><i>From 10 September 2009, a grape wine product is a beverage that:</i></p> <ul style="list-style-type: none"> contains at least 70% grape wine; has not had added to it any ethyl alcohol from any other source, except <ul style="list-style-type: none"> grape spirit; or alcohol used in preparing vegetable extracts (including spices, herbs and grasses) where the alcohol: 	<p>Grape wine products are traditional products that have been produced by the wine industry for many years.</p> <p>Up to and including 9 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; and imitation liqueurs (wine based); <p>but only where they satisfy the requirements in the column on the left.</p> <p>Up to and including 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
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<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;</i> <ul style="list-style-type: none"> • <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> 	<ul style="list-style-type: none"> • 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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12. Table in Appendix A under definitions for mead

Omit the fifth row in the table; substitute

<p>Mead</p> <p><i>Up to and including 8 June 2005, mead is a beverage that:</i></p> <ul style="list-style-type: none"> • <i>is the product of the complete or partial fermentation of honey and;</i> • <i>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit; and</i> • <i>has not had added any liquor or substance (other than honey, grape spirit or neutral spirit) that gives colour or flavour.</i> <p><i>From 9 June 2005, mead is a beverage that:</i></p> <ul style="list-style-type: none"> • <i>is the product of the complete or partial fermentation of honey; and</i> • <i>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit; and</i> 	<p>Up to and including 8 June 2005, mead includes:</p> <ul style="list-style-type: none"> • honey mead; • fortified mead; and • liqueur mead. <p>From 9 June 2005, mead includes:</p> <ul style="list-style-type: none"> • honey mead; • fortified mead; • liqueur mead; and • spiced mead.
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- *has not had added to it any liquor or substance that gives colour or flavour other than:*
 - *grape spirit or neutral spirit;*
 - *honey, herbs and spices, all of which can be added at any time;*
 - *caramel, provided it is added after the fermentation process is complete; or*
 - *fruit or product derived entirely from fruit, provided:*
 - *the fruit or product has not been fermented;*
 - *the fruit or product is added to the mead before fermentation of the mead; and*
 - *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; and*
- *if fruit or product is added the mead contains between 8% and 22% (inclusive) of ethyl alcohol by volume, and*
- *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.*

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.

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13. Footnote 12

Omit the second sentence; substitute:

See also WET Regulations 31-2.01, 31-3.01, 31-4.01 and 31-6.01.

14. Legislative references

Omit:

TAA 1953 Sch 1 105-60

Insert:

- ANTS(GST)A 1999
- ANTS(GST)A 1999 9-10
- ANTS(WET)A 1999 19-20
- ANTS(WET)A 1999 19-20(1)
- ANTS(WET)A 1999 19-20(2)
- ANTS(WET)A 1999 19-20(3)
- TAA 1953 Sch 1 105-60 (repealed)
- TAA 1953 Sch 1 357-60
- TAA 1953 Sch 1 Div 358
- 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)

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 2009/2, 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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