


WETR 2009/2DA2 - Draft Addendum - Wine equalisation tax: operation of the producer rebate for other than New Zealand participants

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Draft Addendum

Wine Equalisation Tax Ruling

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

This Draft Addendum, when finalised, will be a public ruling for the purposes of the *Taxation Administration Act 1953*. It will amend Wine Equalisation Tax Ruling WETR 2009/2 to:

- explain amendments made to the producer rebate provisions of the *A New Tax System (Wine Equalisation Tax) Act 1999*, that came into effect on 10 December 2012,
- reflect changes to the *New Tax System (Goods and Services Tax) Act 1999*, *A New Tax System (Wine Equalisation Tax) Act 1999*, and the *Taxation Administration Act 1953* as a result of the *Indirect Tax Laws Amendment (Assessment) Act 2012*, which introduced a self-assessment regime for indirect taxes. It applies to payments or refunds that relate to tax periods starting on or after 1 July 2012 or if they do not relate to any tax periods, liabilities or entitlements that arose on or after 1 July 2012, and
- clarify the Commissioner's views on the consequences of an entity claiming a producer rebate to which it is not entitled or which exceeds the maximum entitlement for the financial year.

WETR 2009/2 is amended as follows:

1. Paragraph 4

After Note 1, insert:

Note 2: The Addendum to this Ruling that issued on 27 November 2013 explains our view of the law as it applies:

- on and from 10 December 2012 to the extent that it relates to amendments made to the producer rebate provisions of the WET Act, that came into effect on 10 December 2012.

- to payments or refunds that relate to tax periods starting on or after 1 July 2012 or if they do not relate to any tax periods, liabilities or entitlements that arose on or after 1 July 2012 to the extent that it relates to amendments made to the *A New Tax System (Goods and Services Tax) Act 1999*, 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.
- both before and after its date of issue to the extent it clarifies the Commissioner's views with respect to what happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed. You can rely upon the Addendum on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the TAA.

2. Paragraph 13

After the paragraph; insert:

13A. From 10 December 2012, where a producer blends or further manufactures wine using wine purchased from another producer, the amount of rebate for the blended or further manufactured wine is reduced by the sum of any rebate amounts attributable to the other producer's wine.^{9A}

3. Paragraph 65

After the paragraph insert:

Reduction for earlier rebate amounts for wine used in manufacture

65A. As set out in paragraphs 36 and 40 to 45 inclusive of this Ruling, an entity may be a producer of rebatable wine where it acquires wine that has been manufactured by another entity and subjects the wine to a process or processes of manufacture. These include but are not limited to manufacturing finished wine from raw wine or blending wines to create wine that is commercially distinct from its inputs.

65B. From 10 December 2012, where a producer rebate relates to an eligible dealing with wine that was manufactured using other wine, the amount of the rebate is reduced by the sum of any earlier rebates for the wine used in the manufacturing process.

^{9A} Subsection 19-17(1).

65C. The amount of the producer rebate to which a producer is entitled is reduced by the sum of the amount of earlier producer rebates relating to the wine. Subsection 19-17(2) provides that an earlier producer rebate relating to wine is the amount of the supplying producer's rebate for the other wine that was used to manufacture the wine.

65D. Where wine is acquired prior to 10 December 2012, but is blended or used in further manufacture after that date, the wine is taken to have had no earlier rebate.^{34A}

Wine lost during manufacture

65E. If bulk wine, for which there is a producer rebate entitlement for the supplying producer, evaporates or is otherwise lost 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.

65F. 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.^{34B}

Notification of earlier rebate amount

65G. 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 (see paragraph 65R for what happens if the supplier does not provide a notice).

65H. Where a supplier chooses to provide notice of a rebate entitlement to a purchaser, the notice must be given in the approved form.^{34C} 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)

^{34A} Item 4 of Schedule 6 to the *Tax Laws Amendment (2012 Measures No. 5) Act 2012*.

^{34B} Refer to Appendix B for further examples relating to earlier producer rebates.

^{34C} Subsection 19-17(3).

- 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 tax invoice - for example, the tax invoice number, and
- the date that the wine was supplied.

65I. 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.^{34D}

65J. 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.

65K. The recipient of the notice of rebate entitlement is not required to provide the notice to the Commissioner unless requested to do so. However, the notice should be retained by the recipient in accordance with the record keeping requirements explained in paragraphs 217 and 218 of WETR 2009/1.

65L. If a person gives a notice of rebate entitlement to a purchaser and the notice is false or misleading in a material particular, because of something in it or something omitted from it, the person giving the notice will have committed an offence under the WET Act.^{34E}

65M. If a supplier of wine notifies the purchaser in the approved form of the amount of rebate the producer of the purchased wine is entitled to, the purchaser's producer rebate for any wine they have manufactured using the purchased wine is reduced. The amount of reduction is the amount of the earlier rebate that is attributable to the purchased wine used to manufacture the wine.^{34F}

^{34D} Refer to Appendix C for an example of an acceptable notification form.

^{34E} Section 19-28.

^{34F} Subsection 19-17(2).

Example 6 – Calculating reduction of rebate where notification is received

65N. Winemaker A makes a wholesale sale under quote of 100 litres of semillon that it has manufactured to Winemaker B for \$220 (including GST). Winemaker A's entitlement to a producer rebate is $29\% \times (\$220 - 1/11 \times \$220) = \$58$. Winemaker A gives notice to Winemaker B of its entitlement to claim the producer rebate for the wine of \$58.

65O. Winemaker B uses the wine purchased from Winemaker A to blend with 100 litres of sauvignon blanc it manufactured to manufacture 200 litres of blended semillon sauvignon blanc. Winemaker B sells 30 litres of the blended wine under quote to a wholesale distributor for \$110 (including GST).

65P. But for section 19-17 of the WET Act, Winemaker B is entitled to a rebate for the blended wine of 29% of the selling price of the wine (excluding GST). However, the amount of Winemaker B's rebate claim for the blended wine must be reduced by the amount of the earlier rebate as follows:

$$29\% \times (\$110 - 1/11 \times \$110) - (30/200 \times \$58)$$

Therefore, Winemaker B's rebate for the 30 litres is $\$29 - \$8.70 = \$20.30$.

65Q. If a supplier of wine notifies a purchaser in the approved form that the producer of the purchased wine is not entitled to a rebate for that wine and the purchaser uses the wine in blending or further manufacture, the purchaser's producer rebate for any eligible dealing with the blended or further manufactured wine is not reduced.^{34G}

65R. Where a producer purchases wine for use in blending or further manufacture and does not receive notification in the approved form of any earlier rebate entitlement, the producer rebate for any wine manufactured using that purchased wine must be reduced by an amount as if the seller has been entitled to a producer rebate for that sale.

65S. The producer rebate for wine that has been manufactured using other wine in respect of which no notice of previous rebate entitlement was provided, is reduced by 29% of the GST exclusive purchase price of the wine used in the manufacturing process.^{34H}

^{34G} Subsection 19-17(2).

^{34H} Subsection 19-17(2).

Example 7 – Calculating reduction of rebate where no notification is received

65T. Wholesaler A purchases 2,000 litres of grenache from Winemaker A. Wholesaler A makes a wholesale sale of the purchased wine under quote to Winemaker B for \$4,400 (including GST). Wholesaler A does not provide notice in the approved form to Winemaker B of Winemaker A's rebate entitlement for the wine.

65U. Winemaker B blends the grenache purchased from Wholesaler A with 1,000 litres of mourvedre it manufactured. Winemaker B then sells 3,000 litres of the blended grenache mourvedre wine under quote to Wholesaler B for \$6,600 (including GST) for bottling and sale.

65V. The amount attributable to the wine purchased from Wholesaler A is calculated by multiplying the GST exclusive purchase price of the wine purchased from Wholesaler A by 29% (that is $29\% \times (\$4,400 - 1/11 \times \$4,400) = \$1,160$)

65W. Winemaker's B's rebate entitlement for the sale of the grenache mourvedre is:

$$29\% \times (\$6,600 - 1/11 \times \$6,600) - \$1,160$$

Therefore, the amount of rebate Winemaker B is entitled to for the sale of the grenache mourvedre blend is \$580.

Earlier rebate for New Zealand wine

65X. Where a purchaser buys wine from a producer of wine in New Zealand and the New Zealand producer does not give notice of a rebate entitlement in the approved form, the purchaser must reduce any rebate claim for wine they manufacture using the wine acquired from the New Zealand producer. The claim must be reduced by an amount equal to 29% of the 'approved selling price' of the wine purchased from the New Zealand producer and used to manufacture the wine the subject of the rebate claim.³⁴¹ The approved selling price is the price for which the wine is sold by the New Zealand producer, net of any expenses unrelated to the production of the wine. These expenses include transport, freight and insurance, agent's fees and New Zealand or Australian taxes or duties. (Refer to paragraphs 84 to 92 inclusive of WETR 2006/1 for a more detailed discussion of the approved selling price).

³⁴¹ Subsection 19-17(5).

65Y. Where components that make up the approved selling price of wine purchased from a New Zealand producer are not expressed in Australian currency, they are to be converted to Australian currency.^{34J} The Commissioner has made a Determination setting out the manner for converting components of the approved selling price to Australian currency.^{34K}

65Z. The Commissioner's Determination provides two options for New Zealand producers to convert the approved selling price to Australian currency. However, because of the timing of events, only one of these options will be relevant where an Australian producer must determine the amount of a New Zealand producer's earlier rebate in the following circumstances:

- wine has been purchased from a New Zealand producer
- the wine purchased from the New Zealand producer has been used in blending or further manufacture by the purchaser
- the wine resulting from the process of blending or further manufacturing the wine has been the subject of a dealing in relation to which the purchaser is entitled to claim the rebate, and
- the New Zealand producer has not yet become entitled to claim the rebate or the New Zealand producer has not provided notice of an earlier rebate.

65AA. In these circumstances, any components of the approved selling price that are not expressed in Australian currency must be converted to Australian currency using the Reserve Bank of Australia rate on the earlier of:

- the day on which the New Zealand producer received any of the consideration from the purchaser for the supply of wine, or
- the date the invoice is issued to the purchaser.

^{34J} Subsection 19-15(1B).

^{34K} *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006* (Appendix B of WETR 2006/1).

4. Paragraph 68

After the paragraph insert:

Timing of notification of earlier rebate amount

68A. There is no time within which notice of an earlier rebate must be given to a purchaser of wine. As such, a producer may have made a rebate claim in a tax period for wine they manufactured using another producer's wine and reduced the claim to take account of an earlier rebate amount in the absence of a notice. Where a notice of earlier rebate is provided subsequent to a rebate claim being made by a producer, the additional rebate amount must be accounted for as follows:

- Where the notice is provided before the end of the financial year in which the producer made the reduced rebate claim, any additional rebate entitlement resulting from the notice can be claimed in the activity statement for the tax period in which the notice was provided.^{37A}
- Where the notice is provided after the end of the financial year in which the producer made the reduced rebate claim, the last activity statement for the financial year in which the producer made the reduced rebate claim must be adjusted to reflect any additional rebate amount resulting from the provision of the notice:
 - For tax periods prior to 1 July 2012, where the notice is provided more than four years after the end of the financial year in which the producer was entitled to claim the rebate, the producer is not able to claim any additional amount that would have otherwise resulted from the provision of the notice.^{37B}

^{37A} Refer to paragraph 67 and footnote 37 of this Ruling. The Commissioner accepts that producer rebates can be claimed progressively throughout the financial year. That is, a producer rebate can be claimed in the activity statement for the tax period to which wine tax is attributed for the dealing to which the rebate claim relates. The same principle applies for rebate amounts to which a producer becomes entitled as a result of being provided with a notice of earlier rebate.

^{37B} Section 105-55 of Schedule 1 to the TAA. However, an entity may preserve its entitlement to claim the producer rebate beyond the general four year limit where it notifies the Commissioner of its entitlement under paragraph 105-55(1)(a) of Schedule 1 to the TAA within the four year time limit.

- For tax periods from 1 July 2012, where the notice is provided after the period of review, the producer is not entitled to claim any additional amount that would have otherwise resulted from the provision of the notice.^{37C}

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

68B. If an entity has claimed a rebate to which it is not entitled, in whole or in part, an amendment should be made to the entity's assessed net amount for the tax period in which the rebate was claimed. Circumstances where an entity is not entitled to a rebate include the following:

- the entity is not a producer of the wine^{37D}
- the entity is not liable to wine tax for a taxable dealing or would not have been liable to wine tax for a taxable dealing even if the purchaser had not quoted^{37E}
- the entity calculated the amount of producer rebate incorrectly^{37F}
- the entity is not entitled because one of the exceptions in section 19-10 applies.^{37G}

Example 8 – entity not a producer of wine

68C. *Wisdom Company lodged quarterly returns in the 2013/2014 financial year claiming producer rebates totalling \$500,000 in the following tax periods: Quarter 1 September 2013 - \$100,000; Quarter 2 December 2013 - \$125,000; Quarter 3 March 2014 - \$175,000; Quarter 4 June 2014, \$100,000.*

^{37C} Refer to section 155-15 of Schedule 1 to the TAA, which provides that the Commissioner is treated as having made an assessment of a net amount when a GST return (activity statement) is lodged. Under section 155-35 of Schedule 1 to the TAA, amendments to the assessment may be made within the period of review, which starts on the day the notice of assessment is given and ends four years from the day after the notice of assessment was given. However, the four years can be extended if the Federal Court of Australia orders an extension under subsection 155-35(3) of Schedule 1 to the TAA, or if an entity gives written notice to the Commissioner that they consent to an extension of the period of review under subsection 155-35(4) of Schedule 1 of the TAA.

^{37D} subsection 19-5(1)

^{37E} subsection 19-5(1)

^{37F} section 19-5

^{37G} section 19-10

68D. *Wisdom Company was not a producer of the wine in any of the tax periods and therefore not entitled to the producer rebate in any of those tax periods.*

68E. *Therefore Wisdom Company's assessed net amounts for each of Quarters 1, 2, 3, and 4 would be amended to disallow the rebates claimed.*

68F. This Ruling does not deal with the imposition of penalties. However it is important to note that in these circumstances the Commissioner will consider whether an administrative penalty is applicable^{37H} by reference to each of the relevant tax periods in which an amendment is made. The Commissioner will also determine the general interest charge (GIC) that applies less any remission by reference to those tax periods.

68G. Given the penalty and interest outcomes discussed in paragraph 68F above, it is prudent that an entity ensures that it does not claim rebates to which it is not entitled. If the entity does, it should correct the claim as soon as possible.

5. Paragraph 69

Before the paragraph, insert the heading '*Excess claim – single producer*'.

6. Paragraph 69

After the paragraph, insert:

69A. Therefore an entity, who is not an associated producer, can correct an excess claim by attributing the amount payable as wine tax payable to the last tax period of the financial year in which the excess claim was made.^{39A}

69B. The wine tax law clearly sets out the maximum entitlement for a single producer^{39B} and the producer rebate may be claimed in the tax period to which the wine tax on the dealing is attributed.^{39C} Therefore, if the Commissioner discovers the excess claim (for example through compliance activity) and the entity has not corrected the claim, then the Commissioner will amend the entity's assessed net amount for each of the tax periods to the extent of the excess claim.^{39D}

^{37H} section 284-75 of Schedule 1 to the TAA and section 298-20 of Schedule 1 to the TAA

^{39A} subsection 19-25(1)

^{39B} subsection 9-15(2)

^{39C} Refer to paragraph 67 and footnote 37 of this Ruling.

^{39D} The Commissioner will identify the earliest tax period in the financial year in which the producer rebates have been claimed for that financial year where the total claim for the year has exceeded the maximum, and amend that tax period and all subsequent tax periods (where relevant).

69C. This Ruling does not deal with the imposition of penalties. However it is important to note that in these circumstances the Commissioner will determine any administrative penalty applicable^{39E} less any remission^{39F} by reference to each of the relevant tax periods in which an amendment is made. The Commissioner will also determine the GIC that applies less any remission by reference to those tax periods.

69D. Given the penalty and interest outcomes discussed in paragraph 69C above, it is prudent that an entity ensures that it does not exceed its maximum entitlement. If the entity does, it should correct the excess claim as soon as possible.

Example 9 – single producer excess claim

69E. *Montes Company lodged quarterly returns in the 2012/2013 financial year claiming the producer rebate in the following tax periods: Quarter 1 September 2012 - \$200,000; Quarter 2 December 2012 - \$175,000; Quarter 3 March 2013 - \$275,000; Quarter 4 June 2013, \$50,000.*

69F. *In August 2013, Montes Company discovers that due to a software error they had over claimed the producer rebate by \$200,000 in the 2012/2013 financial year (\$700,000 claimed less \$500,000 maximum entitlement). They can correct the excess claim by attributing \$200,000 as wine tax in Q4 (that is, the tax period ending June 2013 tax period).*

69G. *If Montes Company does not correct the excess claim and the Commissioner discovers it through compliance activity, the Commissioner would amend Montes Company's assessed net amounts in Q4 by \$50,000 and in Q3 by \$150,000.*

69H. *The Commissioner would determine any administrative penalty and general interest charge less any applicable remission for the Q3 and Q4 tax periods.*

7. Paragraph 70

Before the paragraph, insert the heading '*Excess claim – associated producer*'.

^{39E} section 284-75 of Schedule 1 to the TAA

^{39F} section 298-20 of Schedule 1 to the TAA

8. Paragraph 70

After the paragraph, insert:

70A. Therefore, if an entity is an associated producer of one or more other producers for a financial year^{41A} and:

- the rebate claimed by the group for a financial year is more than the maximum amount of producer rebates to which the group is entitled for the financial year, and
- the entity or any other member of the group has not corrected the excess claim in the last tax period of the financial year in which the excess claim was made,^{41B}

then the Commissioner will:

- amend the entity's net amount to include the wine tax payable in the last tax period of the financial year in which the excess claim was made,^{41C}
- 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 claim,^{41D} by amending those entities' net amounts in accordance with section 19-25 to include the wine tax payable, and
- ensure each of the entities assessed net amounts are not amended for more than the total amount of rebate they individually claimed during the financial year.^{41E 41F}

Example 10 – associated producer excess claim

70B. In Quarter 1, Hill Company claimed a producer rebate of \$500,000. In Quarter 3, Flat Company claimed a producer rebate of \$300,000. At the end of the financial year (end of Quarter 4), the Commissioner determines that Hill Company is an associated producer of Flat Company.

70C. The maximum rebate Flat Company and Hill Company are entitled to as a group is \$500,000. Therefore they are jointly and severally liable to pay the excess claim of \$300,000 (\$800,000 claimed less \$500,000 maximum).

^{41A} section 19-20

^{41B} subsection 19-25(4) and paragraph 69 of this Ruling

^{41C} subsection 19-25(4) and paragraph 69 of this Ruling

^{41D} subsection 19-25(3)

^{41E} subsection 19-25(3)

^{41F} The Commissioner will ensure the aggregate amount recovered from the group of associated producers does not exceed the excess claim of the group.

70D. The Commissioner will amend Hill Company's assessed net amount under section 19-25 to include \$300,000 wine tax payable in Quarter 4. The Commissioner will also amend Flat Company's assessed net amount under section 19-25 to include \$300,000 wine tax payable in Quarter 4. The Commissioner will not collect more than \$300,000 (the sum of the excess claim) from the group.

Example 11 – associated producer, producer rebate claimed less than excess claim

70E. In Quarter 1, Charles Company claimed a rebate of \$500,000. In Quarter 2, Miranda Company claimed a rebate of \$500,000. In Quarter 3, Stanley Company claimed a rebate of \$200,000.

70F. After the end of the financial year, the Commissioner determines that Charles Company, Miranda Company and Stanley Company are members of a group of associated producers. The maximum rebate to which they are entitled as a group is \$500,000. Charles Company, Miranda Company and Stanley Company are jointly and severally liable to pay the excess claim of \$700,000 (\$1,200,000 total of rebates claimed less \$500,000 maximum entitlement).

70G. The liability of each producer cannot exceed the total amount of producer rebate claimed by that producer for the financial year. Since all three producers claimed a rebate of less than \$700,000 each, the Commissioner can only amend Charles Company and Miranda Company's Q4 assessed net amounts to include \$500,000 wine tax payable each and Stanley Company's net amount to include \$200,000 wine tax payable. The Commissioner will not collect more than \$700,000 (the sum of the excess claim) from the group.

70H. This Ruling does not deal with the imposition of penalties. However, it is important to note that in these circumstances the Commissioner will consider whether administrative penalties are applicable.^{41G} The Commissioner will also determine any GIC that applies less any remission, by reference to those tax period(s).

^{41G} By reference to the amount payable by each entity under section 19-25 and in accordance with sections 284-75 and 298-20 of Schedule 1 to the TAA.

WETR 2009/2**9. Paragraphs 71 and 72**

Omit the paragraphs; substitute:

71. If an entity has allowed volume rebates or discounts which effectively reduce the price for which wine is sold (see paragraphs 118 to 122 of WETR 2009/1) and the volume rebate or discount has not been factored into the calculation of the producer rebate claimed, they will need to adjust their producer rebate accordingly.

72. Consistent with other claims to which an entity is not entitled,^{41H} in these circumstances, an amendment should be made to the entity's assessed net amount for the tax period in which the incorrect amount was claimed.

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Omit the list; substitute:

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^{41H} Refer to paragraphs 68A and 68F to 68G of this Ruling

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11. Legislative references

Insert:

- ANTS(WET)A 1999 19-15(1B)
- ANTS(WET)A 1999 19-17(1)
- ANTS(WET)A 1999 19-17(2)
- ANTS(WET)A 1999 19-17(3)
- ANTS(WET)A 1999 19-17(5)
- ANTS(WET)A 1999 19-28
- Indirect Tax Laws Amendment (Assessment) Act 2012
- TAA 1953 Sch 1 105-55
- TAA 1953 Sch 1 155-15
- TAA 1953 Sch 1 155-35
- Tax Laws Amendment (2012 Measures No. 5) Act 2012 Sch 6 Item 4

12. Other references

Insert:

- Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006

13. Appendix A

After Appendix A, insert 'Appendix B and Appendix C'.

Appendix B

Examples relating to earlier producer rebates

Example A – an example to illustrate factoring in earlier rebate amounts.

Example B – an example to illustrate what happens when the producer who supplies the wine has exhausted their producer rebate limit.

Example C – an example to illustrate how to deal with losses before manufacturing and top ups.⁴³

Example D – an example to illustrate how to deal with production losses in the course of manufacturing and top ups.⁴⁴

Example E – an example to illustrate how to deal with production losses in the course of manufacturing.

Example F – an example to illustrate ‘unit costing’ to take into account earlier rebate amounts: the example uses the cents per litre method.

⁴³ The ‘term top ups’ refers to for example the addition of a quantity of wine to a container of wine to prevent oxidation or to cover loss caused by spillage.

⁴⁴ The ‘term top ups’ refers to for example the addition of a quantity of wine to a container of wine to prevent oxidation or to cover loss caused by spillage.

WETR 2009/2**EXAMPLE A****Producer A**

Supplies 20,000 litres under quote to Producer C for \$33,000 GST inclusive. Producer A chooses not to provide notification of rebate entitlement.

Producer B

Supplies 20,000 litres under quote to Producer C for \$33,000 GST inclusive. Producer B chooses not to provide notification of rebate entitlement.

Producer C

Blends wine from Producer A and Producer B. In working out their WET rebate must take into account the earlier rebate amounts (ERA) of Producers A and B.

An example of a method to work out the ERA is to work out the ERA \$ per litre (unit price) for each quantity of wine.

Producer C supplies Producer D with 40,000 litres at \$110,000 GST inclusive under quote. Producer C claims and notifies a rebate of \$29,000 less the earlier producer rebates for the wine acquired from Producer A and Producer B: Producer A – \$8,700. Producer B – \$8,700. Entitlement for Producer C is therefore \$11,600.

Note: Producer C has not exhausted its maximum producer rebate for the year.

Producer D

Blends 40,000 litres of wine from Producer C with 40,000 litres of wine they produced themselves.

Resultant 80,000 litres is sold for \$275,000 GST and WET inclusive.

Producer D claims producer rebate of \$56,201.55 less the amount notified by Producer C (ie \$11,600).

Net claim = \$44,601.55

Note: Producer D has not exhausted its maximum producer rebate for the year.

Note the producer rebates claimed by Producer A and Producer B are not relevant to Producer D.

Formula to work out the earlier rebate amount (wine obtained under quote)

Eg. work out rebate for 20,000 litres at \$33,000.

29% of GST exclusive price.

GST is \$3,000.

Producer rebate is 29% of \$30,000 = \$8,700.

Per unit is $\frac{\$8,700}{20,000 \text{ L}}$

= \$0.435 per litre

EXAMPLE B**Producer A**

Supplies 20,000 litres under quote to Producer C for \$33,000 GST inclusive price. Producer A chooses not to provide notification of rebate entitlement.

Producer B

Supplies 20,000 litres under quote to Producer C for \$33,000. Producer B chooses not to provide notification of rebate entitlement.

Producer C

Producer C blends wine from Producer A and Producer B. Producer C sells resultant 40,000 litres to Producer D. Producer C has already reached the \$500,000 p.a. producer rebate limit. Producer C chooses to notify Producer D that it is not entitled to a rebate in respect of the wine supplied to Producer D.

Producer D

Producer D blends wine acquired from producer C with other wine it produced and sells the resultant blend. As Producer C has notified they are not entitled to a producer rebate the earlier rebate amount is \$0 and therefore Producer D's rebate amount is not reduced.

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EXAMPLE C

Producer A

Supplies 20,000 litres under quote to Producer B for \$33,000 GST inclusive. Producer A chooses not to provide notification of rebate entitlement.

Producer B

Producer B stores the purchased wine for a period of time. Producer B then prepares to blend the wine from Producer A with 30,000 litres of wine it has produced, but discovers that it has lost 50 litres of the wine acquired from Producer A.

This means that only 19,950 litres of the purchased wine has been used in manufacturing the resultant blend.

Producer B includes a further 50 litres of its own wine to bring the total up to 50,000 litres.

Producer B sells the resultant blend of 50,000 litres for \$110,000 GST inclusive under quote.

Although Producer B acquired 20,000 litres (and the earlier rebate for that would be \$8,700), Producer B has only used 19,950 litres of this wine in manufacturing the blend. On a per unit basis the wine acquired from Producer A attracted a rebate of litres \$0.435 per litre (\$8,700/20,000). Therefore the earlier producer rebate for wine used in manufacturing Producer B's blend is 19,950 litres x \$0.435 (which equals \$8,678.25).

Producer B's rebate entitlement is therefore \$29,000 less \$8,678.25 (which equals \$20,321.75).

Formula to work out the earlier rebate amount (wine obtained under quote)

Eg. work out rebate for 20,000 litres at \$33,000.

29% of GST exclusive price.

GST is \$3,000.

Producer rebate is 29% of \$30,000 = \$8,700.

Per unit is $\frac{\$8,700}{20,000 \text{ L}}$

= \$0.435 per litre

EXAMPLE D**Producer A**

Supplies 20,000 litres under quote to Producer B for \$33,000 GST inclusive.
 Producer A chooses not to provide notification of rebate entitlement.

Producer B

Producer B blends the 20,000 litres acquired from Producer A with 30,000 litres of wine it has produced.

In the course of production 50 litres is lost through spillage.

In this case since 50 litres was lost during the manufacturing process, it is considered that the entire 20,000 litres acquired from Producer A was used in the manufacture of the blend [see paragraph 65F of this Ruling]. The earlier producer rebate for the wine used to manufacture Producer B's wine is \$8,700.

Producer B sells the resultant blend of 49,950 litres for \$110,000 GST inclusive under quote.

Therefore Producer B's rebate entitlement is \$29,000 less \$8,700 (which equals \$20,300).

Formula to work out earlier rebate amount (wine obtained under quote)

Work out rebate for 20,000 litres at \$33,000.

29% of GST exclusive price.

GST is \$3,000.

Producer rebate is 29% of \$30,000 = \$8,700.

Per unit is $\frac{\$8,700}{20,000 \text{ L}}$

= \$0.435 per litre.

EXAMPLE E

Producer A

Supplies 20,000 litres under quote to Producer B for \$33,000 GST inclusive. Producer A claims and notifies a producer rebate of \$8,700.

Producer B

Producer B blends 10,000 litres of the wine acquired from Producer A with 10,000 litres of wine it has produced. At the end of the blending/manufacturing process it has 19,950 litres. Producer B sells 10,000 litres of the blended wine under quote for \$55,000 GST inclusive and retains the balance (9,950 litres) for future use.

Producer B needs to apportion the earlier rebate of \$8,700 that applied to the 20,000 litres acquired from Producer A. Therefore the previous rebate amount is $\$8,700 \times 10,000/20,000$ litres (being the portion of wine from Producer A used for blending) $\times 10,000/19,950$ litres (being the proportion of the resultant wine that is sold) which equals \$2,180. Therefore Producer B's rebate entitled is $\$50,000 \times 29\% - (\$2,180) = \$12,320$.

EXAMPLE F**Producer A**

Supplies Producer D 20,000 litres under quote for \$33,000 GST inclusive.
Producer A chooses not to provide notification of rebate entitlement.

Producer B

Supplies Producer D 20,000 litres under quote for \$33,000 GST inclusive.
Producer B chooses not to provide notification of rebate entitlement.

Producer C

Supplies Producer E 20,000 litres under quote for \$33,000 GST inclusive price.
Producer C provides notification of a rebate entitlement of \$8,700.

Producer D

Blends wine from Producer A and Producer B.
Producer D supplies Producer F with 40,000 litres at \$110,000 GST inclusive under quote. Producer D claims and notifies a rebate \$11,600 (\$29,000 less the earlier producer rebates relating to the wine from Producer A (\$8,700) and Producer B (\$8,700).
Note: Producer D has not exhausted its maximum producer rebate for the year.

Producer E

Producer E blends the 20,000 litres acquired from Producer C with 30,000 litres of wine it has produced. Producer E sells the resultant blend of 50,000 litres to Producer F for \$110,000 GST inclusive under quote.
Producer E's rebate entitlement is \$20,300 (\$29,000 less \$8,700). They notify Producer F of the amount.
Note: Producer E has not exhausted its maximum producer rebate for the year.

Producer F

Producer F blends 20,000 litres of wine it has produced with 20,000 litres of wine acquired from Producer D and 25,000 litres of wine acquired from Producer E.

Producer F sells the resultant 65,000 litres under quote for \$198,000.

As they have not used all of the acquired wine in manufacturing their wine they need to work out how much of the earlier producer rebate relates to the amount of wine used.

Using a cents per litre basis, Producer F works out the amount of earlier rebate for wine used on a per litre basis is:

Producer D's wine is \$11,600/40,000 litres which equals \$0.29 per litre.

Producer E's wine is \$20,300/50,000 which equals \$0.406 per litre.

Producer F's rebate entitlement is 29% of the GST exclusive price (which is \$180,000) less the previous earlier producer rebates. Therefore, Producer F's rebate entitlement is 29% of \$180,000 less the sum of 20,000 x \$0.29 and 25,000 x \$0.406.
 $\$52,200 - (\$5,800 + \$10,150) = \$36,250.$

Appendix C**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 tax invoice - 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

Date

When the Draft Addendum is finalised it will apply as follows:

- on and from 10 December 2012 to the extent it relates to amendments made to the producer rebate provisions of the *A New Tax System (Wine Equalisation Tax) Act 1999*, that came into effect on 10 December 2012.
- to payments or refunds that relate to tax periods starting on or after 1 July 2012 or if they do not relate to any tax periods, liabilities or entitlements that arose on or after 1 July 2012 to the extent that it relates to amendments made to the *A New Tax System (Goods and Services Tax) Act 1999*, *A New Tax System (Wine Equalisation Tax) Act 1999*, and the *Taxation Administration Act 1953* as a result of the *Indirect Tax Laws Amendment (Assessment) Act 2012*, which introduced a self-assessment regime for indirect taxes.
- both before and after its date of issue to the extent it clarifies the Commissioner's views with respect to what happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed. The Final Addendum can be relied upon on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

Your comments

You are invited to comment on this Draft Ruling. Please forward your comments to the contact officer by the due date.

A compendium of comments is prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- be published on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 8 January 2014
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Commissioner of Taxation

27 November 2013

ATO references

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