WETR 2009/2DAC1 - Draft Consolidation - Wine equalisation tax: operation of the producer rebate for other than New Zealand participants

From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.
View the Draft Addendum notice for this document.

Wine Equalisation Tax Ruling

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

This Ruling is consolidated by WETR 2009/2DA2 and has no legal status. Refer to the draft addendum to view details of all potential changes. When the draft addendum is finalised this Ruling will have the following preamble.

Preamble

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.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

What this Ruling is about

1. The *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) deals with a tax on sales, importations and certain other dealings with wine which take place on or after 1 July 2000. The tax on wine is referred to in this Ruling as the wine tax although it is also known as the wine equalisation tax or WET.

2. The WET Act provides for a producer rebate in the form of a wine tax credit from 1 October 2004. This Ruling explains how the wine tax producer rebate operates for producers of wine other than New Zealand participants.[1] This Ruling also explains eligibility to

[1] See WETR 2006/1 Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand for an explanation of how the wine tax producer rebate operates for producers of wine in New Zealand that have their wine exported to Australia.

claim the rebate, how the rebate is calculated and when and how a claim for the rebate may be made.

3. Unless otherwise stated, all legislative references in this Ruling are to the WET Act and all references to the WET Regulations are to the A New Tax System (Wine Equalisation Tax) Regulations 2000.

Date of effect

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.

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.

5. If this Ruling conflicts with a previous private ruling that you have obtained or a previous public ruling, this Ruling prevails. However, if you have relied on a previous ruling, you will be protected in respect of what you have done up to the date of issue of this Ruling. This means that if you have underpaid an amount of WET, you will not be liable for the shortfall prior to the date of issue of the later ruling. Similarly, you will not be liable to repay an amount overpaid by the Commissioner as a refund.

Background

How does the wine tax work?

6. The broad aim of the WET Act is to impose wine tax on dealings with wine in Australia. The wine tax is applied to both Australian produced wine and imported wine. Dealings which attract wine tax are referred to as assessable dealings and can include selling wine, using wine, or making a local entry of imported wine at the customs barrier.

7. The wine tax is normally a once only tax designed to fall on the last wholesale sale. Where wine is sold by wholesale to a retailer for example, to a distributor, bottle shop, hotel or restaurant, wine tax is calculated on the selling price of the wine excluding wine tax and Australian goods and services tax (GST).[2] If wine is not the subject of a wholesale sale, for example, it is sold by retail by the manufacturer at the cellar door or used by the manufacturer for tastings or promotional activities, alternative values are used to calculate the tax payable.

8. Normally for retailers (including bottle shops, hotels, restaurants and cafes) wine tax is included in the price for which the retailers purchase the wine. Most retailers are not entitled to a credit for wine tax included in the purchase price of the wine. The system is designed so that wine tax is built into the retailer's cost base and is then effectively passed on in the price of the wine to the end consumer.

9. Refer to Wine Equalisation Tax Ruling WETR 2009/1 Wine equalisation tax: the operation of the wine equalisation tax system for a detailed discussion on how the wine tax works.

Producer rebates

10. The WET Act provides a rebate of wine tax for producers of rebatable wine that are registered or required to be registered for GST in Australia. From 1 October 2004 to 30 June 2006, the maximum amount of rebate that an Australian producer (or group of associated producers)[3] could claim in a full financial year was A$290,000, effectively offsetting wine tax on A$1 million (wholesale value) of eligible sales and applications to own use per annum.

11. From 1 July 2006, the maximum amount of rebate an Australian producer (or group of associated producers) can claim in a full financial year is A$500,000, which equates to approximately A$1.7 million (wholesale value) of eligible sales and applications to own use per annum.[4]

12. The amount of the producer rebate is:

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[2] The amount on which the wine tax is calculated may be increased in certain circumstances, for example, where the transaction is not at arm's length, or to include the value of royalties or containers.
[3] Section 19-20.
[4] Subsections 19-15(2) and 19-15(3).

(a) for wholesale sales,[5] 29% of the price for which the wine is sold[6] (excluding wine tax and GST).

(b) for retail sales[7] and AOUs,[8] 29% of the notional wholesale selling price of the wine.[9]

13. From 1 July 2005, access to the producer rebate was extended to eligible New Zealand wine producers that have their wine exported to Australia. The operation of the producer rebate for New Zealand participants is described in Wine Equalisation Tax Ruling WETR 2006/1 Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand.

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]

Previous Rulings

14. This Ruling replaces paragraphs 121 to 135 inclusive of Wine Equalisation Tax Ruling WETR 2004/1 Wine equalisation tax: the operation of the wine equalisation tax system. WETR 2004/1 was withdrawn on 24 June 2009. Pursuant to section 105-60 of the TAA, you will be protected in respect of what you have done up until the date of the withdrawal of WETR 2004/1 to the extent that you have relied on paragraphs 121 to 135 of WETR 2004/1 to ascertain your entitlement to the producer rebate.

Ruling and Explanation

Rebatable wine

15. Producers of rebatable wine may be entitled to a producer rebate.[10]

16. Rebatable wine[11] means grape wine, grape wine products, fruit or vegetable wine, cider or perry, mead or sake as defined in the WET Act.[12]

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[5] See paragraphs 57 to 61 of WETR 2009/1 for a discussion of 'wholesale sales'.
[6] Paragraph 19-15(1)(a).
[7] See paragraphs 62 and 63 of WETR 2009/1 for a discussion of 'retail sales'.
[8] AOU means application to own use. See paragraphs 80 to 83 of WETR 2009/1 for a discussion of 'application to own use'.
[9] Paragraph 19-15(1)(b). See paragraphs 142 to 151 of WETR 2009/1 for a discussion of 'notional wholesale selling price'.
[9A] Subsection 19-17(1).
[10] Subsection 19-5(1).
[11] As defined in section 33-1.

17. The definitions and examples of these various products are set out in Appendix A of this Ruling and are discussed in paragraphs 8 to 43 of WETR 2009/1.

Producer of rebatable wine

18. An entity is entitled to a producer rebate for rebatable wine if it is the producer of the wine.[13] Producer (of rebatable wine) is defined in section 33-1 and means an entity that:

> manufactures the wine or supplies to another entity the grapes, other fruit, vegetable or honey from which the wine is manufactured.[14]

19. There are two elements to the definition of producer in section 33-1. Firstly, in broad terms, an entity is the producer of rebatable wine if it manufactures the wine from the base constituents (for example grapes for grape wine, fruit or vegetables for fruit or vegetable wine, honey for mead or rice for sake or grape wine for grape wine products).

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.

21. Although rice is not specifically mentioned in the definition of producer of rebatable wine, the Commissioner considers rice falls within the meaning of fruit or vegetable.[15] Therefore, an entity that supplies rice to another entity to manufacture sake will also be a producer of the rebatable wine.

22. The meaning of producer as defined in section 33-1 refers to an entity that supplies the raw materials such as fruit or vegetables from which wine is manufactured. As specified in section 33-1 the term 'supply' in the WET Act takes its meaning from the definition of supply in *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

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

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[12] Sections 31-1, 31-2, 31-3, 31-4, 31-5, 31-6 and 31-7. See also WET Regulations 31-2.01, 31-3.01, 31-4.01 and 31-6.01.
[13] Subsection 19-5(1).
[14] Section 33-1.
[15] In the context of the wine industry fruit or vegetable wine includes wine made from the complete or partial fermentation of fruit, vegetable, grains and/or cereals. See the *Australia New Zealand Food Standards Code.*

- 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.

24. The sale of fruit or vegetables to a manufacturer of wine is not a taxable dealing in wine. Therefore an entity that sells the grapes, fruit or vegetables or honey to a wine manufacturer will not be entitled to a producer rebate.

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.

Manufacture of wine

26. Manufacture is defined[16] in the WET Act to include:

(a) production;

(b) combining parts or ingredients so as to form an article or substance that is commercially distinct from the parts or ingredients; and

(c) applying treatment to foodstuffs as a process in preparing them for human consumption.

27. The definition of manufacture is an inclusive definition and extends the ordinary meaning of manufacture. In commenting on the similarly inclusive definition of manufacture in section 3 of the *Sales Tax Assessment Act (No. 1) 1930*, Murray J stated in *Deputy Commissioner of Taxation v. Cohn's Industries Pty Ltd*:[17]

> …I am quite unable to see anything which should lead me to the view that the word 'includes' is intended to be, insofar as it is followed by para. (b) exhaustive. It seems to me that para. (a), (b) and (c) of the definition can all be fairly read as intended to extend the ordinary meaning of the term 'manufacture'.[18]

28. The definition of manufacture in the WET Act also uses identical words to the first three paragraphs of the definition of manufacture in the sales tax legislation. The meaning of manufacture has been considered in a number of sales tax cases. The Commissioner considers that the cases that examined that part of the sales tax definition as replicated in the WET Act apply equally to wine tax.

29. In *McNichol and Anor v. Pinch*[19] Darling J stated at page 361:

[16] Section 33-1.
[17] (1978) 9 ATR 479; 79 ATC 4025
[18] (1978) 9 ATR 479 at 480; 79 ATC 4025 at page 4027.
[19] [1906] 2 KB 352.

> ...the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made.[20]

30. This statement was quoted with approval in *Federal Commissioner of Taxation v. Jack Zinader Pty Ltd.*[21] In that case it was held that articles which resulted from the remodelling of fur garments were goods manufactured and sold within the meaning of the *Sales Tax Assessment Act (No. 1) 1930-1942* and were liable to tax under that Act. In his judgment Dixon J stated:

> The argument is answered by the consideration that, according to the conclusion already stated, the process produces a different article. When that consideration is added to the fact that the actual work done and the procedure employed in producing the new, that is the distinct, article is characteristically a manufacturing process, it must follow that the 'goods' are 'manufactured' within the ordinary meaning of that term.[22]

31. Whether or not the processes carried out by a particular entity constitute manufacture will be a matter of fact and degree. An entity that makes, from the base constituents, for example grapes, fruit or vegetables, honey or rice, a beverage (this includes raw wine)[23] that satisfies the meaning of wine in section 31-1 manufactures wine. However, an entity that purchases bottled wine or bulk wine for bottling does not manufacture that wine and is not eligible for the producer rebate in relation to that wine.

32. The first limb of the extended meaning of manufacture in section 33-1 refers to production.

33. *The Australian Oxford Dictionary,* 2004, Second Edition, Oxford University Press, Melbourne relevantly defines 'production' as:

> 1. the act or instance of producing; the process of being produced.

34. Produce is relevantly defined as:

> 2. manufacture (goods) from raw materials etc.

35. The meaning of production in the definition of manufacture was considered by the High Court in *Federal Commissioner of Taxation v. Riley.*[24] Rich, Dixon and McTiernan JJ in their joint judgement stated:

> By the statutory definition, manufacture includes production. This description is very wide. It appears to cover all operations conducted for the purpose of bringing tangible things into existence for sale.[25]

36. Some winemakers purchase raw wine (wine that has undergone primary fermentation) and finish the wine by stabilising, fining and filtering, secondary fermentation (malolactic fermentation) if needed, maturation and racking to clarify the wine by removing

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[20] [1906] 2 KB 352 at page 361.
[21] (1949) 78 CLR 336; (1949) 9 ATD 46.
[22] (1949) 78 CLR 336 at page 345.
[23] See paragraphs 37 to 43 of WETR 2009/1 for a discussion on beverage in the context of the WET Act
[24] (1935) 53 CLR 69.
[25] (1935) 53 CLR 69 at page 78.

unwanted solids. The Commissioner's view is that these are processes in the production of wine and that entities that carry out all these processes manufacture wine. However, an entity that carries out only one or some of the above mentioned processes may not be considered to manufacture wine.

37. Whether a particular process, or combination of processes that an entity conducts in relation to wine constitutes production, and therefore manufacture, requires examination of the relevant facts and circumstances. However filtering wine as part of the bottling process on its own would not be the manufacture of the wine.

38. The second limb of the extended meaning of manufacture in section 33-1 refers to combining parts or ingredients so as to form an article or substance that is commercially distinct from the parts or ingredients.

39. The mixing together of two or more different wines (the inputs) to produce another wine, for example a blended wine satisfies the second limb of the definition of manufacture. The person who mixes the inputs together does not have to have produced the inputs.

40. In the wine industry it is a normal part of winemaking to blend wines. In some cases the wines that are blended may be different varieties of wine, for example cabernet sauvignon and merlot. In other cases the blended wines may be the same variety of wine but with each individual blended wine having characteristics that when combined with the characteristics of the other blended wine results in a wine with its own commercially distinct characteristics. What is commercially distinct will often be a matter of fact and degree. The Commissioner considers that an entity that combines different wines to produce wine with its own characteristics, distinct from the individual blended wines, manufactures wine.

Example 1 – manufacture by combining two or more different wines

41. *Feekle Wines Pty Ltd purchases bulk Cabernet Sauvignon wine from Winemaker A and bulk Merlot wine from Winemaker B. Feekle Wines blends the wines to produce their own distinctive Cabernet Merlot wine.*

42. *Feekle Wines Pty Ltd manufactures the Cabernet Merlot wine.*

Example 2 – manufacture by combining two or more different wines

43. *Feekle Wines Pty Ltd purchases bulk 2005 port style wine from Winemaker A and bulk 2006 port from Winemaker B. Feekle Wines believes that the combination of these two wines will produce a port style wine that will have the characteristics they want. Feekle Wines combines the 2005 wine with the 2006 wine to produce their own port style wine.*

44. *Feekle Wines Pty Ltd manufactures their port style wine.*

45. The mixing of wine with other substances to produce another wine, for example a beverage that meets the requirements of a grape wine product, will also meet the second limb of the definition of manufacture.

Example 3 – manufacturing a grape wine product

46. *Good Drinks Pty Ltd makes a beverage that meets the definition of grape wine product. The beverage consists of 85% white wine, 10% lemonade and 5% orange flavour. Good Drinks Pty Ltd purchases the white wine from other wine makers and combines the ingredients to make the grape wine product.*

47. *Good Drinks Pty Ltd is the manufacturer of the grape wine product.*

48. The Commissioner also considers that an entity manufactures wine when it engages a contract wine maker who makes the wine on behalf of the entity, provided that the grapes, other fruit, vegetable or honey and the resulting wine remains the property of the entity. The owner does not physically manufacture the wine, however the owner provides the requisite materials (the grapes, other fruit, vegetable or honey) and specifications for wine to be manufactured, and the engagement of the contract winemaker is akin to engaging an employee to undertake the physical tasks of manufacture.

49. Although the entity that owns the wine does not carry out any of the physical processes of manufacture personally, by causing the wine to be manufactured on their behalf, the owner has undertaken the manufacture of the wine. In these circumstances the owner of the wine is the producer of that rebatable wine for the purposes of Division 19.

50. Having regard to the views expressed in paragraphs 48 and 49 of this Ruling the Commissioner considers that an owner of grape wine that provides to a contract winemaker the grape wine and other materials and specifications to make a beverage that meets the definition of grape wine product, manufactures the grape wine product as defined in section 33-1. Therefore the owner of the grape wine is the producer of that rebatable wine for the purposes Division 19.

51. The third limb of the extended meaning of manufacture in section 33-1 refers to applying treatment to foodstuffs as a process in preparing them for human consumption.

52. This third limb of the extended meaning of manufacture in section 33-1 is not relevant in determining if an entity is a producer of rebatable wine. This is because wine is not a foodstuff.

53. While ‘food’ is defined in the WET Act by reference to the GST Act, ‘foodstuffs’ is not defined in the WET Act. Therefore the term ‘foodstuffs’ takes its ordinary meaning. *The Australian Oxford Dictionary,* 2004, Second Edition, Oxford University Press, Melbourne defines foodstuff as:

any substance suitable as food.

54. The ordinary meaning of 'foodstuff', as set out in paragraph 53 of this Ruling, is defined with reference to 'food'. Food, as it is ordinarily understood does not include drink.[26] Therefore the ordinary meaning of 'foodstuff' does not extend to drinks or beverages. Consequently wine is not a foodstuff for the purposes of the third limb of the extended definition of manufacture in section 33-1.

55. The third limb of the extended definition of manufacture in section 33-1 may be relevant in determining if a person is entitled to quote[27] for an assessable dealing because they will use the wine in manufacture or other treatments or processes which may not relate to, or result in other wine.[28] For example sherry may be used in the manufacture of cakes.

Eligible sales and applications to own use

56. To be eligible to claim a producer rebate the producer must either:

- be liable for wine tax on taxable dealings during the financial year; or
- sell wine in a dealing that would have incurred wine tax if the purchaser had not quoted at or before the time of the sale.[29]

Example 4 – incur wine tax

57. *Tim's Tasty Wines Pty Ltd makes chardonnay. Tim's Tasty Wines is registered for GST and sells the chardonnay via cellar door sales.*

58. *Tim's Tasty Wines incurs wine tax on those sales and therefore satisfies the producer rebate requirements.*

Example 5 – would have incurred wine tax

59. *Winemaker A is the producer of Cabernet Sauvignon wine. Feekle Wines Pty Ltd purchases bulk Cabernet Sauvignon wine from Winemaker A. Winemaker A is registered for GST. Feekle Wines quotes for the purchase from Winemaker A.*

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[26] The definition of food in *The Australian Oxford Dictionary* relevantly includes:
1. a nutritious substance, especially solid in form, that can be taken into an animal or a plant to maintain life and growth.
Similarly the definition of food in the Macquarie Dictionary, 2005, 4th edition, The Macquarie Library Pty Ltd, NSW includes:
2. more or less solid nourishment (as opposed to drink).

[27] See paragraphs 177 to 182 of WETR 2009/1 for a discussion of eligibility to 'quote' in relation to a sale of wine.

[28] Paragraph 13-5(1)(c).

[29] Subsection 19-5(1).

60. *Winemaker A would have incurred wine tax if Feekle Wines had not quoted and therefore Winemaker A satisfies the producer rebate requirements for this dealing.*

Exceptions

61. An entity is not entitled to the producer rebate if:[30]

- the purchaser quotes for the sale and notifies the entity at or before the time of the sale that they intend to make a GST-free supply of the wine; or
- the entity has claimed a wine tax credit,[31] or a wine tax credit subsequently arises for the entity (other than a producer rebate), for the dealing with the wine.

62. The approved form for quoting[32] has provision for the purchaser to notify a producer that the purchaser intends to make a GST-free supply of the wine. This is not the only way in which the purchaser can notify a producer that the purchaser intends to make a GST-free supply of the wine. It is sufficient that they provide the producer with the information necessary to conclude that they will make a GST-free supply. For example, exporting wine is a GST-free supply, therefore, if a purchaser provides the producer with information that the wine will be exported they have notified the producer that they intend to make a GST-free supply.

63. Where an entity purchases wine from a producer and they intend to make a GST-free supply of the wine, the purchaser commits an offence if they do not notify the producer of that intention either at or before the time of the purchase.[33]

Amount of producer rebate

64. The amount of a producer rebate is calculated as follows:[34]

- for wholesale sales – 29% of the price (excluding wine tax and GST) for which the wine was sold; and
- for retail sales and applications to own use – 29% of the notional wholesale selling price of the wine.

65. The maximum amount of producer rebate to which a producer is entitled for a financial year as from 1 July 2006 is $500,000. However, if the producer is an associated producer (refer to paragraph 66 of this Ruling) of one or more other producers for a financial year, the maximum amount of producer rebates to which

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[30] Section 19-10.
[31] See paragraphs 207 and 208 of WETR 2009/1 for a discussion of 'wine tax credits'.
[32] See Appendix A of WETR 2009/1 for copy of the quotation form.
[33] Section 19-30. The maximum penalty is 20 penalty units.
[34] Section 19-15.

those producers are entitled as a group for each financial year as from 1 July 2006 is $500,000.

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.

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]

[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.

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)
- 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.

[34C] Subsection 19-17(3).
[34D] Refer to Appendix C for an example of an acceptable notification form.

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]

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% x ($220 – 1/11 x $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% x ($110 – 1/11 x $110) – (30/200 x $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.

[34E] Section 19-28.
[34F] Subsection 19-17(2).
[34G] Subsection 19-17(2).

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]

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% x ($4,400 – 1/11 x $4,400) = $1,160)*

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

29% x ($6,600 – 1/11 x $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. [34I] 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).

[34H] Subsection 19-17(2).
[34I] 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.

Associated producer

66. A producer is an associated producer of another producer for a financial year if, at the end of the financial year:[35]

- 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*

[34J] Subsection 19-15(1B).
[34K] *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006* (Appendix B of WETR 2006/1).
[35] Section 19-20.

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]

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 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]

Claiming the producer rebate

67. The producer rebate is claimed in the activity statement for the tax period to which the wine tax on the dealing is attributed.[37] However if the purchaser has quoted for a dealing at or before the time of the sale then it is the tax period in which WET would have been payable if the purchaser had not quoted. The producer rebate is claimed by adding the rebate to the total amount of wine tax credits claimed and entering this total amount against Label 1D (wine equalisation tax refundable).

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[36] [Omitted.]

[36A] Subsection 19-20(1).

[36B] Subsection 19-20(2).

[36C] Subsection 19-20(3).

[37] Subsection 17-10(1), read in conjunction with the fourth column in the Wine Tax Credit Table, in section 17-5, in relation to CR9 and with section 21-15, indicates that producer rebates are claimed in the final tax period for the year. However, subsection 19-25(1) seems to contemplate (and arguably would otherwise be otiose) that producer rebates are claimed progressively throughout the year in the activity statement for each tax period. Accordingly, the Commissioner accepts that producer rebates may be claimed in the activity statement for the tax period to which the wine tax on the dealing is attributed. Where the entitlement for the producer rebate arises because you would have incurred wine tax if the purchaser had not quoted for the sale then the producer rebate is claimed in the period in which it would have been attributable if the purchaser had not quoted.

68. Any subsidy payable by the States or Territories is claimable from the relevant State or Territory department or authority. It must not be claimed on the activity statement.

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]
  - 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]

[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.

[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

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.*

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.*

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

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.

What happens if the producer rebate is over-claimed

Excess claim – single producer

69. If the amount of producer rebate that an entity claims exceeds the amount to which the entity is entitled for a financial year, the entity is liable to pay an amount equal to that excess.[38] The amount payable is treated as if it is wine tax payable and is attributable to the last tax period of the financial year in which the excess claim was made.[39]

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
[38] Subsection 19-25(1).
[39] Subsection 19-25(4).
[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 (ie 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.

Excess claim – associated producer

70. If an entity is a member of a group of associated producers 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, each member of the group is jointly and severally liable to pay an amount equal to the excess.[40] However, an entity will not be liable to pay an amount that exceeds the sum of the amounts of producer rebates that the entity claimed for the financial year.[41]

[39E] section 284-75 of Schedule 1 to the TAA
[39F] section 298-20 of Schedule 1 to the TAA
[40] Subsections 19-25(2) and 19-25(3).
[41] Subsection 19-25(3).

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).

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.

[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.

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).

Impact of volume rebates and discounts

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.

[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.
[41H] Refer to paragraphs 68A and 68F to 68G of this Ruling

Detailed contents list

73. Below is a detailed contents list for this Ruling:

Commissioner of Taxation
24 June 2009

Previous draft:
WETR 2008/D2

Related Rulings/Determinations:
GSTR 1999/1; WETR 2002/1; WETR 2006/1; WETR 2009/1

Previous Rulings/Determinations:
WETR 2004/1

Subject references:
- assessable dealing
- application to own use
- export
- manufacture
- producer rebate
- taxable value
- wholesale sales
- wine

Legislative references:
- ANTS(WET)A 1999
- ANTS(WET)A 1999 9-10
- ANTS(WET)A 1999 13-5(1)(c)
- ANTS(WET)A 1999 17-10(1)
- ANTS(WET)A 1999 Div 19
- ANTS(WET)A 1999 19-5(1)
- ANTS(WET)A 1999 19-10
- ANTS(WET)A 1999 19-15
- ANTS(WET)A 1999 19-15(1)(a)
- ANTS(WET)A 1999 19-15(1)(b)
- ANTS(WET)A 1999 19-15(1B)
- ANTS(WET)A 1999 19-15(2)
- ANTS(WET)A 1999 19-15(3)
- 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 19-20
- ANTS(WET)A 1999 19-20(1)
- ANTS(WET)A 1999 19-20(2)
- ANTS(WET)A 1999 19-20(3)
- ANTS(WET)A 1999 19-25(1)
- ANTS(WET)A 1999 19-25(2)
- ANTS(WET)A 1999 19-25(3)
- ANTS(WET)A 1999 19-25(4)
- ANTS(WET)A 1999 19-28
- ANTS(WET)A 1999 19-30
- ANTS(WET)A 1999 21-15
- ANTS(WET)A 1999 31-1
- ANTS(WET)A 1999 31-2
- ANTS(WET)A 1999 31-3
- 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 33-1
- ANTS(GST)A 1999

- ANTS(WET)R 2000
- ANTS(WET)R 2000 31-2.01
- ANTS(WET)R 2000 31-3.01
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- Indirect Tax Laws Amendment (Assessment) Act 2012
- Sales Tax Assessment Act (No. 1) 1930-1942
- Sales Tax Assessment Act (No. 1) 1930 3
- TAA 1953 Sch 1 105-60 (repealed)
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- TAA 1953 Sch 1 155-15
- TAA 1953 Sch 1 155-35
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- TAA 1953 Sch 1 357-60
- TAA 1953 Sch 1 Div 358
- Tax Laws Amendment (2012 Measures No. 5) Act 2012 Sch 6 Item 4

Case references:

- Deputy Commissioner of Taxation v. Cohn's Industries Pty Ltd (1978) 9 ATR 479; 79 ATC 4025
- Federal Commissioner of Taxation v. Riley (1935) 53 CLR 69
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- McNichol and Anor v. Pinch [1906] 2 KB 352

Other references:

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- Macquarie Dictionary, 2005, 4th Edition, The Macquarie Library Pty Ltd NSW
- Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006

ATO references

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Appendix A

Rebatable Wines

Set out below are the definitions of products for the purposes of the WET Act.[42] The definitions incorporate the requirements of the regulations set out in the WET Regulations. The wine tax applies to alcoholic products which satisfy the definitions and contain more than 1.15% by volume of ethyl alcohol. Some examples of products that satisfy the various definitions and products that do not are provided - the examples are only covered by the definitions where they meet the requirements in the column on the left. Alcoholic products containing more than 1.15% by volume of ethyl alcohol that are not covered by the wine equalisation tax are subject to the excise/duty regime.

Definitions	Examples
Grape wine *Grape wine is a beverage that:* • *is the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes; and* • *does not contain more than 22% of ethyl alcohol by volume.* *Note: a beverage does not cease to be the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes merely because grape spirit, brandy, or both grape spirit and brandy have been added to it.*	Grape wine includes: • table wines (red, white and rosé); • sparkling wines; • fortified wines; and • dessert wines.
Grape wine products *Up to and including 9 September 2009, a 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) for example, in producing vermouth; and* • *contains between 8% and 22% (inclusive) of ethyl alcohol by volume.*	Grape wine products are traditional products that have been produced by the wine industry for many years. Up to and including 9 September 2009, grape wine products include: • vermouth; • marsala; • green ginger wine (except green ginger wine with spirits such as scotch added); • wine based cocktails and creams; and • imitation liqueurs (wine based); but only where they satisfy the

[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.

	requirements in the column on the left. Up to and including 9 September 2009, grape wine products do not include: • 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. From 10 September 2009 grape wine products include: • vermouth; • marsala; • green ginger wine (except green ginger wine with spirits such as scotch added); • wine based cocktails and creams that do not contain the flavour of any alcoholic beverage (other than wine) whether the flavour is natural or artificial; and • imitation liqueurs (wine based) that do not contain the flavour of any alcoholic beverage (other than wine) whether the flavour is natural or artificial; but only where they satisfy the requirements in the column on the left. From 10 September 2009, Grape wine products do not include: • 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

From 10 September 2009, a grape wine product is a beverage that:
• *contains at least 70% grape wine;*
• *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) where the alcohol:*
  – *is only used to extract flavours from vegetable matter;*
  – *is essential to*	

the extraction process; and – *adds no more than one percentage point to the overall alcoholic strength by volume of the beverage;* • *has not had added to it the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial; and* *contains between 8% and 22% (inclusive) of ethyl alcohol by volume.*	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.
Fruit or vegetable wine *Fruit or vegetable wine is a beverage that:* • *is the product of the complete or partial fermentation of the juice or must of fruit or vegetables, or products derived solely from fruit or vegetables;* • *has not had added to it any ethyl alcohol from any other source except grape spirit or neutral spirit;* • *has not had added to it any liquor or substance that gives colour or flavour except grape spirit or neutral spirit; and* • *contains between 8% and 22% (inclusive) of ethyl alcohol by volume or if grape spirit or neutral spirit has been added contains between 15% and 22% (inclusive) of ethyl alcohol by volume (Note: a product is only a fruit or vegetable wine after the addition of grape spirit or neutral spirit if that product met the definition of fruit or vegetable wine before the spirit was added).*	Fruit or vegetable wines include: • table wine; • sparkling wine; and • fortified wine. Fruit or vegetable wines do not include: • ready to drink (RTD) or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges, et cetera. (unless they satisfy the requirements in the column on the left).
Cider and Perry *Cider or perry is a beverage that:* • *is the product of the complete or partial fermentation of the juice or must of apples or pears;* • *has not had added to it any ethyl alcohol from any other source;*	Cider and perry include: • traditional cider and perry; • draught cider and perry; • dry cider and perry; and • sweet cider and perry.

and • *has not had added to it any liquor or substance (other than water or the juice or must of apples or pears) that gives colour or flavour.*	Cider and perry do not include: • cider or perry that has had lemon, black currant or other fruit flavourings added; and • cider or perry that has had cola or other flavourings added.
•	•
Mead *Up to and including 8 June 2005, mead is a beverage that:* • *is the product of the complete or partial fermentation of honey and;* • *has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit; and* • *has not had added any liquor or substance (other than honey, grape spirit or neutral spirit) that gives colour or flavour.* *From 9 June 2005, mead is a beverage that:* • *is the product of the complete or partial fermentation of honey; and* • *has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit; and* • *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*	Up to and including 8 June 2005, mead includes: • honey mead; • fortified mead; and • liqueur mead. From 9 June 2005, mead includes: • honey mead; • fortified mead; • liqueur mead; and • spiced 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.*	
Sake *Sake is a beverage that:* • *is the product of the complete or partial fermentation of rice;* • *has not had added to it any ethyl alcohol from any other source; and* • *has not had added to it any liquor or substance that gives colour or flavour.*	Sake includes: • fermented sake; and • rice wine. Distilled sake does not satisfy the definition and is not included.
•	

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.

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).

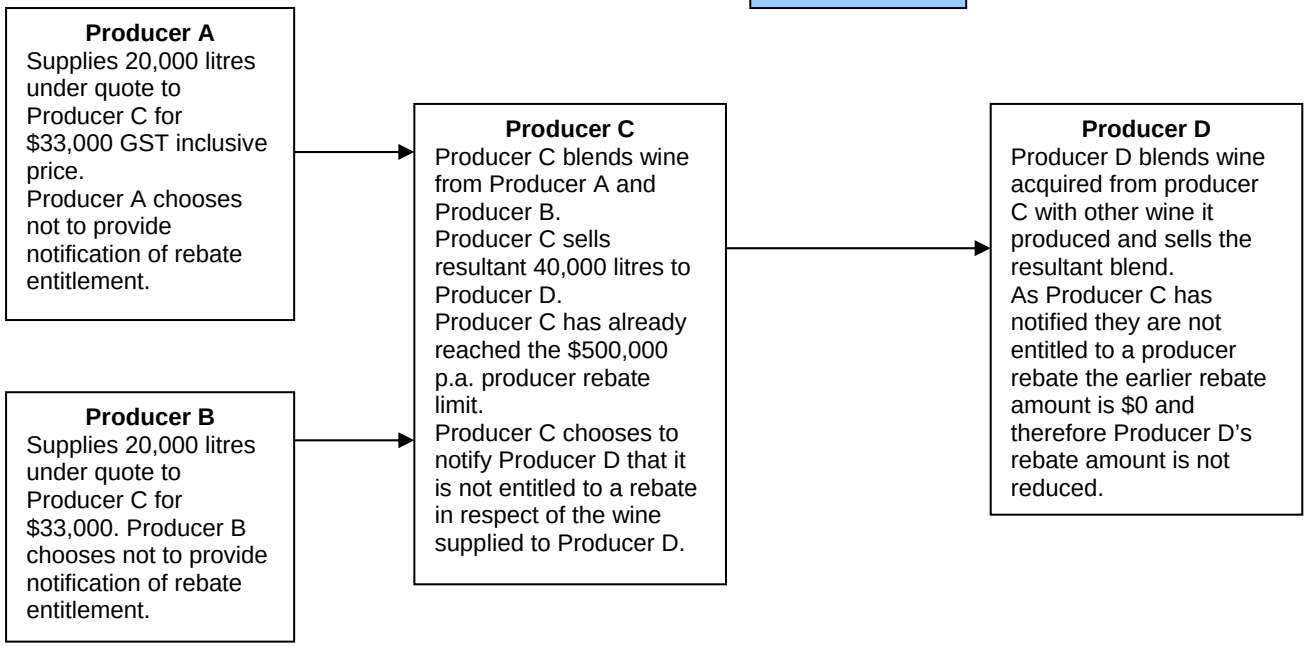
Net claim = $44,601.55

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 $\frac{\$8,700}{20,000\ L}$
=$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.

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 $\frac{\$8,700}{20,000\ L}$
=$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 $\frac{\$\ 8,\ 700}{20,000\ L}$
=$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 x 10,000/20,000 litres (being the portion of wine from Producer A used for blending) x 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 x 29% - ($2,180) = $12,320.

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.

EXAMPLE F

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

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Date
