WETR 2006/D1 - Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand

This document has been finalised by WETR 2006/1.

Draft Wine Equalisation Tax Ruling

Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand

Preamble

This document is a draft for public comment. As such, it represents the preliminary, though considered, views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners, as it is not a ruling or advice for the purposes of section 105-60 of Schedule 1 to the ***Taxation Administration Act 1953****. The final Ruling will be a public ruling for the purposes of section 105-60 and may be relied upon by any entity to which it applies.*

What this Ruling is about

1. The *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) imposes 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.

2. This Ruling explains how the wine tax producer rebate operates for producers of wine in New Zealand that have their wine exported to Australia. It includes explanation about eligibility to 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 or the A New Tax System (Wine Equalisation Tax) Regulations 2000 (WET Regulations).

Date of effect

4. This draft Ruling represents the preliminary, though considered view of the Australian Taxation Office. This draft may not be relied on by taxpayers or practitioners. When the final Ruling is officially released, it will explain our view of the law as it applies from 1 July 2005.

5. The final Ruling will be a public ruling for the purposes of section 105-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) and may be relied upon, after it is issued, by any entity to which it applies. Wine Equalisation Tax Ruling WET 2002/1 explains the WET rulings system and our view of when you can rely on our interpretation of the law in WET public and private rulings.

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

Background

How does the wine tax work?

7. The broad aim of the WET Act is to impose wine tax on dealings with wine[1] in Australia. The tax is applied to both Australian produced wine and imported wine. Dealings which attract wine tax are called *assessable dealings* and can include selling wine, using wine, or making a local entry of imported wine at the customs barrier.

8. 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 reseller, 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.[3]

9. Normally, wine tax is included in the price for which retailers (including bottle shops, hotels, restaurants and cafes) 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 retailers' cost base and is then effectively passed on in the price of the wine to the end consumer.

10. Wine tax is calculated at the rate of 29% of the *taxable value* of the dealing.[4]

11. Refer to Wine Equalisation Tax Ruling WETR 2004/1 for a detailed discussion on how the wine tax works.

[1] See paragraph 31 of this Ruling for which alcoholic products are affected.
[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] See footnote 2.
[4] Subsection 5-5(3).

Producer rebates

12. The Commonwealth operates a rebate scheme which 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 an Australian producer (or group of associated producers) can claim in a full financial year is A$290,000, effectively offsetting wine tax on A$1 million (wholesale value) of eligible sales and applications to own use per annum.

13. 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.

14. From 1 July 2005, access to the producer rebate has been extended to eligible New Zealand wine producers that have their wine exported to Australia. New Zealand wine producers may apply to the Commissioner of Taxation to become approved *New Zealand participants*. If approved, they can then claim the New Zealand wine producer rebate for *rebatable wine* that has been produced by the producer in New Zealand, exported to Australia and in respect of which they can demonstrate WET has been paid on or after 1 July 2005.

15. The rebate entitlement is 29% of the *approved selling price* of the wine received by the New Zealand wine producer net of any expenses incurred by the producer that are unrelated to the production of wine in New Zealand. The maximum entitlement is A$290,000 for the financial year ending 30 June 2006 and A$500,000 for each financial year thereafter and is subject to the associated producer provisions of the WET Act.

16. Although a New Zealand wine producer may be eligible to claim the New Zealand wine producer rebate, if they are registered or required to be registered for GST in Australia, have an assessable dealing with wine and pay wine tax, the producer can claim the rebate in their business activity statement for the tax period to which the wine tax on the dealing is attributed. However, the rebate cannot be claimed twice in relation to the same wine.

Ruling and Explanation

Eligibility

Approval as a New Zealand participant

17. To be eligible for the rebate, New Zealand producers must be approved as *New Zealand participants*.

18. To be considered for approval as a New Zealand participant an entity must apply in writing in the approved form to the Australian Commissioner of Taxation.[5] However, to streamline the approval process, applications for approval can be sent by New Zealand wine producers to New Zealand Inland Revenue, who will on-send the applications to the Australian Taxation Office. More information about the application form and how to lodge is available from New Zealand Inland Revenue or on their website at www.irdt.gov.nz.

19. For an entity to be eligible to be approved as a New Zealand participant, the Commissioner must be satisfied that:

- the entity is a producer of rebatable wine in New Zealand; and
- the rebatable wine has been or is likely to be exported to Australia.[6]

Who is a producer of rebatable wine?

20. A **producer** of rebatable wine is defined as an entity that:

- manufactures the wine; or
- supplies to another entity the grapes, other fruit, vegetables or honey from which the wine is manufactured.[7]

21. An entity is the *producer of rebatable wine* if they manufacture the wine from grapes, other fruit, vegetables or honey they produce or purchase.

22. 'Manufacture' is defined in section 33-1 to include:

- production;
- combining parts or ingredients so as to form an article or substance that is commercially distinct from the parts or ingredients; and
- applying a treatment to foodstuffs as a process in preparing them for human consumption.

23. This definition of 'manufacture' is inclusive, not exhaustive and extends the ordinary meaning of manufacture. In commenting on the similarly inclusive definition of 'manufacture' in the sales tax law, Murray J stated in *Deputy Commissioner of Taxation v. Cohn's Industries Pty Ltd* (1978) 9 ATR 479 at 480; 79 ATC 4025 at 4027:

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

[5] Subsection 19-7(1).
[6] Subsection 19-7(2).
[7] Section 33-1.

24. The definition of 'manufacture' in the WET Act uses identical words to the first three paragraphs of the definition of manufacture that was contained 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 which has been replicated in the WET Act will apply equally to wine tax.

25. In *McNichol and Anor v. Pinch* [1906] 2 KB 352, Darling J stated at page 361:

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

26. This statement was quoted with approval in *Federal Commissioner of Taxation v. Jack Zinader Pty Ltd* (1949) 78 CLR 336; (1949) 9 ATD 46. 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 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.

27. The meaning of 'production' in the definition of manufacture was considered by the High Court in *Federal Commissioner of Taxation v. Riley* (1935) 53 CLR 69 at 78 and it stated:

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

28. An entity will also be the *producer of rebatable wine* if they supply grapes, other fruit, vegetables or honey they produce or purchase to a contract winemaker to be made into the wine.

29. However, an entity is not the *producer of rebatable wine* if they merely purchase bottled wine or bulk wine for bottling and will not be eligible for the producer rebate for this wine.

Example 1

30. *NZ Wines manufactures its own wine in New Zealand, as well as providing grapes to a contract winemaker to be made into wine. From time to time NZ Wines also purchases bulk wine manufactured by another producer in New Zealand, which it bottles and labels. All of this wine is for export by NZ Wines to Australia.*

NZ Wines is the producer of the wine it manufactures in New Zealand, as well as the wine made by the contract winemaker on its behalf. However, it is not the producer of the bulk wine it bottles and labels for the purpose of export.

Because NZ Wines is the producer of wine that has been or is likely to be exported to Australia (that is the wine it manufactures in New Zealand, as well as the wine made under contract from its own grapes), it is considered to be a producer of rebatable wine for the purpose of approval as a New Zealand participant.

However, if NZ Wines only imported bottled or bulk wine or purchased bottled or bulk wine from another producer of wine in New Zealand for export it would not be considered to be a producer of rebatable wine for the purpose of approval as a New Zealand participant.[8]

What is rebatable wine?

31. Wine that is eligible for the producer rebate is referred to as rebatable wine. The following alcoholic products fall within the definition of 'wine' for the purposes of the WET Act provided they contain more than 1.15% by volume of ethyl alcohol:

- grape wine;
- grape wine products (such as marsala, vermouth, wine cocktails and creams);
- fruit wines or vegetable wines; and
- cider, perry, mead and sake.

32. The alcoholic products listed above are defined in the WET Act.[9] Their definitions and examples of the treatment of various types of products are set out in **Appendix A** of this Ruling.

33. Alcoholic products with an alcohol content of more than 1.15% by volume of ethyl alcohol which do not meet the definitions are subject to either excise duty (if they are locally produced) or customs duty (if they are imported). Designer drinks and pre-mixed alcoholic products commonly referred to as Ready-to-Drink products do not usually fall within the definition of the above products. They are subject to excise or customs duty and are not rebatable.

[8] It is also important to note that even if NZ Wines is approved as a New Zealand participant, it will not be entitled to claim the rebate for any wine it purchases (whether locally or imported) and subsequently exports because wine eligible for the rebate must be produced by NZ Wines in New Zealand. See paragraphs 34 and 36 of this Ruling.

[9] Sections 31-1, 31-2, 31-3, 31-4, 31-5, 31-6 and 31-7. See also WET Regulations 31-2.01, 31-4.01 and 31-6.01 in relation to the requirements for some of the products listed in paragraph 31 of this Ruling.

Wine produced in New Zealand

34. For approval as a New Zealand participant, the wine that has been or is likely to be exported to Australia must be produced 'in New Zealand'.[10]

35. *New Zealand* is defined in the WET Act to mean, 'the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue'.[11]

Example 2

36. *NZ Wines supplies grapes to a contract winemaker in Australia. The grapes are made into bulk wine in Australia under contract. The wine is then shipped back to New Zealand where it is bottled and labelled and subsequently exported to Australia.*

NZ Wines is considered to be the producer of the wine, but the wine is not produced by NZ Wines in 'New Zealand'.

Rebatable wine has been, or is likely to be, exported to Australia

37. To be approved as a New Zealand participant it is necessary for the Australian Commissioner of Taxation to be satisfied that the wine produced by the entity in New Zealand 'has been, or is likely to be, exported to Australia'.[12]

Meaning of export

38. The term 'export' is not defined in the WET Act. Its ordinary meaning is 'to send (commodities) to other countries or places for sale, exchange etc'.[13]

39. Similarly, exportation refers to '...the sending of commodities out of a country, typically in trade'.[14]

40. The Federal Court of Australia commented on the meaning of export in *Australian Trade Commission v. Goodman Fielder Industries Ltd* (1992) 36 FCR 517. At page 523, Beaumont, Gummow and Einfeld JJ stated:

> The ordinary meaning of 'export' is to send commodities from one country to another using the verb 'send' as indicating that which occasioned or brought about the carriage of the commodity from one country to another.

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[10] Paragraph 19-7(2)(a).
[11] Section 33-1.
[12] Paragraph 19-7(2)(b).
[13] Macquarie Dictionary 3rd edition.
[14] Macquarie Dictionary 3rd edition.

41. The Federal Court has considered the term export in the context of the Customs Act, where, like the WET Act, the term is not defined. In *Wesley-Smith and Ors v. Balzary* (1976-77) 14 ALR 681 Forster J said:

> Export in the first sense no doubt means taking of goods out of a proclaimed port or across a low water mark with the intention of landing them at some place beyond the seas.

42. The Commissioner considers that these ordinary meanings apply in relation to the use of the word 'export' in the WET Act. A New Zealand producer will be considered to have exported wine to Australia when they physically send or take rebatable wine out of New Zealand with the intention that the wine be landed in Australia.

Meaning of Australia

43. Because a New Zealand wine producer must produce rebatable wine that has been or is likely to be exported to Australia to be eligible for approval as a New Zealand participant, it is necessary to establish what constitutes 'Australia'.

44. 'Australia' is defined in the WET Act by reference to section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

45. *Australia* is defined in the GST Act as follows:

> Australia does not include any external Territory. However, it includes an installation (within the meaning of the Customs Act) that is deemed by section 5C of the Customs Act to be part of Australia.[15]

'Likely to be'

46. To be eligible for approval as a New Zealand participant, a wine producer does not necessarily have to have exported wine to Australia, it is sufficient for the Commissioner to be satisfied that the rebatable wine they have produced in New Zealand is likely to be exported to Australia.[16]

[15] Section 195-1 of the GST Act.
[16] Paragraph 19-7(2)(b).

47. In *Australian Telecommunications Commission v. Krieg Enterprises Pty Ltd* (1976) 14 SASR 303, Bray CJ considered the meaning of 'likely' in the phrase 'likely to interfere with or damage property'. His Honour said at pages 312-313:

> Here we are concerned with the word 'likely' in a statute. As I have said, the ordinary and natural meaning of the word is synonymous with the ordinary and natural meaning of the word 'probable' and both words mean,... that there is an odds-on chance of the thing happening. That is the way in which statutes containing the words have usually been construed. ...I think that 'likely' in the sub-section means 'probable' and I think that that means that there is a more than fifty per cent chance of the thing happening.

48. For the purposes of subsection 19-7(2)(b), the expression, 'likely to be' means that on the balance of probabilities, it can be concluded that the wine is more likely than not going to be exported to Australia.

Approval or refusal of application

49. If the Australian Commissioner of Taxation is satisfied that an applicant is the producer of rebatable wine in New Zealand that has been or is likely to be exported to Australia, the entity will be approved as a New Zealand participant. Such an entity will be given written notice of the approval, including the date from which the approval has effect.[17]

50. An entity may request that the date of approval be backdated.

Example 3

51. *NZ Wines is a producer of wine in New Zealand. After receiving an order from a wholesale distributor in Australia, NZ Wines recently exported a number of cases of bottled wine to Australia. The wholesale distributor provided a quotation to Customs upon entering the wine into Australia.*

Until receiving the order from the Australian distributor, NZ Wines sold its wine exclusively in New Zealand and had not anticipated exporting wine to Australia. As such, NZ Wines was not an approved New Zealand participant when the wine was exported.

In this case, as the wine 'has been exported to Australia', NZ Wines can apply for approval as a New Zealand participant and have the date of effect of the approval backdated to the date the wine was exported.

52. If an entity is not satisfied with the Commissioner's decision on the date of effect, the entity may have the decision reviewed in accordance with section 111-50 of Schedule 1 to the TAA.

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[17] Section 19-7.

53. If the Commissioner is not satisfied that an applicant is the producer of rebatable wine in New Zealand that has been or is likely to be exported to Australia, the entity will not be approved as a New Zealand participant. In these circumstances, the entity will be given written notice of the refusal, including the reasons for the decision.[18] Refusing to approve an entity as a New Zealand participant is also a reviewable decision under section 111-50 of Schedule 1 to the TAA.

Revocation

54. If at any time the Commissioner becomes aware that an entity no longer meets the requirements for approval as a New Zealand participant, the approval will be revoked. An entity will be notified of such a revocation in writing, including the date from which the revocation has effect and the reasons for the revocation.[19]

55. Revocation and the date of revocation of approval as a New Zealand participant is also a reviewable decision under section 111-50 of Schedule 1 to the TAA.

56. An entity must notify the Commissioner in writing if they no longer meet the eligibility criteria for approval as a New Zealand participant due to a change in circumstances, for example, if they are no longer a producer of rebatable wine in New Zealand. The notification must occur within 21 days of the change in circumstances.[20] Upon notifying the Commissioner of the change in circumstances the approval will be revoked. An entity will be notified of such a revocation in writing, including the date from which the revocation has effect. This decision is reviewable under section 111-50 of Schedule 1 to the TAA.

Eligibility to make the claim

57. If an entity is an approved New Zealand participant, they are entitled to claim the producer rebate for a financial year[21] for rebatable wine that they produce in New Zealand if:

- the wine is exported to Australia; and
- either the participant or another entity paid wine tax for a taxable dealing in the wine during the financial year.[22]

58. Unlike eligibility for approval as a New Zealand participant, before an entity is entitled to claim the rebate, the wine that has been produced by the participant in New Zealand must have actually been exported to Australia (within the meaning of 'export' set out in paragraphs 38-42 of this Ruling).

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[18] Subsection 19-7(6).
[19] Section 19-8.
[20] Section 19-9.
[21] Where the term 'financial year' appears in this Ruling, it refers to an Australian financial year as defined in s33-1 of the WET Act to mean, 'a period of 12 months beginning on 1 July'.
[22] Subsection 19-5(2).

59. The requirement that the New Zealand participant or another entity must have paid wine tax for a dealing with the wine contrasts with the words used in the entitlement provision for Australian producers – that is that the producer must be liable to wine tax for a dealing with the wine.[23] The Commissioner considers that the use of this form of words means that for a New Zealand participant to be eligible for the rebate, more is required than the existence of a liability for the wine tax and that the law requires that wine tax for the dealing must have been remitted to the Australian Tax Office.

60. Where liability for wine tax on wine that is exported from New Zealand to Australia is incurred by an entity other than the New Zealand participant, it may be difficult for the New Zealand participant to establish whether that liability has been met and wine tax on the wine remitted to the Australian Tax Office.

61. In light of this consideration and of the fact that claimants are:

- required to substantiate their claim for the rebate by providing supporting documents to evidence that wine tax has been included in an assessable dealing with the wine;[24] and
- not eligible to lodge their claim until after the end of the financial year in which the relevant taxable dealing took place,[25]

it is the Commissioner's view that it will generally be reasonable for the claimant to assume that wine tax on the wine for which the rebate is being claimed has been remitted to the Australian Tax Office by the end of the financial year in which the taxable dealing took place. However, it will not be reasonable to make this assumption if the claimant is aware, or should reasonably have been aware that the wine tax has not been paid to the Commissioner in respect of that wine (for example if the entity that has the liability for wine tax is in liquidation).

Exceptions

62. An entity will not be entitled to the producer rebate for a dealing in the wine if:

- the wine is exported from Australia after the dealing and at the time of the rebate claim the claimant knew, or should reasonably have been aware, that the wine was to be so exported;[26] or
- a producer rebate has previously been paid for the same wine.[27]

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[23] Subsection 19-5(1).
[24] See paragraphs 96 to 103 of this Ruling.
[25] See Appendix A of this Ruling.
[26] Subsection 19-10(3).
[27] Subsection 19-10(4).

Should reasonably have been aware

63. The phrase 'should reasonably have been aware' is not defined in the WET Act. Therefore, it is necessary to look to the ordinary meaning of the words in the phrase.

64. The word 'should' in the context is referring to 'a likely event or situation'.[28]

65. The word 'reasonable' in this context has a meaning of 'not exceeding the limit prescribed by reason; not excessive'.[29]

66. The Commissioner considers that the test in paragraph 19-10(3)(b) is whether it is likely that an ordinary reasonable person in all of the circumstances of the producer would have been aware, at the time of making the claim, that the wine in respect of which the claim is being made was to be exported.

Example 4

67. *NZ Wines is an approved New Zealand participant. Bottled cleanskin wine produced by NZ Wines in New Zealand is exported to Australia to a company called All Aussie Exports. NZ Wines deals with All Aussie Exports on a regular basis and is aware that once the cleanskin wine arrives in Australia, All Aussie Exports puts its own label on the wine and exports half of it to various countries. All Aussie Wines pays wine tax on the wine upon importation.*

NZ Wines claims the rebate in the approved form together with the required supporting documentation (see paragraph 96 of this Ruling) in relation to all of the wine that it exports to All Aussie Exports.

However, NZ Wines knew that although the wine was subject to a taxable dealing in Australia, part of the wine would be exported from Australia. NZ Wines is not entitled to claim the rebate for that part of the wine that is to be exported from Australia.

Calculation of the rebate

68. The maximum amount of producer rebate to which a New Zealand producer is entitled for the financial year commencing 1 July 2005 is A$290,000 and is A$500,000 for each financial year from 1 July 2006. However, if the producer is an *associated producer* of one or more other producers at the end of a financial year, the maximum amount of producer rebates to which those producers are entitled as a group for the financial year is A$290,000[30] for the financial year commencing 1 July 2005 and is A$500,000 for each financial year from 1 July 2006.

[28] See Macquarie Dictionary 3rd edition.
[29] See Macquarie Dictionary 3rd edition.
[30] Section 19-15.

Associated producers

69. A producer is an associated producer of another producer for a financial year, if at the end of the financial year:

- they are 'connected'.[31] They are 'connected if:
  - one controls the other;
  - both are controlled by the same third entity; or
  - one producer controls a second entity and the second entity controls the other producer, including where the second entity is a public entity;[32]
- one is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions of the other in relation to their financial affairs;[33]
- each of them is under an obligation (formal or informal), or might reasonably be expected to, act in accordance with the directions of the same third entity in relation to their financial affairs;[34] or
- one is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions 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 of the second producer in relation to their financial affairs.[35]

70. A New Zealand producer may be associated with one or more New Zealand producers, one or more Australian producers or one or more New Zealand and Australian producers.

Overclaim and offsets

71. If the amount of producer rebate that an entity claims exceeds the amount to which they are entitled for a financial year, they will be liable to pay an amount equal to that excess.[36] The amount payable is treated as if it is wine tax payable at the end of the financial year in which entitlement to the rebate arose.[37]

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[31] Subsection 19-20(1).
[32] Subsection 152-30(2) of the *Income Tax Assessment Act 1997.* Refer to the publication *Advanced guide to capital gains tax concessions for small business* to determine when an entity is connected with another entity.
[33] Paragraphs 19-20(1)(b) & (c).
[34] Subsection 19-20(2).
[35] Subsection 19-20(3).
[36] Subsection 19-25(1A).
[37] Subsection 19-25(4).

72. 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 A$290,000 up until 1 July 2006, or A$500,000 for each financial year thereafter, each member of the group is jointly and severally liable to pay an amount equal to the excess.[38] However, the entity will not be liable to pay an amount that exceeds the sum of the amounts of producer rebate that they claimed for the financial year.[39]

73. If an entity has allowed volume rebates or discounts which effectively reduce the price for which wine is sold (see paragraphs 81 to 86 of this Ruling) they will need to adjust the amount of producer rebate that they have claimed for this wine.

74. Volume rebates or discounts allowed on wine for which an entity has already claimed a producer rebate will result in an over-claim of the rebate.

Amount of producer rebate

75. The amount of a producer rebate for a New Zealand participant is calculated as 29% of the approved selling price of the wine.[40]

Rebate calculation

76. The rebate is calculated as:

approved selling price in Australian dollars multiplied by 29%

Example 5

77.

Approved selling price	*A$225,000*
Rebate at 29%	*A$65,354*

Approved selling price of the wine

78. The approved selling price of the wine means the price for which the wine was sold by the producer net of any expenses unrelated to the production of the wine in New Zealand.[41] The Commissioner considers that this means that if the New Zealand producer has incurred any such expenses, the approved selling price must be reduced by the amount of the expense. If another entity (for example the importer) has incurred these expenses, the New Zealand producer will not be required to reduce the selling price in respect of these amounts.

[38] Subsections 19-25(2) and 19-25(3).
[39] Subsection 19-25(3).
[40] Subsection 19-15(1A).
[41] Subsection 19-15(1C).

79. The Commissioner considers that 'expenses unrelated to the production of the wine in New Zealand' are those expenses borne by the New Zealand producer that would not be incurred if the wine had been produced in Australia. These expenses may include:

- costs associated with the importation of wine into Australia such as:
  - transportation;
  - freight;
  - insurance; and
  - agent's fees;
- New Zealand or Australian taxes including customs duties;[42] and
- foreign exchange and currency hedging costs.

Example 6

80.

Total selling price of wine as per sales invoice	*NZ$4,500*
Less producer's expenses unrelated to the production of wine in New Zealand:	
Transportation	*NZ$220*
Insurance	*NZ$115*
Agent's fees	*NZ$250*
Approved selling price	*NZ$3,915*

Trade incentives

81. The selling price of the wine by the producer can be affected by trade incentives allowed by the producer to their customers. Trade incentives are allowed in different circumstances and these include settlement discounts, volume rebates, promotional rebates, co-operative advertising allowances and deferred credits.

82. Trade incentives will bring about a reduction in the selling price where they relate to the sale and the price of the wine. Factors relevant to determining whether or not an incentive reduces the selling price of the wine include:

- the circumstances surrounding the provision of the incentive;
- the accounting treatment of the incentive in the financial records of both the supplier and the customer;

[42] Subsection 19-15(1C).

- the terms of trading between the parties and other sales documentation, such as invoices, incentive claim forms and credit notes; and
- an objective assessment of the intention of the parties.

83. Examples of incentives which reduce the selling price of wine include:

- volume rebates and deferred credits – these are rebates that relate directly and solely to the volume or value of the wine sold and are calculated accordingly; and
- settlement discounts – these are discounts that relate to the value of the wine provided by the supplier and are allowed because payment is made in cash or is made promptly.

84. If you have allowed volume rebates or discounts which effectively reduce the price for which the wine is sold you will need to account for these volume rebates or discounts when calculating your *approved selling price* of the wine.

85. Incentives that are provided to subsidise, compensate, reimburse, or reward a customer for carrying out activities or performing services for the producer do not reduce the selling price of the wine. This will be the case even if they are based on volume or value and however they may be described.

86. Examples of payments which do not usually reduce the selling price of wine include promotional rebates, advertising rebates and cooperative advertising rebates. These payments generally will not reduce the selling price as they are made to purchase, subsidise, compensate or reimburse the producer for advertising expenditure incurred in marketing their product.

Foreign exchange conversion

87. Components that make up the approved selling price that are not expressed in Australian currency will be treated as if they are amounts of Australian currency. The WET Act enables the Australian Commissioner of Taxation to determine, by legislative instrument, the manner in which any component of the approved selling price that is expressed in a currency other than Australian currency may be converted to Australian currency.[43] The Commissioner's determination is set out at **Appendix B** of this Ruling.

88. The Commissioner's determination provides New Zealand producers with options for converting to Australian currency any component used to determine the approved selling price, depending on whether the component is expressed in New Zealand currency or a currency other than Australian or New Zealand currency.

[43] Subsection 19-15(1B).

Option 1 – conversion for components expressed in any foreign currency

89. The conversion under this option is to be calculated by multiplying the value of the component of the approved selling price, expressed in foreign currency, by the inverse of the *New Zealand participant's particular exchange rate* on the *conversion day*.

90. The *New Zealand participant's particular exchange rate* will be either:

- the foreign exchange rate calculated by the Reserve Bank of Australia; or
- the foreign exchange rate agreed to between the New Zealand participant and the recipient of their wine.

91. The *conversion day* is the date the New Zealand wine producer will use to convert foreign currency into Australian currency. This date will be the earlier of:

- the day on which any of the consideration is received by the New Zealand wine producer for the supply of their wine; or
- the date the invoice is issued for that supply.

Option 2 – additional option for components expressed in New Zealand currency

92. Approved New Zealand participants may also convert components of the approved selling price that are expressed in New Zealand currency by using a single average rate of conversion for a financial year.

93. The *average RBNZ* exchange rate is the total of the Reserve Bank of New Zealand average monthly exchange rates for a financial year, divided by twelve. The Australian Taxation Office will publish on its website the average RBNZ exchange rate for each Australian financial year.

Consistent use of exchange rate

94. Whichever foreign exchange rate method an entity chooses, the entity must apply that method consistently.[44] The Commissioner considers that an entity will have applied a method consistently if it uses the same method for calculations in a financial year. If an entity switches methods with a view to maximising the producer rebate claim for a financial year, the Commissioner considers that entity is using the method inconsistently and has therefore not complied with the requirements of the determination. In these circumstances, an entity may have overstated its rebate claim for a financial year.

[44] Paragraph 6 of the determination (Appendix B of this Ruling).

95. An example of calculation of approved selling price where the components that make up the approved selling price are expressed in New Zealand currency is set out at **Appendix C** of this Ruling.

Making the claim

How do you claim the producer rebate?

Approved form

96. The producer rebate is claimed using the approved form, and is to be sent to the Australian Commissioner of Taxation.[45] However, to streamline the claim process, claim forms and supporting documentation can be sent by New Zealand wine producers to New Zealand Inland Revenue, who will on-send the claims to the Australian Taxation Office. More information about the form and how to lodge, is available from New Zealand Inland Revenue, or on their website at www.irdt.gov.nz.

Accompanied by supporting evidence

97. Subsection 17-10(2A) provides that the rebate claim must be accompanied by such supporting evidence as the Commissioner requires.

98. A New Zealand wine producer is only entitled to claim the rebate for wine produced by them in New Zealand, exported to Australia and in respect of which wine tax has been paid. To evidence that these things have occurred, the Commissioner requires that a New Zealand participant provide the following original supporting documentation with their claim, or copies where it is not possible to obtain originals. These documents will be returned to the claimant after the claim has been processed.

99. Where an entity has sold their wine to an Australian importer, the supporting documentation must include:

- the New Zealand sales invoices of the wine producer; and
- New Zealand customs export entries to evidence export of wine from New Zealand; and
- Australian customs import entries as evidence of importation of wine to Australia; and either:
    - Australian tax invoices (to substantiate that wine tax has been charged or included in an assessable dealing with wine that is not a customs entry); or

[45] Subsection 17-10(2A).

- wholesalers' statements; or
- if the wine is taxed at the customs barrier, Australian customs import entries (to substantiate a local entry); and

- a worksheet showing how the rebate claim has been calculated.

100. Where an entity has sold wine to another entity in New Zealand who sells wine to an Australian importer, the supporting documentation must include:

- the New Zealand sales invoices of the wine producer; and
- New Zealand sales invoices for sales of wine to the Australian importer; and
- New Zealand customs export entries to evidence export of wine from New Zealand; and
- Australian customs import entries as evidence of importation of wine to Australia; and either:
  - Australian tax invoices (to substantiate that wine tax has been charged or included in an assessable dealing with wine that is not a customs entry); or
  - wholesalers' statements; or
  - if the wine is taxed at the customs barrier, the Australian customs import entries (to substantiate a local entry); and
- a worksheet showing how the rebate claim has been calculated.

101. Where an entity has imported the wine into Australia and sold the wine in Australia, the supporting documentation must include:

- New Zealand customs export entries to evidence export of wine from New Zealand; and
- Australian customs import entries as evidence of importation of wine to Australia; and either:
  - your Australian tax invoices (to substantiate that wine tax has been charged or included in an assessable dealing with wine that is not a customs entry); or
  - if the wine is taxed at the customs barrier, the Australian customs import entries (to substantiate a local entry); and
- a worksheet showing how the rebate claim has been calculated.

102. If an entity is claiming rebates on wine sold by an Australian distributor, other than the importer, on the basis that the distributor has paid wine tax on the wine (the wine not having been subject to wine tax prior to the sale by the distributor), the following additional documentation is required:

- the distributor's purchase invoice of the wine; and either:
  - the distributor's Australian tax invoices (to substantiate that WET has been charged or included in an assessable dealing with the wine by the distributor); or
  - wholesaler's statement from the distributor.

103. An example of a wholesaler's statement is set out at **Appendix D** of this Ruling.

Timing

104. Although entitlement to the rebate arises in respect of an eligible assessable dealing immediately before the end of the financial year in which the dealing occurs, the WET Act states that the Commissioner may determine, by legislative instrument, when claims for the rebate may actually be made.[46]

105. In accordance with the Commissioner's determination you may claim for the producer rebate using the approved claim form and with the relevant substantiating documents after the end of the financial year in which entitlement to the rebate arises.

106. The Commissioner's determination is set out at **Appendix E** of this Ruling.

107. The producer rebate claim must be made within 4 years of the time when the rebate entitlement arises.[47]

108. A producer can make a claim for more than one financial year on the same claim form provided it is after those financial years have ended.

A$200 exclusion

109. Producer rebates claimed are not available for amounts totalling less than A$200.[48] However, individual claims may be aggregated to reach the A$200 minimum amount. This is also subject to the four year time period referred to in paragraph 107 of this Ruling.

[46] Subsection 17-10(2B).
[47] Subsection 17-10(3).
[48] Section 17-15.

If the claim is disallowed

110. The Commissioner can decide to disallow in whole or in part your rebate claim. In the event your claim is disallowed, the Commissioner must notify you of this in writing.[49]

111. Disallowance of a claim for the rebate either in whole or in part is a reviewable wine tax decision in accordance with section 105-60 of Schedule 1 to the TAA.

What records do you need to keep and how long do you need to keep them?

112. If you are entitled to a producer rebate, you are required to keep records of all transactions that relate to the rebate claim for a period of 5 years after completion of the transactions or acts to which the rebate claim relates.[50]

113. The records must be in English or readily accessible and convertible into English.[51]

Your comments

114. The Commissioner invites you to comment on this draft Wine Equalisation Tax Ruling. Please forward your comments to the contact officer(s) by the due date. (Note: The Tax office prepares a compendium of comments for the consideration of the relevant Rulings Panel. The Tax Office may use a sanitised version (names and identifying information removed) of the compendium in providing its responses to persons providing comments. Please advise if you do not want your comments included in a sanitised compendium.)

Due date:	**23 August 2006**
Contact officer:	**Naomi Schell**
Email address:	**naomi.schell@ato.gov.au**
Telephone:	**+61 8 7422 2815**
Facsimile:	**+61 1300 130 916**
Address:	**GPO Box 2318** **Adelaide SA 5001**

[49] Section 17-45.
[50] Paragraph 70(1)(e) of the TAA.
[51] Subsection 70(2) of the TAA.

Detailed contents list

115. Below is a detailed contents list for this draft Wine Equalisation Tax Ruling:

Commissioner of Taxation
12 July 2006

Previous drafts:
Not previously issued as a draft

Related Rulings/Determinations:
WETR 2002/1; WETR 2004/1

Subject references:
- assessable dealing
- associated producers
- application to own use
- approved form
- approved selling price
- backdated approval
- claim lodgement
- eligible producer
- export
- foreign exchange
- manufacture
- New Zealand participant
- producer of rebatable wine
- producer rebate
- rebatable wine
- record keeping
- revocation of approval
- substantiation

- supporting evidence
- taxable value
- trade incentives
- wholesale sale
- wine
- wine tax

Legislative references:

- ANTS(WET)A 1999 5-5(3)
- ANTS(WET)A 1999 17-10(2A)
- ANTS(WET)A 1999 1-10(2B)
- ANTS(WET)A 1999 17-10(3)
- ANTS(WET)A 1999 17-15
- ANTS(WET)A 1999 17-45
- ANTS(WET)A 1999 19-5(1)
- ANTS(WET)A 1999 19-5(2)
- ANTS(WET)A 1999 19-7
- ANTS(WET)A 1999 19-7(1)
- ANTS(WET)A 1999 19-7(2)
- ANTS(WET)A 1999 19-7(2)(a)
- ANTS(WET)A 1999 19-7(2)(b)
- ANTS(WET)A 1999 19-7(6)
- ANTS(WET)A 1999 19-8
- ANTS(WET)A 1999 19-9
- ANTS(WET)A 1999 19-10(3)
- ANTS(WET)A 1999 19-10(3)(b)
- ANTS(WET)A 1999 19-10(4)
- ANTS(WET)A 1999 19-15
- ANTS(WET)A 1999 19-15(1A)
- ANTS(WET)A 1999 19-15(1B)
- ANTS(WET)A 1999 19-15(1C)
- ANTS(WET)A 1999 19-20(1)
- ANTS(WET)A 1999 19-20(1)(b)
- ANTS(WET)A 1999 19-20(1)(c)
- ANTS(WET)A 1999 19-20(2)
- ANTS(WET)A 1999 19-20(3)
- ANTS(WET)A 1999 19-25(1A)
- 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 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 31-7
- ANTS(WET)A 1999 33-1
- ANTS(WET)R 2000 31-2.01
- ANTS(WET)R 2000 31-4.01
- ANTS(WET)R 2000 31-6.01
- ANTS(GST)A 1999 195-1
- ITAA 1997 152-30(2)
- TAA 1953 Sch 1 105-60
- TAA 1953 Sch 1 111-50
- Sales Tax Assessment Act (No. 1) 1930-1942
- Tax Laws Amendment (2005 Measures No. 4) Act 2005 Sch 4
- Reserve Bank Act 1959
- Reserve Bank of New Zealand Act

Case references:

- Australian Telecommunications Commission v. Krieg Enterprises Pty Ltd (1976) SASR 303
- Australian Trade Commission v. Goodman Fielder Industries Ltd (1992) 36 FCR 517
- DCT v. Cohn's Industries Pty Ltd (1978) 9 ATR 479; 79 ATC 4025
- FCT v. Riley (1935) 53 CLR 69
- Federal Commissioner of Taxation v. Jack Zinader Pty Ltd (1949) 78 CLR 336; (1949) 9 ATD 46
- McNicol & Anor v. Pinch [1906] 2 KB 352
- Wesley-Smith and Ors v. Balzary (1976-77) 14 ALR 681

Other references:

- Advanced guide to capital gains tax concessions for small business
- Macquarie Dictionary 3rd edition
- Wine Equalisation Tax New Zealand Producer rebate Foreign Exchange Conversion Determination 2006
- Wine Equalisation Tax New Zealand Producer Rebate Claim Lodgment Determination 2006

ATO references
NO: 2006/6905
ISSN: 1832-3197
ATOlaw topic: Wine Equalisation Tax

Appendix A

Wine Equalisation Tax

Set out below are the definitions of alcoholic products for the purposes of the WET Act. The definitions incorporate the requirements of the regulations set out in the *A New Tax System (Wine Equalisation Tax) Regulations 2000*. The wine equalisation 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 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.* ***NB.** 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 rose); • sparkling wines; • fortified wines; and • dessert wines.
Grape wine products *A grape wine product is a beverage that:* • *contains at least 70% grape wine;* • *has not had added any ethyl alcohol from any other source, except grape spirit or alcohol used in preparing vegetable extracts (including spices, herbs and grasses) e.g. in producing vermouth; and* • *contains between 8% and 22% (inclusive) of ethyl alcohol by volume.*	Grape wine products are generally traditional products that have been produced by the wine industry for many years. They include: • vermouth; • marsala; • green ginger wine (except green ginger wine with spirits such as scotch added); • wine based cocktails and creams that satisfy the requirements in the column on the left; and • imitation spirits (wine based).

	Grape wine products do not include: • wine coolers (unless they satisfy the requirements in the column on the left); • ready to drink (RTDs) 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). RTDs or designer drinks containing grape spirit must also satisfy the requirements in the column on the left in order to be included; 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 any ethyl alcohol from any other source except grape spirit or neutral spirit;* • *has not had added any liquor or substance that gives colour or flavour (other than 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 (NB grape spirit or neutral spirit can only be added if the beverage meets the definition of fruit or vegetable wine before the spirit is added).*	Fruit or vegetable wines include: • table wine; • sparkling wine; and • fortified wine. Fruit or vegetable wines do not include: • ready to drink (RTDs) or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges etc. (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 any ethyl alcohol from any other source; and* • *has not had added any liquor or substance (other than water or the juice or must of apples or pears) that gives colour or flavour.*	Cider and Perry include: • traditional cider and perry; • draught cider and perry; • dry cider and perry; and • sweet cider and perry. 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 *Mead is a beverage that:* • *is the product of the complete or partial fermentation of honey* • *has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit* • *has not had added any liquor or substance that gives colour or flavour other than:* o *grape spirit or neutral spirit* o *honey, herbs and spices, all of which can be added at any time* o *caramel, provided it is added after the fermentation process is complete* o *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* ▪ *after the addition of the fruit or product and before fermentation the mead contains not less than 14% by volume of honey and not more than 30% by volume of the fruit or product* ▪ *if fruit or product is added the mead contains between 8% and 22% (inclusive) of*	Mead includes: • honey mead; • fortified mead; • liqueur mead; and • spiced mead.

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 any ethyl alcohol from any other source; and* • *has not had added 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

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

Under subsection 19-15(1B) of the *A New Tax System (Wine Equalisation Tax) Act 1999*, I make the following determination:

Citation

1. This determination may be cited as the *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006.*

Commencement

2. This determination commences on 1 July 2006 or the commencement of Schedule 4 to the *Tax Laws Amendment (2005 Measures No. 4) Act 2005*, whichever is the later.

Application of determination

3. This determination applies to approved New Zealand participants that are required to calculate the approved selling price of their wine in Australian currency, when one or more components of the approved selling price are expressed in a currency other than Australian currency.

   Note: *For approved New Zealand participants, the amount of a WET producer rebate is calculated using the approved selling price of their wine.*

Definitions

4. (1) The following terms are defined for the purpose of this determination:

   - ***RBA rate*** means the foreign exchange rate calculated by the Reserve Bank of Australia (RBA) when the New Zealand participant works out the value of the component used to determine the approved selling price on a conversion day:

     (a) that is a RBA business day, then the RBA rate is the unit of foreign currency per $A calculated by the RBA at 4:00pm Australian Eastern time on that RBA business day, and

(b) that is *not* a RBA business day, then the RBA rate is the unit of foreign currency per $A calculated by the RBA at 4:00pm Australian Eastern time of the previous RBA business day.

- ***New Zealand participant's agreed rate*** means a foreign exchange rate agreed to between the New Zealand participant and the recipient of the wine. The agreed rate only applies for sales made under the agreement and for the period of the agreement applying to the Australian financial year in which the producer rebate is being claimed.
- ***conversion day*** is the date you use to convert foreign currency into Australian currency for wine equalisation tax purposes, and is the earlier of:

  (a) the day on which any of the consideration is received by the New Zealand participant for the supply of the wine (the receipt date); or
  (b) the invoice date.
- ***RBA business day*** means a day that the head office of the RBA is open for business.
- ***Reserve Bank of Australia*** means the body corporate continued in existence under the *Reserve Bank Act 1959.*
- ***average monthly RBNZ rate*** means the average of the RBNZ rate for a particular month calculated by the Reserve Bank of New Zealand (RBNZ) at 11:10am New Zealand time on the last RBNZ business day of that month.
- ***RBNZ rate*** means the foreign exchange rate calculated by the RBNZ that is the unit of Australian currency per $NZ calculated by the RBNZ at 11:10am New Zealand time on that RBNZ business day.
- ***RBNZ business day*** means a day that the head office of the RBNZ is open for business.
- ***Reserve Bank of New Zealand*** is the body corporate continued in existence under the *Reserve Bank of New Zealand Act*.

(2) Other terms in this determination have the same meaning as in the *A New Tax System (Wine Equalisation Tax) Act 1999*.

Manner in which the conversion to Australian currency may be made

5. *Option 1 – conversion for components expressed in any foreign currency*
In working out the value of the component used to determine the approved selling price, you convert the value of the component expressed in a foreign currency (including New Zealand currency) on a conversion day in accordance with the following formula:

$$\text{Value of component expressed in a foreign currency} \times \frac{1}{\text{the } \textbf{New Zealand participant's particular exchange rate} \text{ on the } \textbf{conversion day}}$$

where,

- the ***New Zealand participant's particular exchange rate*** is the ***RBA rate*** or the ***New Zealand participant's agreed rate,*** whichever is applicable; and
- the ***conversion day*** is the date that the foreign currency is converted into Australian currency for wine equalisation tax purposes.

Option 2 – additional option for components expressed in New Zealand currency
Where the value of the component used to determine the approved selling price is expressed in New Zealand currency, then in working out the value of that component you have the option of converting the value on a conversion day in accordance with the following formula:

$$\text{Value of component expressed in New Zealand currency (\$NZ)} \times \textbf{average yearly RBNZ rate}$$

where,

- ***average yearly RBNZ rate*** is the total of the ***average monthly RBNZ rates*** for each month in the Australian financial year in which the **conversion day** occurs, divided by twelve; and
- the ***conversion day*** is the date that the New Zealand currency is converted into Australian currency for wine equalisation tax purposes.

6. You must use your particular exchange rate and conversion option consistently.

Dated this 23rd day of March 2006

Stephen Neil Olesen

Deputy Commissioner and Delegate of the Commissioner

Appendix C

Example: calculation of approved selling price where the components that make up the approved selling price are expressed in New Zealand currency

Kiwi Wines is a wine producer that manufactures wine in New Zealand. Several shipments of wine are sold to an Australian importer during the 2006-07 financial year. The importer pays wine tax on the wine at importation. The invoice prices, expressed in New Zealand dollars, include expenses for freight and insurance to transport the wine to the New Zealand shipping dock. The importer meets the shipping costs to Australia.

Kiwi Wines invoices the Australian importer for the wine:

nvoice date	Invoice amount (NZ$) including shipping costs	Transport costs to shipping dock	Invoice amount (NZ$) excluding transport costs	Date of payment
21 July 06	$26,500	$500	$26,000	21 Aug 06
13 Sept 06	$69,000	$1,000	$68,000	21 Oct 06
04 Dec 06	$126,000	$2,000	$124,000	21 Jan 07
05 April 07	$22,500	$500	$22,000	21 May 07

Note: expenses of freight and insurance to be excluded from the invoice price (expenses unrelated to the production of the wine in New Zealand).

Options available to convert the invoice amounts to Australian dollars:
The invoice date for each sale must be used as the **conversion day** as the invoice date occurs before the date of payment.

Option 1

The **RBA rate**
Assume the following RBA exchange rate for a unit of New Zealand currency per Australian dollar:

21 July 06	1.0650
13 Sept 06	1.0741
04 Dec 06	1.0823
05 April 07	1.0331

Conversion to Australian currency:

Invoice date	Invoice amount (NZ$) excluding transport costs	Conversion rate	Invoice amount (A$)
21 July 06	$26,000	1.0650	$24,413
13 Sept 06	$68,000	1.0741	$63,309
04 Dec 06	$124,000	1.0823	$114,571
05 April 07	$22,000	1.0331	$21,295
		Total of invoices	**A$223,588**

Option 2

The **agreed rate**
Assume that all sales were made under the same agreement and that for the period of the agreement in which the sales were made the agreed exchange rate for a unit of New Zealand currency per Australian dollar was 1.0755.

Conversion to Australian currency:

Invoice date	Invoice amount (NZ$) excluding transport costs	Conversion rate	Invoice amount (A$)
21 July 06	$26,000		
13 Sept 06	$68,000		
04 Dec 06	$124,000		
05 April 07	$22,000		
	Total $240,000	1.0755	**A$223,152**

Note: Where the New Zealand participant and the recipient of the wine are associates, the **agreed rate** should reflect a rate agreed to by parties dealing at arm's length. Where the agreed rate does not apply, you need to select The **RBA rate** or the **average RBNZ rate**, if applicable.

Option 3

The **average RBNZ rate**.
Assume the **average RBNZ rate** for a unit of Australian currency per New Zealand dollar is calculated to be 0.9390 for the 2006-07 financial year.

Invoice date	Invoice amount (NZ$) excluding transport costs	Conversion rate	Invoice amount (A$)
21 July 06	$26,000		
13 Sept 06	$68,000		
04 Dec 06	$124,000		
05 April 07	$22,000		
	Total $240,000	0.9390	**A$225,360**

In this example Kiwi Wines may wish to use the **average RBNZ rate** to maximise their rebate claim.

Appendix D

Statement for sales of New Zealand wine for the purposes of the A New Tax System (Wine Equalisation Tax) Act 1999.

Name of entity making statement
Australian Business Number
Address

Shipment details of New Zealand wine to Australia (* if known)
New Zealand producer name
Address

Shipment / order number *
New Zealand export permit number *
Australian customs import entry number *
Date of receipt

Details of wine imported / purchased

Description			
Quantity imported (cases)			

Statement
(Insert name of entity making statement)…….hereby states that:

1. the following sales of the New Zealand wine detailed above have been sold into the Australian domestic market at a price that includes wine equalisation tax; and
2. the wine has not been exported from Australia.

Sales of wine for the period …….. in respect of the financial year ended 30 June…….

Tax invoice no	Invoice date	Description of wine	Quantity sold (cases)

Signature details
Name of person authorised to make this statement……
Signature of person authorised to make this statement……..
Date……

Note: This statement may only cover one shipment number

Appendix E

Wine Equalisation Tax New Zealand Producer Rebate Claim Lodgment Determination 2006

Under subsection 17-10(2B) of the *A New Tax System (Wine Equalisation Tax) Act 1999,* I make the following determination:

Citation

1. This determination may be cited as the *Wine Equalisation Tax New Zealand Producer Rebate Claim Lodgment Determination 2006.*

Commencement

2. This determination commences on 1 July 2006 or the commencement of Schedule 4 to the *Tax Laws Amendment (2005 Measures No. 4) Act 2005*, whichever is the later.

Application of determination

3. This determination applies to approved New Zealand participants entitled to claim the wine producer rebate and sets out the time when the claim for the rebate may be made.

Definitions

4. Terms in this determination have the same meaning as in the *A New Tax System (Wine Equalisation Tax) Act 1999.*

When the claim may be lodged

5. Where an approved New Zealand participant is entitled to make a producer rebate claim, the claim may be made at any time after the entitlement to the rebate arises and within 4 years after that entitlement arises.

   Note: Entitlement to the producer rebate arises immediately before the end of the Australian financial year in which the relevant taxable dealing takes place.

Dated this 23rd day of March 2006

Stephen Neil Olesen

Deputy Commissioner and Delegate of the Commissioner