WETR 2006/1 - Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand

This cover sheet is provided for information only. It does not form part of *WETR 2006/1 - Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand*

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 The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts.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.
The updated WETR is being issued as a draft for public comment. The comment period ends on 12 January 2018. A version with the tracked changes is available for download.

This document has changed over time. This is a consolidated version of the ruling which was published on *30 April 2014*

WETR 2006/1 History Draft Addendums

Date	Version	Change
27 November 2013	Draft Consolidated Ruling	Draft Addendum #

Finalised by Addendum Issued on 19 March 2014

Wine Equalisation Tax Ruling

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

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) 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 (WET).

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 Ruling explains the Commissioner's view of the law as it applied from 1 July 2005. 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 applies from 1 July 2005.

Note 2: The Addendum to this Ruling that issued on 30 April 2014 explains our view of the law as it applies:

- both before and after its date of issue to the extent that it deals with the treatment of marketing and promotional fees;
- on and from 10 December 2012 to the extent that it aligns with the view expressed in WETR 2009/2 in relation to amendments made to the producer rebate provisions of the WET Act, that came into effect on 10 December 2012;
- both before and after its date of issue to the extent that it aligns with the view expressed in WETR 2009/2 and clarifies the Commissioner's view with respect to what happens if the producer rebate is claimed when it should not be claimed or when it is over-claimed;
- where it is aligned with the view expressed in WETR 2009/2 in relation to amendments made to the *A New Tax System (Goods and Services Tax) Act 1999,* the 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 and applies:
  - i. to payments of refunds that relate to tax periods starting on or after 1 July 2012; or
  - ii. liabilities and entitlements that do not relate to any tax periods that arose on or after 1 July 2012.

5. You can rely on the Addendum on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the TAA. If this Ruling conflicts with a previous private ruling that you have obtained, or a previous public ruling, this 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 this public ruling. This means that if you have underpaid an amount of wine tax you are not liable for the shortfall prior to the date of issue of this 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?

6. 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.

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 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]

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 retailers' cost base and is then effectively passed on in the price of the wine to the end consumer.

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

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

Producer rebates

11. The Australian government 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[5] is A$290,000, effectively offsetting wine tax on A$1 million (wholesale value) of eligible sales and applications to own use per annum.

12. From 1 July 2006, the maximum amount of rebate an Australian producer (or group of associated producers) can claim in a

---

[1] See paragraph 33 of this Ruling for alcoholic products that fall within the definition of 'wine' for the purposes of the WET Act.
[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 of this Ruling.
[4] Subsection 5-5(3).
[5] A full financial year is 1 July to 30 June. The limit applies to the financial year in which the entitlement to the rebate arose and not the financial year in which the claim for the rebate is made.

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.

13. 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 Australian Commissioner of Taxation to become approved *New Zealand participants*. If approved, a producer can 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 the producer can demonstrate wine tax has been paid on or after 1 July 2005.

14. The rebate entitlement is 29% of the *approved selling price* (in Australian dollars) of the wine received by the New Zealand participant net of any expenses incurred by the New Zealand participant that are unrelated to the production of wine in New Zealand. The maximum amount of rebate a New Zealand producer (or group of associated producers) can claim in a full financial year is A$290,000 for the financial year ending 30 June 2006 and A$500,000 for each financial year thereafter.

14A. From 10 December 2012, where a New Zealand participant blends or further manufactures wine in New Zealand using wine produced by another producer, any rebate claim for the blended or further manufactured wine must be reduced by the sum of any rebate amounts attributable to the other producer's wine.[5A]

15. A New Zealand wine producer may be registered or required to be registered for GST in Australia, in which case the producer can claim the rebate on the producer's business activity statement (BAS). However, a New Zealand producer that is registered or required to be registered for GST in Australia cannot claim the rebate twice in relation the same wine (that is, through the producer's BAS and again under the New Zealand rebate scheme).

Ruling and Explanation

Eligibility

16. For a New Zealand wine producer to be eligible to claim the producer rebate, they must meet a number of requirements, all of which are discussed in detail below.

Approval as a New Zealand participant

17. To be eligible for the rebate, a New Zealand wine producer must be approved as a *New Zealand participant*.

[5A.] Section 19-17.

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 (the Commissioner).[6] However, to streamline the approval process, the application for approval can be sent by the entity to New Zealand Inland Revenue, which will on-send the application to the Australian Taxation Office. More information about the application form and how to lodge is available from New Zealand Inland Revenue or its website at www.ird.govt.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**[7] in New Zealand; and
- the rebatable wine has been, or is likely to be, exported to Australia.[8]

Who is a producer of rebatable wine?

20. A 'producer' of rebatable wine[8A] 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 by that other entity on its behalf.[9]

21. 'Manufacture'[9A] 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.

22. 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 legislation,[10] 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, insofar as it is

---

6 Subsection 19-7(1).
7 What is rebatable wine is discussed from paragraph 33 of this Ruling.
8 Subsection 19-7(2).
8A See paragraphs 18 to 25 of WETR 2009/2 for a discussion of the meaning of producer of rebatable wine.
9 Section 33-1.
9A See paragraphs 26 to 55 of WETR 2009/2 for a detailed discussion and examples relating to the meaning of 'manufacture', as defined in section 33-1.
10 Section 3 of the *Sales Tax Assessment Act (No. 1) 1930*.

> 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'.

23. 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.

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

> …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.

25. 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 ((1949) 78 CLR 336, at 345):

> 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.

26. 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 page 78 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.

27. An entity is also the *producer of rebatable wine* if it supplies grapes, other fruit, vegetables or honey that it either produces or purchases to a contract winemaker to be made into wine on its behalf.

28. However, an entity that merely purchases bottled wine or bulk wine for bottling is not the *producer of rebatable wine* and is not eligible for the producer rebate for this wine.

Example 1

29. *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.

30. *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.*

31. *As 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.*[11]

32. *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 NZ Wines would not be a producer of rebatable wine for the purpose of approval as a New Zealand participant.*

What is rebatable wine?

33. 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;
- fruit wines or vegetable wines; and
- cider, perry, mead and sake.

34. The alcoholic products listed above are defined in the WET Act.[12] The definitions and examples of these various products are set out in **Appendix A** of this Ruling.

35. 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 produced in Australia) or customs duty (if imported into Australia). Designer drinks and pre-mixed alcoholic products commonly referred to as Ready-to-Drink products do not usually fall within the definition of wine. Products that are subject to excise or customs duty are not rebatable.

---

[11] It is important to note that even if NZ Wines is approved as a New Zealand participant, it is not 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 paragraph 36 of this Ruling.

[12] Sections 31-1, 31-2, 31-3, 31-4, 31-5, 31-6 and 31-7. See also WET Regulations 31-2.01, 31-4.01 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

36. 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'.[13]

37. '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'.[14]

Example 2

38. *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 NZ Wines in 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. Therefore, with respect to this wine NZ Wines is not a producer of rebatable wine for the purpose of approval as a New Zealand participant.*

38A. *A wine is not produced 'in New Zealand' if some additional manufacturing processes in the production of the wine occur in Australia, subsequent to its export from New Zealand. For example, if raw wine manufactured 'in New Zealand' undergoes stabilisation, fining, filtering and secondary fermentation in Australia before its bottling for sale, the resultant, finished wine is not produced 'in New Zealand'. The finished bottled wine is not the same wine as that manufactured in New Zealand and exported to Australia.*

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

39. To be approved as a New Zealand participant the Commissioner must be satisfied that the wine produced by the entity in New Zealand 'has been, or is likely to be, exported to Australia'.[15]

Meaning of export

40. 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'.[16]

41. Similarly, exportation refers to '...the sending of commodities out of a country, typically in trade'.[17]

42. The Federal Court of Australia commented on the meaning of export in *Australian Trade Commission v. Goodman Fielder Industries*

[13] Paragraph 19-7(2)(a).
[14] Section 33-1.
[15] Paragraph 19-7(2)(b).
[16] Macquarie Dictionary 3rd edition.
[17] Macquarie Dictionary 3rd edition.

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.

43. The Supreme Court of the Northern Territory 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 at page 688:

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

44. The Commissioner considers that the ordinary meaning, as commented upon in these cases, applies to the use of the word 'export' in the WET Act. A New Zealand producer exports wine to Australia when the wine is physically taken out of New Zealand with the intention that the wine be landed in Australia.

Meaning of Australia

45. 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'.

46. '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).

47. *Australia* is defined in section 195-1 of the GST Act as follows:

> Australia does not include any external Territory. However, it includes an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia.[18]

'Likely to be'

48. 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 approval as a New Zealand participant if the Commissioner is satisfied that the rebatable wine the entity has produced in New Zealand is likely to be exported to Australia.[19]

---

[18] Australia as defined does not include external territories such as Norfolk Island, Christmas Island or the Australian Antarctic Territory. Typically, the installations referred to in section 5C of the *Customs Act 1901* are oil drilling rigs and similar mining exploration installations (see paragraph 51 of GSTR 2005/2).

[19] Paragraph 19-7(2)(b).

49. 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.

50. For the purposes of paragraph 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

51. If the Commissioner 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.[20]

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

Example 3

53. *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.*

54. *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.*

55. *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.*

56. 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 *Taxation Administration Act 1953* (TAA).

[20] Section 19-7.

57. 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.[21] 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

58. 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.[22]

59. 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.

60. An entity must notify the Commissioner in writing if it no longer meets the eligibility criteria for approval as a New Zealand participant due to a change in circumstances, for example, if the entity is no longer a producer of rebatable wine in New Zealand. The notification must occur within 21 days of the change in circumstances.[23] 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.

Entitlement to claim the rebate

61. If an entity is an approved New Zealand participant, it is entitled to claim the producer rebate for a financial year[24] for rebatable wine that it produced in New Zealand if:

- the wine is exported to Australia; and
- either it or another entity paid wine tax for a taxable dealing with the wine during that financial year.[25]

62. Unlike eligibility for approval as a New Zealand participant, before an entity is entitled to claim the producer 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 40 to 44 of this Ruling).

---

[21] Subsection 19-7(6).
[22] Section 19-8.
[23] Section 19-9.
[24] Where the term 'financial year' appears in this Ruling, it refers to a period of 12 months beginning on 1 July as defined in section 33-1 of the WET Act.
[25] Subsection 19-5(2).

63. The New Zealand participant does not have to be the exporter of the wine to be able to claim the producer rebate. The requirement that the wine be exported from New Zealand to Australia will be met whether the wine is exported by the New Zealand participant or another entity.

64. The requirement in paragraph 19-5(2)(c) that the New Zealand participant or another entity must have *paid* wine tax for a taxable dealing with the wine contrasts with the words used in paragraph 19-5(1)(a) which applies to Australian producers and requires that the Australian producer must be *liable* to wine tax for a taxable dealing with the wine.[26] The Commissioner considers that the use of the words 'paid wine tax' means that for a New Zealand participant to be eligible for the rebate, the law requires more than the existence of a liability for the wine tax and requires that wine tax for the dealing must have been remitted to the Australian Taxation Office.

65. 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 Taxation Office.

66. In light of this consideration and of the fact that a New Zealand participant:

- is required to substantiate a claim for the rebate by providing supporting documents to evidence that wine tax has been included in a taxable dealing with the wine;[27] and
- is not eligible to lodge the claim until after the end of the financial year in which the relevant taxable dealing took place,[28]

the Commissioner considers that it is generally reasonable for the New Zealand participant to assume that wine tax on the wine for which the rebate is being claimed has been remitted to the Australian Taxation Office by the end of the financial year in which the taxable dealing took place. However, it is not reasonable for the New Zealand participant to make this assumption if the participant is aware, or should reasonably have been aware[29] 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).

---

[26] Subsection 19-5(1).
[27] See paragraphs 103 to 108 of this Ruling.
[28] See Appendix A of this Ruling.
[29] The phrase 'should reasonably have been aware' has the same meaning as in paragraph 68 of this Ruling.

Exceptions

67. A New Zealand participant is not entitled to a producer rebate for a taxable dealing in the wine if:

- the wine is exported from Australia after the dealing and at the time of the rebate claim the New Zealand participant knew, or should reasonably have been aware, that the wine was to be so exported;[30] or
- a producer rebate has previously been paid for the same wine.[31]

Should reasonably have been aware

68. The phrase 'should reasonably have been aware' is not defined in the WET Act. However, 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 New Zealand participant 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

69. *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.*

70. *NZ Wines claims the rebate in the approved form together with the required supporting documentation (see paragraphs 103 to 108 of this Ruling) in relation to all of the wine that it exports to All Aussie Exports.*

71. *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.*

[30] Subsection 19-10(3).
[31] Subsection 19-10(4).

Calculation of the producer rebate

72. The maximum amount of producer rebate to which a New Zealand participant 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.[32] However, if the New Zealand participant 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[33] for the financial year commencing 1 July 2005 and is A$500,000 for each financial year from 1 July 2006.

Associated producers

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

- they are 'connected with' each other. They are connected with each other if they would be 'connected with' each other under section 328-125 of the *Income Tax Assessment Act 1997* (ITAA 1997) if subsection 328-125(8) of the ITAA 1997 were omitted; or [34] [35]
- 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.[36]

73A. 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.[37]

---

[32] The limit applies to the financial year in which the entitlement to the rebate arose and not the financial year in which the claim for the rebate is made.
[33] Section 19-15.
[34] [Omitted.]
[35] Paragraph 19-20(1)(a).
[36] Paragraphs 19-20(1)(b) and (c).
[37] Subsection 19-20(2).

73B. Furthermore, a producer is an associated producer of another producer if:

- one producer is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of a third producer and the third producer is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the second producer in relation to their financial affairs.[38]

74. 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.

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

74A. If a New Zealand participant has claimed a rebate to which it is not entitled, in whole or in part, they should arrange to pay an amount equal to the amount claimed that should not have been claimed by contacting New Zealand Inland Revenue to refer the details of the claim to the Australian Taxation Office. If payment is not made, the Commissioner will seek to recover the debt.[38A]

74B. Circumstances where an entity is not entitled to a rebate include the following:

- the entity was not approved as a New Zealand participant;[38B]
- the wine was not produced by the New Zealand participant in New Zealand or was not exported to Australia;[38C]
- the New Zealand participant, or another entity, did not pay wine tax for a taxable dealing;[38D]
- the New Zealand participant calculated the amount of producer rebate incorrectly;[38E]
- the New Zealand participant is not entitled because one of the exceptions in section 19-10 applies.

---

[38] Subsection 19-20(3).
[38A] Refer to paragraph 15 of this Ruling. NZ producers who are registered for GST can claim via their BAS and they can claim their rebate entitlement throughout the year see WETR 2009/2 footnote 37. NZ producers who claim through the NZ rebate claim form can only do so after the end of the financial year in which WET was paid in Australia in relation to the wine that was the subject of the claim.
[38B] paragraph 19-5(2)(a)
[38C] paragraph 19--5(2)(a)
[38D] paragraph 19-5(2)(c)]
[38E] section 19-15

Excess claim – single producer

75. 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 to the Australian Taxation Office an amount equal to that excess.[39] 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.[40]

75A. Therefore a New Zealand participant, who is not an associated producer, can correct an excess claim by arranging to pay an amount equal to the excess. They can do this by contacting New Zealand Inland Revenue, who will refer the details of the excess claim to the Australian Taxation Office.

75B. However, if the Commissioner discovers the excess claim (for example through compliance activity) and the New Zealand participant has not corrected the excess claim, then the Commissioner will seek to recover the excess amount.[40A]

76. [Omitted.]

77. [Omitted.]

Excess claim - associated producer

78. 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 30 June 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.[43] 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.[44]

---

[39] Subsection 19-25(1A).
[40] Subsection 19-25(4).
[40A] Subsection 19-25(1A)
[41] [Omitted.]
[42] [Omitted.]
[43] Subsections 19-25(2) and 19-25(3).
[44] Subsection 19-25(3).

78A. Therefore, if a New Zealand participant is an associated producer of one or more other producers for a financial year[44A] and the rebate claimed by the group for a financial year is more than the maximum amount of rebates to which the group is entitled for the financial year, each producer member of the group is jointly and severally liable to pay an amount equal to the excess claim.[44B] This means that one or more members of the group can correct the excess claim by arranging to pay an amount equal to the excess. They can do this by contacting New Zealand Inland Revenue, who will refer the details of the excess claim to the Australian Taxation Office.

78B. However, if the Commissioner discovers the excess claim (for example through compliance activity) and it has not been corrected by one or more members of the group, the Commissioner will 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. The excess amount will be recovered as a debt.[44C]

79. If a New Zealand participant has allowed volume rebates or discounts which effectively reduce the price for which wine is sold (see paragraphs 88 to 90 of this Ruling) and the volume rebate or discount has not been factored into the calculation of the producer rebate claimed the New Zealand participant will need to adjust their producer rebate accordingly.

80. Consistent with other claims to which a New Zealand participant is not entitled,[44D] in these circumstances, the New Zealand participant should arrange to pay an amount equal to the incorrect amount claimed by contacting New Zealand Inland Revenue to refer the details of the claim to the Australian Taxation Office (if payment is not made, the Commissioner will seek to recover the debt).

80A. If any amount of the excess claimed or amounts claimed which should not have been claimed remains unpaid after the time by which it is due to be paid, the New Zealand participant will be also liable to GIC on the unpaid amount.[44E] The GIC will continue to accrue on a daily compounding basis up to and including the end of the last day on which the excess and the GIC on the excess claim remains unpaid.[44F]

80B. The Australian Taxation Office may take action to recover these amounts. This will include offsetting future entitlements to the producer rebate against any amount that remains unpaid.

81. If an entity claims in excess of the amount of producer rebate to which they are entitled for a financial year, they should arrange to

---

[44A] Section 19-20.
[44B] Subsection 19-25(3).
[44C] The Commissioner will ensure the aggregate amount recovered from the group of associated producers does not exceed the excess claim of the group.
[44D] Refer to paragraphs 74A to 74D of this Ruling.
[44E] Section 105-80 of Schedule 1 to the TAA.
[44F] Subsection 105-80(1) of Schedule 1 to the TAA.

pay an amount equal to the excess. They can do this by contacting New Zealand Inland Revenue, who will refer the details of the excess claim to the Australian Taxation Office.

Amount of producer rebate

82. The amount of a producer rebate for a New Zealand participant is calculated as:

approved selling price (in Australian dollars) × 29%

Example 5

83. *Approved selling price* *A$225,000*

Rebate at 29% *A$65,250*

Approved selling price of the wine

84. The approved selling price of the wine means the price for which the wine was sold by the New Zealand participant net of any expenses unrelated to the production of the wine in New Zealand.[45] The Commissioner considers this to mean that if the New Zealand participant has incurred any such expenses, the approved selling price must be reduced by the amount of the expenses. If another entity (for example the importer) has incurred these expenses, the New Zealand participant is not required to reduce the selling price in respect of these amounts.

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

- costs associated with the exportation of wine from New Zealand and the importation of the wine into Australia such as:
  - transportation;
  - freight;
  - insurance; and
  - agent's fees; [46]
- New Zealand or Australian taxes including customs duties;[47] and
- foreign exchange and currency hedging costs.

[45] Subsection 19-15(1C).
[46] Paragraph 19-15(1C)(a).
[47] Paragraph 19-15(1C)(b).

Example 6

86.	*Total selling price of wine as per sales invoice*	*A$4,500*
	Less producer's expenses unrelated to the production of wine in New Zealand:	
	Transportation	*A$220*
	Insurance	*A$115*
	Agent's fees	*A$250*
	Approved selling price	*A$3,915*[48]

Trade incentives

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

88. Trade incentives will bring about a reduction in the selling price if the incentives 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 New Zealand participant and the customer;
- the terms of trade between the New Zealand participant and the customer and other sales documentation, such as invoices, incentive claim forms and credit notes; and
- an objective assessment of the intention of the New Zealand participant and the customer.

89. 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 supplied by the New Zealand participant and are allowed because payment is made in cash or is made promptly.

[48] Components that make up the approved selling price that are not expressed in Australian currency are to be converted to Australian currency as explained at paragraphs 93-101 of this Ruling.

90. If a New Zealand participant has allowed volume rebates or discounts which effectively reduce the price for which the wine is sold the New Zealand participant will need to account for these volume rebates or discounts when calculating its *approved selling price* of the wine.

91. [Omitted.]

92. [Omitted.]

Reduction for earlier rebate amounts for wine purchased from an Australian supplier and used in manufacture

92A. From 10 December 2012, where a rebate claim relates to an eligible dealing with wine that was manufactured by a New Zealand participant using wine acquired from an entity that is registered or required to be registered for GST in Australia (Australian supplier), the amount of the claim must be reduced by the sum of any earlier producer rebate for the wine purchased from the Australian supplier and used in the manufacturing process.[48A]

92B. Where wine is acquired by a New Zealand participant from an Australian supplier 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.[48B]

92C. The amount of the producer rebate to which a New Zealand participant is entitled is reduced by the sum of the amount of earlier producer rebates relating to the wine. Subsection 19-17(2) provides that the amount by which a rebate claim for blended or further manufactured wine will be reduced, depends on whether notification of an earlier rebate amount was provided to the purchaser for the purchased wine and if so, the amount so notified.

Wine lost during manufacture

92D. If bulk wine, for which there is a producer rebate entitlement for the supplying producer, is lost by evaporation or some other means 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.

48A. Section 19-17.

48B. Item 4 of Schedule 6 to the *Tax Laws Amendment (2012 Measures No. 5) Act 2012.*

92E. 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.[48C]

92F. 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. Where a supplier chooses to provide notice of a rebate entitlement to a purchaser, the notice must be in the approved form.[48D]

92G. 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 supply- for example, the tax invoice number; and
- The date that the wine was supplied.

92H. 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.[48E]

92I. 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.

[48C] Refer to Appendix B of WETR 2009/2 for examples relating to earlier producer rebates.
[48D] Subsection 19-7(3).
[48E] Refer to Appendix F for an example of an acceptable notification form.

92J. Where a supplier of wine to a New Zealand participant provides notice in the approved form of an earlier rebate for the wine, the producer rebate for the New Zealand participant is reduced for wine they have manufactured in New Zealand using the purchased wine. The amount of reduction is the amount of the earlier rebate that is attributable to the wine used to manufacture the wine.[48F]

92K. Where a supplier of wine to a New Zealand participant provides notice in the approved form to the New Zealand participant that the producer of the wine is not entitled to the rebate for the wine, the producer rebate for the New Zealand participant is not reduced for wine they have manufactured in New Zealand using the purchased wine.[48G]

92L. Where a New Zealand participant uses wine acquired from an Australian supplier (that is, the producer of the wine or an entity that is not the producer of the wine) in blending or further manufacture in New Zealand, and the New Zealand participant does not receive notification of any earlier rebate entitlement, the producer rebate for any wine manufactured using the purchased wine is reduced. The amount of the reduction is 29% of the GST exclusive purchase price of the wine used in the manufacturing process.[48H]

Example 7 – Calculating reduction of rebate amount

92M. *Australian Winemaker A makes a wholesale sale of 20,000 litres of wine that it has manufactured to Australian Wholesaler B under quote for $33,000 (including GST). Australian Winemaker A provides Australian Wholesaler B with a notice of a rebate entitlement for the wine in the amount of $8,700 (that is 29% x ($33,000 – 1/11 x $33,000)).*

92N. *Australian Wholesaler B sells the wine to NZ Winemaker C for A$50,000 (GST-free export excluding WET and GST). Australian Wholesaler B does not provide NZ Winemaker C with a notice of rebate entitlement in relation to the wine.*

92O. *NZ Winemaker C blends all of the wine purchased from Australian Wholesaler B with 20,000 litres of its own wine in New Zealand to manufacture 40,000 litres of wine. NZ Winemaker C sells all of the blended wine to Wholesale Distributor D in Australia. The approved selling price of the blended wine is A$120,000.*

92P. *NZ Winemaker C's rebate for the A$120,000 sale of 40,000 litres to the Australian distributor is reduced by the earlier rebate attributable to the purchased 20,000 litres. The rebate would then be:*

(29% x $120,000) – (29% x $50,000)
= $34,800 – $14,500

[48F] Subsection 19-17(2).
[48G] Subsection 19-17(2).
[48H] Subsection 19-17(2).

Therefore, the amount of rebate NZ Winemaker C will be entitled to claim (assuming all other requirements are met) is $20,300.

Foreign exchange conversion

93. Components that make up the approved selling price that are not expressed in Australian currency are to be treated as if they are amounts of Australian currency[49] worked out according to the Commissioner's Determination.[50] The WET Act enables the Commissioner 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.[51] The Commissioner's Determination is set out at **Appendix B** of this Ruling.

94. The Commissioner's Determination provides New Zealand participants with the following 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.

Option 1 – conversion for components expressed in any foreign currency

95. 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*.

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

- the foreign exchange rate calculated by the Reserve Bank of Australia;[52] or
- the foreign exchange rate agreed to between the New Zealand participant and the recipient of the wine.[53]

97. The *conversion day* is the date the New Zealand participant uses to convert foreign currency into Australian currency. This date is the earlier of:

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

---

[49] Subsection 19-15(1B).
[50] *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006* (Appendix B of this Ruling).
[51] Subsection 19-15(1B).
[52] See Method 1 of the Example included in Appendix C of this Ruling.
[53] See Method 2 of the Example included in Appendix C of this Ruling.

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

98. 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. The conversion under this option is to be calculated by multiplying the value of the component of the approved selling price expressed in New Zealand currency by the average yearly Reserve Bank of New Zealand (RBNZ) rate.[54]

99. The *average yearly RBNZ* rate is the total of the RBNZ average monthly exchange rates for the financial year in which the conversion day occurs, divided by twelve. The Australian Taxation Office will publish on its website (www.ato.gov.au) the average RBNZ exchange rate for each financial year.

Consistent use of exchange rate

100. Whichever foreign exchange rate method an entity chooses, the entity must apply that method consistently.[55] The Commissioner considers that an entity applies a method consistently if it uses the same method for calculations for a financial year. If an entity switches methods with a view to maximising the producer rebate claim for a financial year, the Commissioner considers the 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.

101. An example of the 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.

How do you claim the producer rebate?

Approved form

102. The producer rebate is claimed using the approved form, which is sent to the Australian Taxation Office.[56] However, to streamline the claim process, claim forms and supporting documentation can be sent by New Zealand participants to New Zealand Inland Revenue, which will on-send the claim forms to the Australian Taxation Office. Claim forms and supporting documentation sent to New Zealand Inland Revenue will be taken to have been lodged with the Commissioner on the day that they are received by New Zealand Inland Revenue. More information about

[54] See Method 3 of the Example included in Appendix C of this Ruling.
[55] Paragraph 6 of the Determination (Appendix B of this Ruling).
[56] Subsection 17-10(2A).

the form and how to lodge it, is available from New Zealand Inland Revenue, or its website www.ird.govt.nz.

Accompanied by supporting evidence

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

104. A New Zealand participant is only entitled to claim the rebate for wine that is produced by it 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 the claim, or copies where it is not possible to obtain originals. These documents will be returned to the New Zealand participant after the claim has been processed.

105. If a New Zealand participant has sold wine to an Australian importer, the supporting documentation must include:

- the New Zealand sales invoices of the participant; and
- New Zealand customs export entries as evidence of the export of the wine from New Zealand; and
- Australian customs import entry numbers as evidence of the importation of the wine to Australia; and either:
  - Australian tax invoices (to substantiate that wine tax has been charged or included in a taxable dealing with wine that is not a customs entry); or
  - wholesalers' statements;[57] or
  - if the wine is taxed at the customs barrier, Australian customs import entry numbers (to substantiate a local entry); and
- a worksheet showing how the rebate claim has been calculated.

106. If a New Zealand participant has sold wine to another entity in New Zealand who sells the wine to an Australian importer, the supporting documentation must include:

- the New Zealand sales invoices of the New Zealand participant; and
- New Zealand sales invoices for sales of the wine by the other entity in New Zealand to the Australian importer; and
- New Zealand customs export entries as evidence of the export of the wine from New Zealand; and

[57] An example of a wholesalers' statement is set out at Appendix D to this Ruling.

- Australian customs import entry numbers as evidence of the importation of the wine to Australia; and either:
  - Australian tax invoices (to substantiate that wine tax has been charged or included in a taxable dealing with wine that is not a customs entry); or
  - wholesalers' statements;[58] or
  - if the wine is taxed at the customs barrier, the Australian customs import entry numbers (to substantiate a local entry); and
- a worksheet showing how the rebate claim has been calculated.

107. If a New Zealand participant has imported the wine into Australia and sold the wine in Australia, the supporting documentation must include:

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

108. 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 wine tax has been charged or included in a taxable dealing with the wine by the distributor); or
  - wholesaler's statement[59] from the distributor.

[58] An example of a wholesalers' statement is set out at Appendix D to this Ruling.
[59] An example of a wholesalers' statement is set out at Appendix D to this Ruling.

Timing

109. Although entitlement to the rebate arises in respect of an eligible taxable 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.[60]

110. In accordance with the Commissioner's Determination,[61] a New Zealand participant may claim 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.

111. The Commissioner's Determination is set out at **Appendix E** of this Ruling.

112. The producer rebate claim must be made within four years of the time when the rebate entitlement arises.[62]

113. 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.

Providing notice of rebate entitlement

113A. From 10 December 2012, where a New Zealand participant is entitled to a producer rebate for wine sold and exported to a purchaser in Australia, the New Zealand participant may choose to notify the Australian purchaser of its entitlement.[62A]

113B. Where a New Zealand participant chooses to provide an Australian purchaser with notification of their producer rebate amount, notification must be provided in the approved form. Paragraphs 65H and 65I of WETR 2009/2 set out when notification of a rebate entitlement will be in the approved form.

113C. A New Zealand participant is not entitled to claim the producer rebate for a dealing until after wine tax has been paid on the wine in Australia. However, for the purpose of an Australian producer claiming the rebate for wine that has been manufactured using wine produced in New Zealand, the New Zealand producer is taken to be entitled to claim the producer rebate before this time.[62B]

---

[60] Subsection 17-10(2B).
[61] *Wine Equalisation Tax New Zealand Producer Rebate Claim Lodgment Determination 2006* (Appendix E of this Ruling).
[62] Subsection 17-10(3).
[62A] Subsection 19-17(3).
[62B.] Subsection 19-17(5).

113D. Therefore, if a New Zealand participant has not yet become entitled to claim the rebate because WET has not been paid on the wine in Australia, notification of the New Zealand participant's rebate entitlement can still be provided. In this scenario, the amount of earlier rebate to which the New Zealand producer is entitled is taken to be 29% of the approved selling price of the wine.[62C]

113E. If a person gives a notice of rebate amount 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.[62D]

113F. The recipient of a notice is not required to verify the bona fides of the entity providing the notification, or any other details provided in the approved form, where the recipient has accepted the notice in good faith. However, where information that is required for the notice to be in the approved form is not included the notice will not be in the approved form. This means that the notice will not be effective.

113G. A New Zealand participant is not required to provide a copy of the notice to the Commissioner, unless requested to do so. However, a New Zealand participant is required to keep the notice as a record in accordance with the record keeping requirements explained in paragraphs 117 and 118 of this Ruling.

113H. Where components that make up the approved selling price of wine purchased from a New Zealand producer are not expressed in Australian currency, they must be converted to Australian currency.[62E] The Commissioner has made a Determination setting out the manner for converting components of the approved selling price to Australian currency.[62F]

113I. The Commissioner's Determination provides two options for converting the approved selling price to Australian currency. However, only one of these options will be relevant, because of the timing of the events, where:

- 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.

62C. Subsection 19-17(5).
62D. Section 19-28.
62E. Subsection 19-15(1B).
62F. *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006* (Appendix B of this Ruling).

113J. 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.

A$200 exclusion

114. A New Zealand participant cannot claim a producer rebate for amounts totalling less than A$200.[63] However, 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 112 of this Ruling.

If the claim is disallowed

115. The Commissioner can decide to disallow in whole, or in part, a New Zealand participant's rebate claim. In the event a claim is disallowed, the Commissioner must notify the New Zealand participant of this in writing.[64]

116. Disallowance of a claim for the rebate either in whole, or in part, is a reviewable wine tax decision in accordance with section 111-50 of Schedule 1 to the TAA.

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

117. Prior to 1 July 2012, where a New Zealand participant was entitled to a producer rebate, the participant is required to keep records of all transactions that relate to the rebate claim for a period of five years after the completion of the transactions or acts to which the rebate claim relates. From 1 July 2012, a New Zealand participant that is entitled to a producer rebate is required to keep records of all transactions that relate to the rebate claim for the longest of:[65]

- five years after the completion of the transactions or acts to which they relate

[63] Section 17-15.
[64] Section 17-45.
[65] Section 382-5 of Schedule 1 to the TAA.

- the period of review for any assessment to which those records, transactions or acts relate. In practical terms this means four years from the day after the day the Commissioner first gives notice of an assessment to the New Zealand participant (unless the period of review is extended in the circumstances set out in section 155-35 of Schedule 1 to the TAA), and
- where an assessment has been amended under Subdivision 155B of Schedule 1 to the TAA, the refreshed period of review that applies to the last of the amendments

118. The records must be in English or readily accessible and convertible into English.[66]

[66] Subsection 382-5(8) of Schedule 1 to the TAA.

Detailed contents list

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

Commissioner of Taxation
22 November 2006

Previous drafts: WETR 2006/D1

Related Rulings/Determinations:

TR 2006/10; WETR 2009/1; WETR 2009/2; GSTR 2005/2

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
- 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(1)(a)
- ANTS(WET)A 1999 19-5(2)
- ANTS(WET)A 1999 19-5(2)(a)
- ANTS(WET)A 1999 19-5(2)(c)
- 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 19-7(3)
- 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(1B)
- ANTS(WET)A 1999 19-15(1C)
- ANTS(WET)A 1999 19-15(1C)(a)
- ANTS(WET)A 1999 19-15(1C)(b)
- ANTS(WET)A 1999 19-17
- 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(1)(a)
- 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 19-28
- 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(WET)R 2000 31-2.01
- ANTS(WET)R 2000 31-4.01
- ANTS(WET)R 2000 31-6.01
- ANTS(GST)A 1999
- ANTS(GST)A 1999 195-1
- ITAA 1997 152-30(a) (repealed)
- ITAA 1997 152-30(b) (repealed)
- ITAA 1997 152-30(c) (repealed)
- ITAA 1997 152-30(d) (repealed)
- ITAA 1997 152-30(e) (repealed)
- ITAA 1997 328-125
- TAA 1997 328-125(8)
- TAA 1953 70(1)(e)
- TAA 1953 70(2)
- TAA 1953 Sch 1 105-60 (repealed)
- TAA 1953 Sch 1 105-80
 TAA 1953 Sch 1 105-80(1)
- TAA 1953 Sch 1 111-50
- TAA 1953 Sch 1 357-60
- TAA 1953 Sch 1 Div 358
- TAA 1953 Sch 1 382-5
- Sales Tax Assessment Act (No. 1) 1930 3
- Sales Tax Assessment Act (No. 1) 1930-1942
- Customs Act 1901
- Customs Act 1901 5C
- Tax Laws Amendment (2005 Measures No. 4) Act 2005 Sch 4

- Tax Laws Amendment (2012 Measures No. 5) Act 2012 Sch 6 Item 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*.[67] 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 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.* ***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 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

[67] 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, 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) 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; and*
• *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.
	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 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 (NB: 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 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 to it any ethyl alcohol from any other source; 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 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;*	Mead includes: • honey mead; • fortified mead; • liqueur mead; and • spiced mead.

• *has not had added to it 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 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;*	Sake includes: • fermented sake; and • rice wine.

• *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.*	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

Option 1 – conversion for components expressed in any foreign currency

5. 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 in Australian currency 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:

Invoice date	Invoice amount (NZ$) including shipping costs	Transport costs to shipping dock	Invoice amount (NZ$) excluding transport costs	Date payment received
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 incurred by the New Zealand participant are excluded from the invoice price as the expenses are 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 payment was received.

*Method 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**

*Method 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 yearly RBNZ rate**, if applicable.

*Method 3 – **average yearly RBNZ rate***

Assume the **average yearly 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 yearly RBNZ rate** to maximise its 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's name
Address

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

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/order 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

Appendix F

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 supply - for example, the tax invoice number

---

Name of the entity to whom the wine was supplied

Address of the entity to whom the wine was supplied

Australian Business Number (ABN) of the entity to whom the wine was supplied or for a New Zealand entity, the Company Number, if they have one (as applicable)

Name of the wine producer who supplied the wine

Australian Business Number (ABN) of the wine producer who supplied the wine or for a New Zealand wine producer, the Company Number, if they have one (as applicable)

The wine producer who supplied the wine provides the following relevant notification to the recipient (only one notification should be provided):

☐ notification that the producer of the wine that is being supplied to the recipient is entitled to a producer rebate for the wine (and the amount of the rebate to which the producer is entitled)

☐ notification that the producer of the wine that is being supplied to the recipient is not entitled to claim a producer rebate for the wine.

Name of individual authorised to provide this notification

Signature of the individual authorised to provide this notification

---

Date
