WETR 2006/1DA3 - Draft Addendum - Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand

This document has been finalised.

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Draft Addendum

Wine Equalisation Tax Ruling

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

This Draft Addendum, when finalised, will be a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Wine Equalisation Tax Ruling WETR 2006/1 to explain how amendments made to the producer rebate provisions of the *A New Tax System (Wine Equalisation Tax) Act 1999* that came into effect on 10 December 2012, apply to producers of wine in New Zealand.

This Draft Addendum also amends Wine Equalisation Tax Ruling WETR 2006/1 to reflect changes to the *A New Tax System (Wine Equalisation Tax) Act 1999* and the *Taxation Administration Act 1953* as a result of the *Indirect Tax Laws Amendment (Assessment) Act 2012*. These changes apply to producer rebate entitlements arising for producers of wine in New Zealand on or after 1 July 2012.

WETR 2006/1 is amended as follows:

1. **Paragraph 14**

After the paragraph insert:

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

[5A.] Section 19-17.

2. Paragraph 92

After the paragraph insert:

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. 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.[48C] The requirements relating to notification of an earlier rebate entitlement are explained in detail in paragraph 65D to 65F of WETR 2009/2.

92D. 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.[48D]

92E. 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.[48E]

48A. Section 19-17.
48B. Item 4 of Schedule 6 to the *Tax Laws Amendment (2012 Measures No. 5) Act 2012.*
48C. Subsection 19-17(3).
48D. Subsection 19-17(2).
48E. Subsection 19-17(2).

92F. 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.[48F]

Example 7 – Calculating reduction of rebate amount

92G. 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)).

92H. 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.

92I. 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.

92J. 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

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

48F. Subsection 19-17(2).

3. Paragraph 113

After the paragraph insert:

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. Paragraph 65D of WETR 2009/2 sets 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]

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. 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.

62A. Subsection 19-17(3).
62B. Subsection 19-17(5).
62C. Subsection 19-17(5).
62D. Section 19-28.

113G. 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]

113H. 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.

113I. 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.

4. Paragraph 117

Omit the paragraph; substitute:

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]

62E. Subsection 19-15(1B).
62F. *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination 2006* (Appendix B of this Ruling).
65. Section 382-5 of Schedule 1 to the TAA.

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

5. Footnote 66

Omit the footnote; substitute:

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

6. Detailed Contents List

Omit the list; insert:

7. Legislative references

Insert:

- 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 19-28
- TAA 1953 Sch1 382-5
- Tax Laws Amendment (2012 Measures No. 5) Act 2012 Sch 6 Item 4

This Draft Addendum applies on and from 10 December 2012.

Your comments

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

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

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

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

Due date: 8 January 2014

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ATO references

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