

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

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! There is a Compendium for this document: **WETR 2009/2EC** .

! This document has changed over time. This is a consolidated version of the ruling which was published on *6 July 2011*

## **WETR 2009/2 History Draft Addendums**

<b>Date</b>	<b>Version</b>	<b>Change</b>
27 November 2013		<u>Draft Consolidated Ruling</u> <u>Draft Addendum</u>



## Wine Equalisation Tax Ruling

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

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#### **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

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

2. The WET Act provides for a producer rebate in the form of a wine tax credit from 1 October 2004. This Ruling explains how the wine tax producer rebate operates for producers of wine other than New Zealand participants.<sup>1</sup> This Ruling also explains eligibility to claim the rebate, how the rebate is calculated and when and how a claim for the rebate may be made.

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

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

## Date of effect

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4. This Ruling explains the Commissioner's view of the law as it applies both before and after its date of issue. You can rely upon this ruling on and from its date of issue for the purposes of section 357-60 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

**Note 1:** The Addendum to this Ruling that issued on 6 July 2011, explains our view of the law as it applied both before and after its date of issue.

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

## Background

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### How does the wine tax work?

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

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

8. Normally for retailers (including bottle shops, hotels, restaurants and cafes) wine tax is included in the price for which the retailers purchase the wine. Most retailers are not entitled to a credit for wine tax

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<sup>2</sup> 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.

included in the purchase price of the wine. The system is designed so that wine tax is built into the retailer's cost base and is then effectively passed on in the price of the wine to the end consumer.

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

### **Producer rebates**

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

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

12. The amount of the producer rebate is:

- (a) for wholesale sales,<sup>5</sup> 29% of the price for which the wine is sold<sup>6</sup> (excluding wine tax and GST).
- (b) for retail sales<sup>7</sup> and AOUs,<sup>8</sup> 29% of the notional wholesale selling price of the wine.<sup>9</sup>

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

## **Previous Rulings**

14. This Ruling replaces paragraphs 121 to 135 inclusive of Wine Equalisation Tax Ruling WETR 2004/1 Wine equalisation tax: the operation of the wine equalisation tax system. WETR 2004/1 was

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<sup>3</sup> Section 19-20.

<sup>4</sup> Subsections 19-15(2) and 19-15(3).

<sup>5</sup> See paragraphs 57 to 61 of WETR 2009/1 for a discussion of 'wholesale sales'.

<sup>6</sup> Paragraph 19-15(1)(a).

<sup>7</sup> See paragraphs 62 and 63 of WETR 2009/1 for a discussion of 'retail sales'.

<sup>8</sup> AOU means application to own use. See paragraphs 80 to 83 of WETR 2009/1 for a discussion of 'application to own use'.

<sup>9</sup> Paragraph 19-15(1)(b). See paragraphs 142 to 151 of WETR 2009/1 for a discussion of 'notional wholesale selling price'.

withdrawn on 24 June 2009. Pursuant to section 105-60 of the TAA, you will be protected in respect of what you have done up until the date of the withdrawal of WETR 2004/1 to the extent that you have relied on paragraphs 121 to 135 of WETR 2004/1 to ascertain your entitlement to the producer rebate.

## Ruling and Explanation

### Rebatable wine

15. Producers of rebatable wine may be entitled to a producer rebate.<sup>10</sup>

16. Rebatable wine<sup>11</sup> means grape wine, grape wine products, fruit or vegetable wine, cider or perry, mead or sake as defined in the WET Act.<sup>12</sup>

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

### Producer of rebatable wine

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

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

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

20. Secondly an entity (the first entity) is also the producer of rebatable wine if it supplies another entity with the base constituents (that is grapes, fruit or vegetables or honey) from which the wine is manufactured.

21. Although rice is not specifically mentioned in the definition of producer of rebatable wine, the Commissioner considers rice falls within the meaning of fruit or vegetable.<sup>15</sup> Therefore, an entity that

<sup>10</sup> Subsection 19-5(1).

<sup>11</sup> As defined in section 33-1.

<sup>12</sup> Sections 31-1, 31-2, 31-3, 31-4, 31-5, 31-6 and 31-7. See also WET Regulations 31-2.01, 31-3.01, 31-4.01 and 31-6.01.

<sup>13</sup> Subsection 19-5(1).

<sup>14</sup> Section 33-1.

<sup>15</sup> In the context of the wine industry fruit or vegetable wine includes wine made from the complete or partial fermentation of fruit, vegetable, grains and/or cereals. See the *Australia New Zealand Food Standards Code*.

supplies rice to another entity to manufacture sake will also be a producer of the rebatable wine.

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

23. The term 'supply' is defined very broadly in the GST Act and, in the context of the WET Act, includes a sale of grapes, fruit or vegetables or honey. Therefore an entity that provides another entity with the base constituents (fruit or vegetables) from which wine is manufactured is a producer of rebatable wine. However, to be entitled to a producer rebate an entity not only has to be the producer of rebatable wine but also:

- must be liable for wine tax for a taxable dealing in the wine during the financial year; or
- would have been liable for wine tax for a dealing in the wine during the financial year had the purchaser not quoted for the sale at or before the time of sale.

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

25. However an entity that provides grapes, fruit or vegetables or honey to another entity to make wine on their behalf, and subsequently has a dealing in the wine for which they are liable to wine tax, or would have been liable to wine tax had the purchaser not quoted for the sale, is a producer of rebatable wine and is entitled to a producer rebate.

### ***Manufacture of wine***

26. Manufacture is defined<sup>16</sup> in the WET Act to include:

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

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<sup>16</sup> Section 33-1.

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

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

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

29. In *McNichol and Anor v. Pinch*<sup>19</sup> 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.<sup>20</sup>

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

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

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

<sup>17</sup> (1978) 9 ATR 479; 79 ATC 4025

<sup>18</sup> (1978) 9 ATR 479 at 480; 79 ATC 4025 at page 4027.

<sup>19</sup> [1906] 2 KB 352.

<sup>20</sup> [1906] 2 KB 352 at page 361.

<sup>21</sup> (1949) 78 CLR 336; (1949) 9 ATD 46.

<sup>22</sup> (1949) 78 CLR 336 at page 345.

<sup>23</sup> See paragraphs 37 to 43 of WETR 2009/1 for a discussion on beverage in the context of the WET Act

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

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

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

34. Produce is relevantly defined as:

2. manufacture (goods) from raw materials etc.

35. The meaning of production in the definition of manufacture was considered by the High Court in *Federal Commissioner of Taxation v. Riley*.<sup>24</sup> 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.<sup>25</sup>

36. Some winemakers purchase raw wine (wine that has undergone primary fermentation) and finish the wine by stabilising, fining and filtering, secondary fermentation (malolactic fermentation) if needed, maturation and racking to clarify the wine by removing unwanted solids. The Commissioner's view is that these are processes in the production of wine and that entities that carry out all these processes manufacture wine. However, an entity that carries out only one or some of the above mentioned processes may not be considered to manufacture wine.

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

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

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

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<sup>24</sup> (1935) 53 CLR 69.

<sup>25</sup> (1935) 53 CLR 69 at page 78.

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

*Example 1 – manufacture by combining two or more different wines*

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

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

*Example 2 – manufacture by combining two or more different wines*

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

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

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

*Example 3 – manufacturing a grape wine product*

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

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

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

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

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

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

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

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

any substance suitable as food.

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

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<sup>26</sup> The definition of food in *The Australian Oxford Dictionary* relevantly includes:

1. a nutritious substance, especially solid in form, that can be taken into an animal or a plant to maintain life and growth.

Similarly the definition of food in the Macquarie Dictionary, 2005, 4<sup>th</sup> edition, The Macquarie Library Pty Ltd, NSW includes:

2. more or less solid nourishment (as opposed to drink).

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

## Eligible sales and applications to own use

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

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

### *Example 4 – incur wine tax*

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

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

### *Example 5 – would have incurred wine tax*

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

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

## Exceptions

61. An entity is not entitled to the producer rebate if:<sup>30</sup>

- the purchaser quotes for the sale and notifies the entity at or before the time of the sale that they intend to make a GST-free supply of the wine; or

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

<sup>28</sup> Paragraph 13-5(1)(c).

<sup>29</sup> Subsection 19-5(1).

<sup>30</sup> Section 19-10.

- the entity has claimed a wine tax credit,<sup>31</sup> or a wine tax credit subsequently arises for the entity (other than a producer rebate), for the dealing with the wine.

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

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

#### **Amount of producer rebate**

64. The amount of a producer rebate is calculated as follows:<sup>34</sup>

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

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

#### **Associated producer**

66. A producer is an associated producer of another producer for a financial year if, at the end of the financial year:<sup>35</sup>

- 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

<sup>31</sup> See paragraphs 207 and 208 of WETR 2009/1 for a discussion of 'wine tax credits'.

<sup>32</sup> See Appendix A of WETR 2009/1 for copy of the quotation form.

<sup>33</sup> Section 19-30. The maximum penalty is 20 penalty units.

<sup>34</sup> Section 19-15.

<sup>35</sup> Section 19-20.

Tax Assessment Act 1997 'ITAA 1997' if subsection 328-125(8) of the ITAA were omitted;<sup>36</sup> or

- one producer is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the other in relation to their financial affairs;<sup>36A</sup>

66A. Two producers are associated producers if:

- each of them is under an obligation (formal or informal), or might reasonably be expected to, act in accordance with the directions, instructions or wishes of the same third entity in relation to their financial affairs.<sup>36B</sup>

66B. Furthermore, a producer is an associated producer of another producer if:

- one is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of a third producer and the third producer is under an obligation (formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the second producer in relation to their financial affairs.<sup>36C</sup>

## Claiming the producer rebate

67. The producer rebate is claimed in the activity statement for the tax period to which the wine tax on the dealing is attributed.<sup>37</sup>

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

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<sup>36</sup> [Omitted.]

<sup>36A</sup> Subsection 19-20(1).

<sup>36B</sup> Subsection 19-20(2).

<sup>36C</sup> Subsection 19-20(3).

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

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

### **What happens if the producer rebate is over-claimed**

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

70. If an entity is a member of a group of associated producers and the rebate claimed by the group for a financial year is more than the maximum amount of producer rebates to which the group is entitled for the financial year, each member of the group is jointly and severally liable to pay an amount equal to the excess.<sup>40</sup> However, an entity will not be liable to pay an amount that exceeds the sum of the amounts of producer rebates that the entity claimed for the financial year.<sup>41</sup>

### **Impact of volume rebates and discounts**

71. If an entity has allowed volume rebates or discounts which effectively reduce the price for which the wine is sold (refer to paragraphs 118 to 122 of WETR 2009/1) the entity will need to adjust the amount of the producer rebate it has claimed for these sales.

72. Where the volume rebate or discount is allowed after the end of the financial year in which the rebatable sale was made it may result in the entity over-claiming the producer rebate for the financial year. If this is the case, any amount of producer rebate over-claimed should be included as wine tax payable in the final tax period of the financial year in which the rebatable sale was made. If the entity has already lodged its activity statement for the final tax period of the financial year in which the rebatable sale was made, the entity will need to revise this activity statement.

## **Detailed contents list**

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

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<sup>38</sup> Subsection 19-25(1).

<sup>39</sup> Subsection 19-25(4).

<sup>40</sup> Subsections 19-25(2) and 19-25(3).

<sup>41</sup> Subsection 19-25(3).

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**Commissioner of Taxation**

24 June 2009

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*Related Rulings/Determinations:*

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WETR 2006/1; WETR 2009/1

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*Subject references:*

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

*Legislative references:*

- ANTS(WET)A 1999
- ANTS(WET)A 1999 9-10

- ANTS(WET)A 1999 13-5(1)(c)
  - ANTS(WET)A 1999 17-10(1)
  - ANTS(WET)A 1999 Div 19
  - ANTS(WET)A 1999 19-5(1)
  - ANTS(WET)A 1999 19-10
  - ANTS(WET)A 1999 19-15
  - ANTS(WET)A 1999 19-15(1)(a)
  - ANTS(WET)A 1999 19-15(1)(b)
  - ANTS(WET)A 1999 19-15(2)
  - ANTS(WET)A 1999 19-15(3)
  - ANTS(WET)A 1999 19-20
  - ANTS(WET)A 1999 19-20(1)
  - ANTS(WET)A 1999 19-20(2)
  - ANTS(WET)A 1999 19-20(3)
  
  - ANTS(WET)A 1999 19-25(1)
  - ANTS(WET)A 1999 19-25(2)
  - ANTS(WET)A 1999 19-25(3)
  - ANTS(WET)A 1999 19-25(4)
  - ANTS(WET)A 1999 19-30
  - ANTS(WET)A 1999 21-15
  - ANTS(WET)A 1999 31-1
  - ANTS(WET)A 1999 31-2
  - ANTS(WET)A 1999 31-3
  - ANTS(WET)A 1999 31-4
  - ANTS(WET)A 1999 31-5
  - ANTS(WET)A 1999 31-6
  - ANTS(WET)A 1999 31-7
  - ANTS(WET)A 1999 33-1
  - ANTS(GST)A 1999
  - ANTS(WET)R 2000
  - ANTS(WET)R 2000 31-2.01
  - ANTS(WET)R 2000 31-3.01
  - ANTS(WET)R 2000 31-3.01(2)
  - ANTS(WET)R 2000 31-3.01(3)
  
  - ANTS(WET)R 2000 31-4.01
  - ANTS(WET)R 2000 31-6.01
  - ITAA 1997 328-125
  - ITAA 1997 328-125(8)
- Sales Tax Assessment Act (No. 1) 1930-1942
  - Sales Tax Assessment Act (No. 1) 1930 3
  - TAA 1953 Sch 1 105-60 (repealed)
  - TAA 1953 Sch 1 357-60
  - TAA 1953 Sch 1 Div 358
- Case references:*
- Deputy Commissioner of Taxation v. Cohn's Industries Pty Ltd (1978) 9 ATR 479; 79 ATC 4025
  - Federal Commissioner of Taxation v. Riley (1935) 53 CLR 69
  - Federal Commissioner of Taxation v. Jack Zinader Pty Ltd (1949) 78 CLR 336; (1949) 9 ATD 46
  - Federal Commissioner of Taxation v. Riley (1935) 53 CLR 69; (1935) 9 ALJ 115; (1935) 3 ATD 183; [1935] ALR 339; [1935] HCA 47
  - McNichol and Anor v. Pinch [1906] 2 KB 352
- Other references:*
- Australia New Zealand Food Standards Code
  - Australian Oxford Dictionary, 2004, 2<sup>nd</sup> Edition, Oxford University Press, Melbourne
  - Macquarie Dictionary, 2005, 4<sup>th</sup> Edition, The Macquarie Library Pty Ltd NSW

ATO references

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**Appendix A****Rebatable Wines**

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

<b>Definitions</b>	<b>Examples</b>
<p><b>Grape wine</b></p> <p><i>Grape wine is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>is the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes; and</i></li> <li>• <i>does not contain more than 22% of ethyl alcohol by volume.</i></li> </ul> <p><i>Note: a beverage does not cease to be the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes merely because grape spirit, brandy, or both grape spirit and brandy have been added to it.</i></p>	<p>Grape wine includes:</p> <ul style="list-style-type: none"> <li>• table wines (red, white and rosé);</li> <li>• sparkling wines;</li> <li>• fortified wines; and</li> <li>• dessert wines.</li> </ul>
<p><b>Grape wine products</b></p> <p><i>Up to and including 9 September 2009, a grape wine product is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>contains at least 70% grape wine; and</i></li> <li>• <i>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</i></li> <li>• <i>contains between 8% and 22% (inclusive) of ethyl alcohol by volume.</i></li> </ul>	<p>Grape wine products are traditional products that have been produced by the wine industry for many years.</p> <p>Up to and including 9 September 2009, grape wine products include:</p> <ul style="list-style-type: none"> <li>• vermouth;</li> <li>• marsala;</li> <li>• green ginger wine (except green ginger wine with spirits such as scotch added);</li> <li>• wine based cocktails and creams; and</li> <li>• imitation liqueurs (wine based);</li> </ul> <p>but only where they satisfy the requirements in the column on the</p>

<sup>42</sup> 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.

<p><i>From 10 September 2009, a grape wine product is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>contains at least 70% grape wine;</i></li> <li>• <i>has not had added to it any ethyl alcohol from any other source, except</i> <ul style="list-style-type: none"> <li>• <i>grape spirit; or</i></li> <li>• <i>alcohol used in preparing vegetable extracts (including spices, herbs and grasses) where the alcohol:</i> <ul style="list-style-type: none"> <li>– <i>is only used to extract flavours from vegetable matter;</i></li> <li>– <i>is essential to the extraction process; and</i></li> <li>– <i>adds no more</i></li> </ul> </li> </ul> </li> </ul>	<p>left.</p> <p>Up to and including 9 September 2009, grape wine products do not include:</p> <ul style="list-style-type: none"> <li>• wine coolers (unless they satisfy the requirements in the column on the left);</li> <li>• ready to drink (RTD) or designer drinks that contain a wine base (unless they satisfy the requirements in the column on the left);</li> <li>• RTDs or designer drinks that contain spirits (other than grape spirit); and</li> <li>• spirit based (other than grape spirit) cocktails, creams and liqueurs.</li> </ul> <p>From 10 September 2009 grape wine products include:</p> <ul style="list-style-type: none"> <li>• vermouth;</li> <li>• marsala;</li> <li>• green ginger wine (except green ginger wine with spirits such as scotch added);</li> <li>• 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</li> <li>• imitation liqueurs (wine based) that do not contain the flavour of any alcoholic beverage (other than wine) whether the flavour is natural or artificial;</li> </ul> <p>but only where they satisfy the requirements in the column on the left.</p> <p>From 10 September 2009, Grape wine products do not include:</p> <ul style="list-style-type: none"> <li>• wine coolers (unless they satisfy the requirements in the column on the left);</li> <li>• ready to drink (RTD) or designer drinks that contain a wine base (unless they satisfy the requirements in the column on the left);</li> <li>• RTDs or designer drinks that</li> </ul>
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<p><i>than one percentage point to the overall alcoholic strength by volume of the beverage;</i></p> <ul style="list-style-type: none"> <li><i>has not had added to it the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial; and</i></li> </ul> <p><i>contains between 8% and 22% (inclusive) of ethyl alcohol by volume.</i></p>	<p>contain spirits (other than grape spirit); and</p> <p>Spirit based (other than grape spirit) cocktails, creams and liqueurs.</p>
<p><b>Fruit or vegetable wine</b></p> <p><i>Fruit or vegetable wine is a beverage that:</i></p> <ul style="list-style-type: none"> <li><i>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;</i></li> <li><i>has not had added to it any ethyl alcohol from any other source except grape spirit or neutral spirit;</i></li> <li><i>has not had added to it any liquor or substance that gives colour or flavour except grape spirit or neutral spirit; and</i></li> <li><i>contains between 8% and 22% (inclusive) of ethyl alcohol by volume or if grape spirit or neutral spirit has been added contains between 15% and 22% (inclusive) of ethyl alcohol by volume (Note: a product is only a fruit or vegetable wine after the addition of grape spirit or neutral spirit if that product met the definition of fruit or vegetable wine before the spirit was added).</i></li> </ul>	<p>Fruit or vegetable wines include:</p> <ul style="list-style-type: none"> <li>table wine;</li> <li>sparkling wine; and</li> <li>fortified wine.</li> </ul> <p>Fruit or vegetable wines do not include:</p> <ul style="list-style-type: none"> <li>ready to drink (RTD) or designer drinks that may contain alcohol fermented from fruits such as lemons, oranges, et cetera. (unless they satisfy the requirements in the column on the left).</li> </ul>
<p><b>Cider and Perry</b></p> <p><i>Cider or perry is a beverage that:</i></p> <ul style="list-style-type: none"> <li><i>is the product of the complete or partial fermentation of the juice or must of apples or pears;</i></li> <li><i>has not had added to it any ethyl alcohol from any other source; and</i></li> <li><i>has not had added to it any liquor or substance (other than water or the juice or must of apples or</i></li> </ul>	<p>Cider and perry include:</p> <ul style="list-style-type: none"> <li>traditional cider and perry;</li> <li>draught cider and perry;</li> <li>dry cider and perry; and</li> <li>sweet cider and perry.</li> </ul> <p>Cider and perry do not include:</p> <ul style="list-style-type: none"> <li>cider or perry that has had lemon, black currant or other fruit flavourings added; and</li> </ul>

<p><i>pears) that gives colour or flavour.</i></p>	<ul style="list-style-type: none"> <li>• cider or perry that has had cola or other flavourings added.</li> </ul>
<ul style="list-style-type: none"> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>
<p><b>Mead</b></p> <p><i>Up to and including 8 June 2005, mead is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>is the product of the complete or partial fermentation of honey and;</i></li> <li>• <i>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit; and</i></li> <li>• <i>has not had added any liquor or substance (other than honey, grape spirit or neutral spirit) that gives colour or flavour.</i></li> </ul> <p><i>From 9 June 2005, mead is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>is the product of the complete or partial fermentation of honey; and</i></li> <li>• <i>has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit; and</i></li> <li>• <i>has not had added to it any liquor or substance that gives colour or flavour other than:</i> <ul style="list-style-type: none"> <li>- <i>grape spirit or neutral spirit;</i></li> <li>- <i>honey, herbs and spices, all of which can be added at any time;</i></li> <li>- <i>caramel, provided it is added after the fermentation process is complete; or</i></li> <li>- <i>fruit or product derived entirely from fruit, provided:</i> <ul style="list-style-type: none"> <li>• <i>the fruit or product has not been fermented;</i></li> <li>• <i>the fruit or product is added to the mead before fermentation of the mead; and</i></li> <li>• <i>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; and</i></li> </ul> </li> </ul> </li> <li>• <i>if fruit or product is added the</i></li> </ul>	<p>Up to and including 8 June 2005, mead includes:</p> <ul style="list-style-type: none"> <li>• honey mead;</li> <li>• fortified mead; and</li> <li>• liqueur mead.</li> </ul> <p>From 9 June 2005, mead includes:</p> <ul style="list-style-type: none"> <li>• honey mead;</li> <li>• fortified mead;</li> <li>• liqueur mead; and</li> <li>• spiced mead.</li> </ul>

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<p><i>mead contains between 8% and 22% (inclusive) of ethyl alcohol by volume, and</i></p> <ul style="list-style-type: none"> <li>• <i>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.</i></li> </ul> <p><i>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.</i></p>	
<p><b>Sake</b></p> <p><i>Sake is a beverage that:</i></p> <ul style="list-style-type: none"> <li>• <i>is the product of the complete or partial fermentation of rice;</i></li> <li>• <i>has not had added to it any ethyl alcohol from any other source; and</i></li> <li>• <i>has not had added to it any liquor or substance that gives colour or flavour.</i></li> </ul>	<p>Sake includes:</p> <ul style="list-style-type: none"> <li>• fermented sake; and</li> <li>• rice wine.</li> </ul> <p>Distilled sake does not satisfy the definition and is not included.</p>
<ul style="list-style-type: none"> <li>•</li> </ul>	