

## JOINT SUBMISSION BY

**The Institute of Chartered Accountants in Australia, National Institute of Accountants, The Taxation Institute of Australia, CPA Australia and Taxpayers Australia**

### *Draft Wine Equalisation Tax Ruling WETR 2008/D2*

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

**Date: 13 February 2009**

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The Professional Bodies welcome the opportunity to comment on Draft Wine Equalisation Tax Ruling WETR 2008/D2 ("the Draft Ruling").

#### **GENERAL COMMENTS**

The Professional Bodies consider that WETR 2008/D2 makes a significant positive contribution to an understanding of the producer rebate for participants other than New Zealand participants.

Consistent with our separate comments on WETR 2008/D1, the Professional Bodies note that wine equalisation tax (WET) only applies to dealings in alcoholic beverages and the producer rebate is only available to producers of rebatable wine. To qualify as rebatable wine, the wine must be a beverage. The word 'beverage' is not usefully defined in either the WET or GST legislation. However, in the latter beverages are expressly included in the definition of 'food'.

Consequently, the Professional Bodies consider that the Draft Ruling should contain an explanation of the difference between beverages on the one hand, and alcoholic products that fall short of being regarded as beverages on the other hand. The discussion of "raw wine" at paragraph 32 of the Draft Ruling is suggested as a possible basis for this explanation.

The Professional Bodies wish to make additional specific comments with a view to enhancing the quality of the final ruling and facilitating compliance with the eligibility rules.

#### **SPECIFIC COMMENTS**

##### ***Meaning of 'supplies'***

Given the interaction between the WET legislation and the GST legislation, the Professional Bodies consider that a comment should be made regarding the meaning of 'supplies' when used as a verb in the context of the producer rebate.

A producer includes an entity that "...supplies to another entity the grapes from which the wine is manufactured." The Professional Bodies note that when discussing this aspect of the definition in paragraph 20, the Draft Ruling substitutes the word "provides". We accept the substitution and suggest that a supply of grapes of the kind covered by the GST definition of "supply" (such as a sale of grapes), would generally not qualify an entity as a producer.

For the purposes of the producer rebate, the Professional Bodies consider that the verb “supplies” is used in the sense of the owner providing or delivering its grapes to a contract winemaker to be made up into wine and returned to the grower and not in the sense of a supply for GST purposes.

One possible exception might arise where the grape grower sells its grapes to a winemaker and re-purchases some of the finished wine.

### ***Meaning of “manufacture”***

Paragraphs 22 to 44 of the Draft Ruling contain a discussion of the definition of ‘manufacture’. Paragraph 23 acknowledges that the definition is an inclusive one, where the ordinary meaning is extended by three separately numbered paragraphs.

The Professional Bodies submit that the reference to the limbs of the definition in paragraphs 28, 34 and 44 should be references to the limbs of the extended definition. If an activity is manufacture according to ordinary meaning, there is no need to consider the extended meanings.

Paragraph 35 of the Draft Ruling discusses the blending of “different” wines so as to produce another wine. The Professional Bodies would welcome an explanation of the meaning of “different” wines. For example, are quantities of bulk cabernet from different regions regarded as different wines? Are different grades of the same variety of wine from the same region regarded as different wines? Clarification of this threshold question would greatly enhance the final ruling.

Paragraph 41 of the Draft Ruling acknowledges that an entity manufactures wine and thereby becomes eligible for the producer rebate where it provides “the inputs” to a contract winemaker, together with the specifications, and the resulting wine remains the property of the entity.

Presumably, the inputs referred to in paragraph 41 are 100% of the wines referred to in paragraph 35. However, the meaning is not completely clear as production aids are often used in winemaking. These might be supplied by the winemaker and not by the owner of the bulk wine. The issue is not resolved by the reference in paragraph 41 to “requisite materials” instead of to bulk wine or by the reference in paragraph 43 to “grape wine and other materials”.

To avoid confusion, the Professional Bodies suggest that the Commissioner’s position be explained more fully. For consistency with paragraphs 20 and 41, we also suggest that the word “supplies” in paragraph 43 be changed to “provides”.

Paragraph 44 of the Draft Ruling states that the third limb of the (extended) definition of manufacture is not relevant to the question whether an activity in relation to wine is, or is not, manufacture. The Professional Bodies are unable to support this conclusion. While we cannot provide a specific example, we consider that it would be open to an entity to contend that wine is a foodstuff and that by applying a process or treatment to that wine (or foodstuff) it manufactures wine in accordance with the extended definition. The GST definition of food referred to above would support such a contention.

### ***Other matters***

Paragraph 51 of the Draft Ruling contains a discussion of the approved form of quoting a purchaser’s ABN to the seller. The Professional Bodies suggest the inclusion of Appendix A from WETR 2008/D1 into this ruling; as a minimum a cross-reference to Appendix A in WETR 2008/D1 should be included in this ruling.

Paragraph 45 of the Draft Ruling explains, correctly, that to claim a producer rebate the producer must either make a taxable dealing with the wine (i.e. subject to WET) or make a sale of the wine on which WET would be payable if the purchaser had not quoted its ABN.

Consistent with paragraph 45, the Professional Bodies recommend that paragraph 56 be revised to recognise that the producer rebate is claimed in the tax period to which the WET payable on the dealing is attributed, "or would be attributed if the dealing were subject to wine tax."

Finally, paragraph 61 of the Draft Ruling describes the need to revise activity statements where post-sale adjustments (such as volume rebates) belatedly reduce sales revenue from rebatable wine and the producer rebate entitlement. The Professional Bodies consider that it would be inappropriate to levy a shortfall penalty or GIC in these circumstances and invite the Commissioner to include a comment to this effect be included in the final ruling.

Alternatively, the Commissioner might consider introducing a practical correction procedure similar to the procedure allowed to correct GST mistakes (see NAT 4700-05-2004).