



Wine Industry Alert April 2009

Tax Office sets sights on “uncommercial” WET practices

The Federal Commissioner of Taxation has announced that he may seek to challenge two arrangements concerning Wine Equalisation Tax (WET) practices.

The Commissioner has described the arrangements as “uncommercial” and “collusive” and has outlined the main features of the arrangements in a media release and two specifically issued Taxpayer Alerts. Taxpayer Alerts are generally issued by the Commissioner as a precursor to investigative or audit activity that may challenge the arrangements identified in the Alert.

1. Indirect Marketing Arrangements: Taxpayer Alert TA 2009/6

The first Alert (TA 2009/6) addresses arrangements which seek to convert sales that would otherwise be taxed at the wholesale selling price into sales that are taxed using the “half retail price method”.

The features of this arrangement include:

- > a retailer interposes a related party (**the marketer**) between itself and the supplier of wine;
- > the marketer purchases wine from the supplier;
- > the retailer sells the wine as agent for the marketer;
- > as the marketer is now remitting WET, it purports to apply the “half retail price method”;
- > on the basis that the retail mark up is minimal, less WET would potentially be remitted than would ordinarily be the case.

The Commissioner has identified a number of issues with this arrangement including his concern that the marketing entity bears little or no risk associated with purchasing the wine. Moreover, the retailer selects the wine to be purchased, negotiates the price, takes delivery direct from the supplier and

normally guarantees that the marketer will pay the supplier for the wine. The retailer pays a small fee to the marketer but retains significant sale proceeds on account of its agent’s commission.

Even if such an arrangement strictly complies with the WET legislation, the Commissioner considers that the arrangement may attract the application of the anti-avoidance provisions contained in the legislation. These provisions allow the Commissioner to set aside arrangements that have the dominant purpose or the principal effect of obtaining a tax benefit.

2. Grower’s Arrangements to Claim Rebate: Taxpayer Alert TA 2009/7

The other arrangement (identified in TA 2009/7) involves a practice of grape growers appointing winemakers to produce wine on their behalf that is then sold to the winemaker.

Under this arrangement:

- > A winemaker enters into a contract to make wine from the produce on the grower’s behalf;
- > At about the time of entering into the contract, the winemaker commits to buying the resulting wine, however, the title to the grapes and resulting wine is retained by the grower;



- > Once the wine is made, the winemaker pays the purchase price and the title to the wine is transferred to the winemaker;
- > The winemaker then sells the wine to a buyer in a transaction that is or would be liable to WET (i.e. assuming the purchaser has not quoted their ABN);
- > The winemaker can be expected to have already claimed the rebate up to the \$500,000 threshold.

The Commissioner considers that most of the commercial risk is with the winemaker once they commence producing the wine on the basis that the winemaker has contracted to purchase the grapes.

In the authors' view this Alert is not aimed at the longstanding practice of grape growers claiming producer rebates where they deal with contract winemakers to produce wine on the grower's behalf. The Commissioner appears to be primarily concerned with the fact that the wine is sold to the winemaker

as part of the arrangement and that the grower is not, as a matter of substance, having any real part in producing the wine. The legislation is a little ambiguous on this issue, however, the Commissioner may also seek to apply the anti-avoidance provisions in this situation.

Care Required

The Commissioner has warned taxpayers against entering into these arrangements which he says "may be ineffective under the law".

For taxpayers already involved in these arrangements, the Commissioner highlights the penalties that apply over and above the tax that may need to be repaid. The Commissioner emphasises that the remission of penalties may apply where a taxpayer makes voluntary disclosure.

Taxpayers likely to be affected by these measures should seek appropriate specialist tax and legal advice.

Other WET developments

The other major WET development to watch is the possibility of the Federal Government increasing the tax rate or reducing the availability of the rebate.

Certainly, there are concerns at present that in its quest to encourage "responsible drinking" the government may seek to duplicate the measures for alcopops because of its perception that taking such steps are in the interests of public health.

Thomson Playford Cutlers will be monitoring any proposal to change the WET legislation and will be in a position to ensure that our wine industry clients are well informed of any impact it might have on their business.

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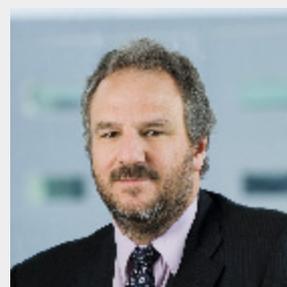


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