



Australian Government

Australian Taxation Office

Wine Equalisation Tax New Measures

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Overview

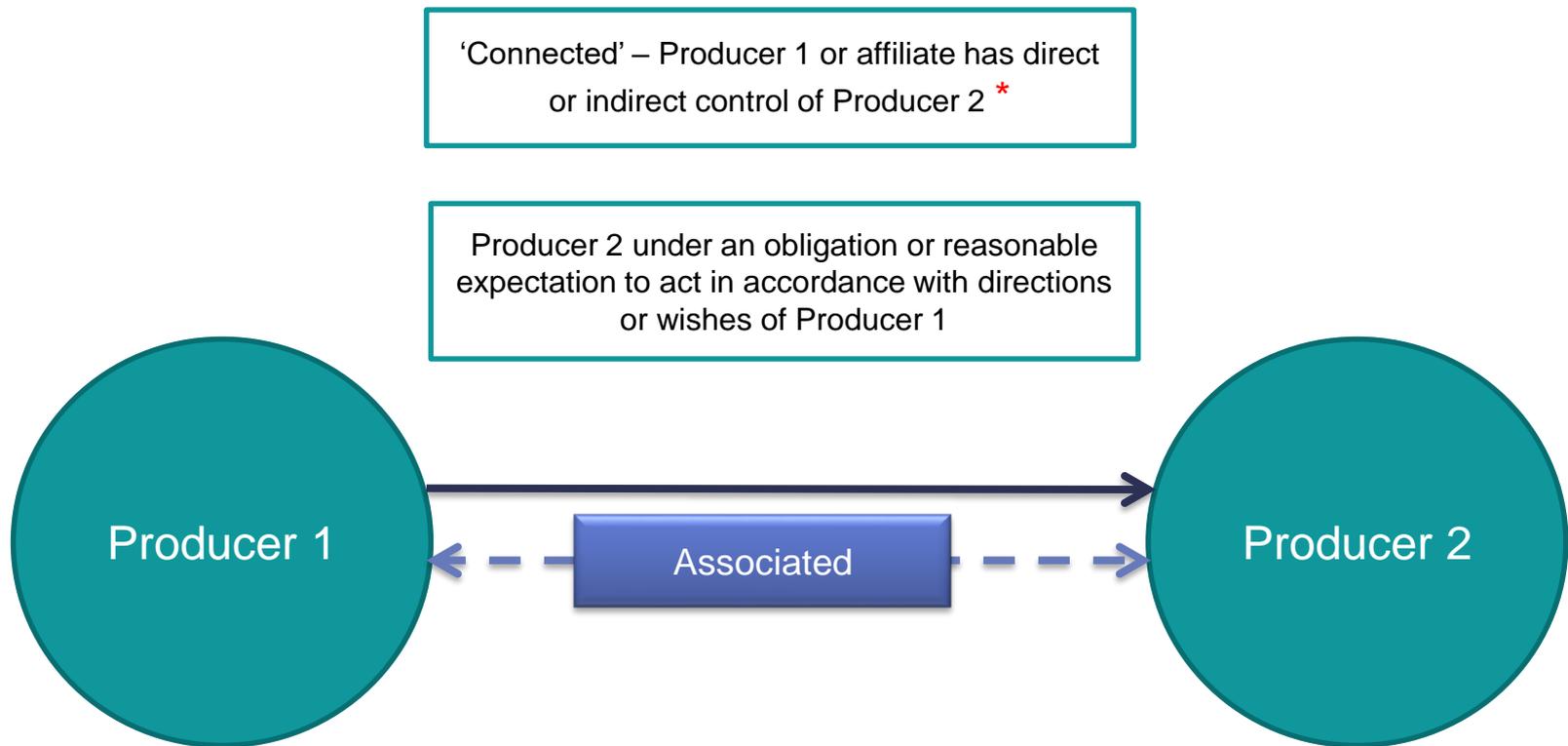
- Changes explained
 - Cap reduction
 - Associated producers
 - Eligibility criteria
 - Quoting
 - WET credits
 - Application and transitional provisions
- ATO support
- Questions

Cap reduction and associated producer amendment

Cap reduction & associated producer test

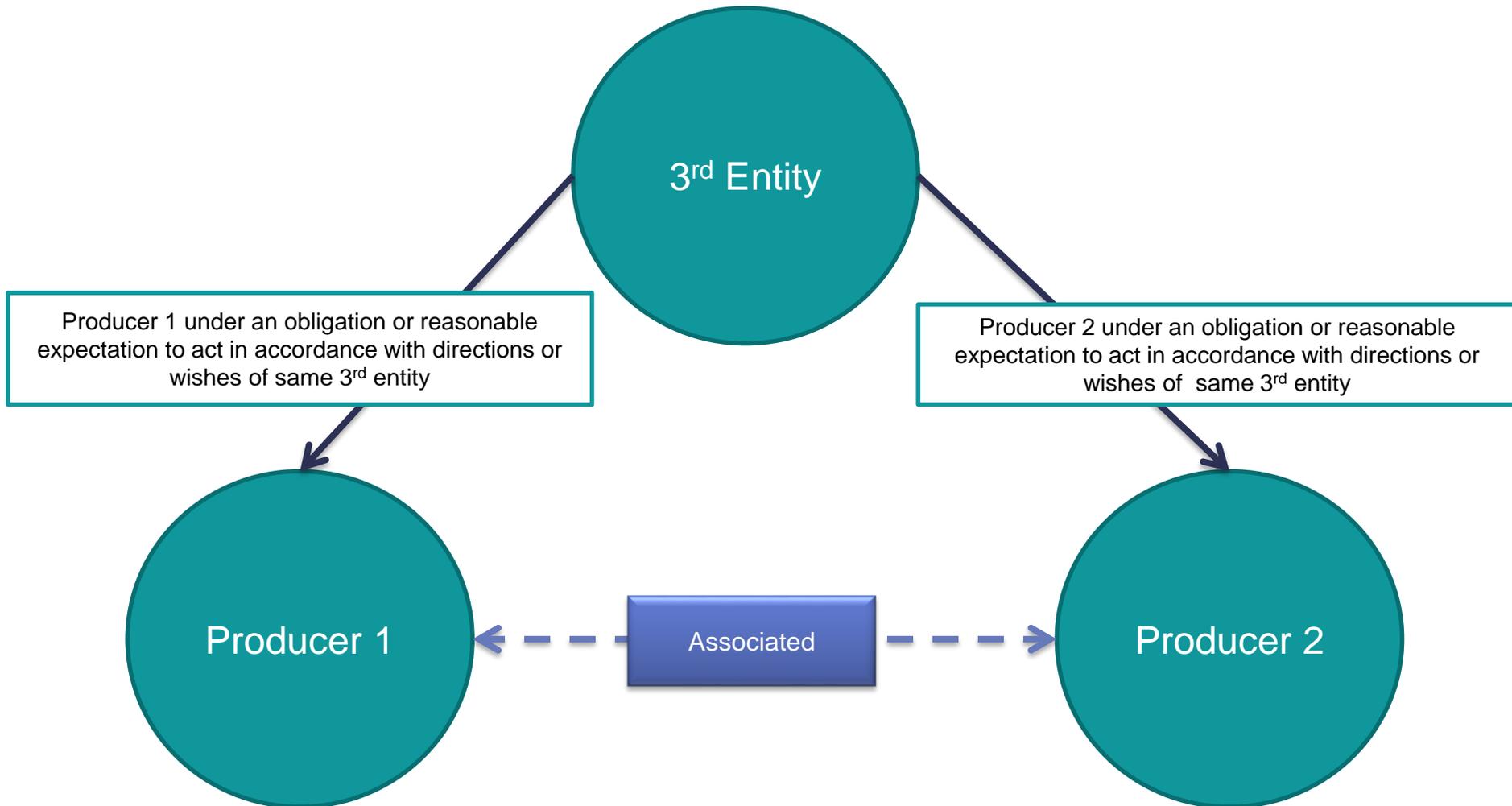
- \$350,000 from 1 July 2018
- applies to a producer, or a group of associated producers
- associated producer test applies **at any time** during the financial year from 1 October 2017

Associated producers – s19-20(1)

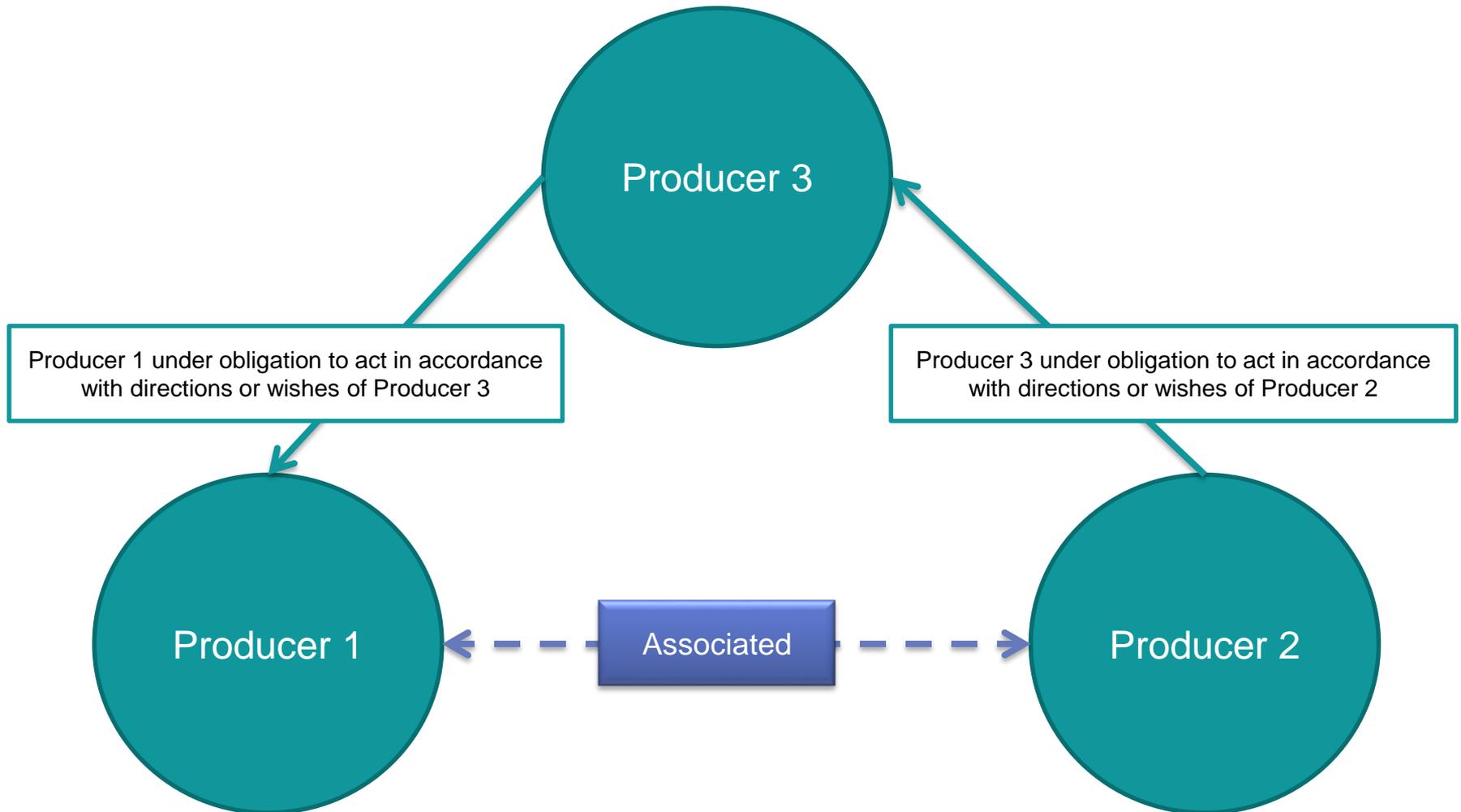


*** Relevant to branding requirement**

Associated producers – s19-20(2)



Associated producers – s19-20(3)



Eligibility criteria

Eligibility Criteria

1. Producer of the wine
2. Either:
 - Producer is liable to remit WET; or
 - Purchaser quotes and indicates they will have a WET liability for the wine
3. Own source product for at least 85% of the wine prior to crushing
4. Packaged for retail sale – 5L (51L for cider and perry)
5. Branded with a trade mark

UNCLASSIFIED
** Refer to flowchart included in handouts*

Who is a producer?

Definition of producer

- You produce wine if you:
 - manufacture the wine; or
 - supply another entity with the 'source product' to manufacture the wine on your behalf

Definition of producer – manufacture the wine

- Manufacture includes:
 - production;
 - combining parts or ingredients so as to form an article or substance that is commercially distinct from the parts or ingredients; and
 - applying treatment to foodstuffs as a process in preparing them for human consumption
- Definition of manufacture is not exhaustive
- ATO considers the facts of each case

Definition of producer – supply source product

- What is 'source product'?
 - Grape wine - grapes*
 - Grape wine product - grapes*
 - Fruit or vegetable wine - fruit or vegetables*
 - Cider or perry - apples or pears*
 - Mead - unfermented honey
 - Sake - unfermented rice

* In whole, unprocessed form

Liability for WET

Liability for WET

- Producer must be liable for WET for the wine; **or**
- Wine sold under quote – purchaser notifies it will have a WET liability for the wine

Liability for WET - Producer

Producer has WET liability

- Wholesale sales (not under quote)
- Cellar door sales
- Applications to own use (AOU)
 - Tastings
 - Samples
 - Own consumption
 - Transfer of title other than a sale

Liability for WET – Purchaser

Purchaser has WET liability

- Wine purchased under quote and purchaser indicates they ***will not***:
 - make a GST-free supply
 - use the wine in manufacture or treatment or other processing
 - sell the wine under quote
- Note - purchaser will have WET liability on their subsequent dealing regardless of how they deal with the wine

No entitlement to rebate – purchase under quote

- Producer *cannot* claim rebate where the quote notifies an intention to
 - make a GST-free supply
 - use the wine in manufacture or other process
 - sell the wine under quote

Ownership of source product

Ownership of source product

- What is 'source product'?
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* In whole, unprocessed form

Ownership of source product

- Only entitled to rebate where at least 85% of the total volume of the wine originated from source product wholly **'owned'** by the producer:
 - from immediately prior to crushing (fermentation for mead and sake)
 - until it is placed in containers which satisfy the packaging and branding rules

Ownership of source product - contracts

- Ownership = good title to source product
- Effective retention of title (*Romalpa*) clauses in grape supply contracts may mean ownership requirement not met
- Grape supply contracts may need to be examined

Ownership of source product - records

- Evidence of source product ownership may include:
 - written grape supply contracts
 - weighbridge documents
 - tax invoices
 - production records

Deemed source product

Substances *added* to wine are taken to be source product:

- grape spirit
- brandy
- alcohol used in preparing vegetable extracts
- ethyl alcohol
- water
- grape juice concentrate (no more than 10% of volume)
- any other substance (*together with similar substances* - no more than 1% of volume)

Deemed source product

- Additives deemed to be source product can only be added where allowed under the definition of each product
 - For example, brandy could not be added to fruit or vegetable wine as it is prohibited under the definition of fruit or vegetable wine in s31-4 of the WET Act
- Note - where the allowable amount of a deemed product is exceeded, the entire amount will be a substance other than source product when determining whether 85% rule is satisfied

Example - 85% source product rule – not satisfied

Vigneron Co manufactures a Grenache Shiraz Mouvedre wine, which is packaged in branded 1 litre bottles. Of the total volume of the wine:

- 820ml originated from fresh unprocessed grapes owned by Vigneron Co
- 150ml is purchased bulk wine
- 10ml is purchased unfermented Grenache grape juice
- 10ml is purchased unfermented Shiraz grape juice
- 8ml is purchased unfermented Mouvedre grape juice
- 2ml is preservative

Example - 85% source product rule – not satisfied

The three portions of grape juice each comprise 1% or less of the total volume of the wine. However, they are considered to be ‘similar substances’ and must be considered collectively for the purpose of the deeming provisions.

The grape juices comprise 28ml (2.8%) of the total volume of the wine and are therefore NOT taken to be source product for which the producer satisfies the ownership test.

The preservative, a different substance, comprises only 0.2% of the total volume of the end product and as such is taken to be source product that satisfies the ownership test.

Example - 85% source product rule – not satisfied

Only 82.2% of the GSM wine (being 82% from grapes owned by Vigneron and 0.2% preservative) satisfies the source product ownership rules for Vigneron Co. The remaining 17.8% of the total volume is not source product. Vigneron Co does not satisfy the 85% source product ownership rule for this wine.

Packaging requirements

Packaging

- The wine must be packaged in a container, which does not *exceed*:
 - **5 litres** – grape wine, grape wine product, fruit and vegetable wine, mead, and sake
 - **51 litres** – cider and perry
- Packaging must be ‘suitable for retail sale’ - in a form consumers would ordinarily expect to find the product sold at the retail level
- Packaging must include regulatory markings and meet the branding requirements

Branding requirements

Branding requirements – trade mark

- Container must be branded with a trade mark that:
 - is a ‘trade mark’ within the meaning of the *Trade Marks Act 1995*
 - identifies, or is readily associated with, the producer
 - is owned by the producer (or an associated entity); and
 - satisfies one of the following:
 - is registered
 - an application has been lodged and is pending
 - has been used by the producer since 2015

‘Branded’ with a ‘trade mark’

- Container that *immediately holds the wine* at time of dealing must be branded – i.e. label on bottle/carton for cask wine - insufficient for carton holding cleanskins to be branded
- Must be a ‘trade mark’ within the meaning of the *Trade Marks Act 1995* – very broad, and includes any combination of:
 - *letter, word, name, name signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound, or scent.*
- Used to distinguish goods or services from the goods or services of others

'Identifies' or 'readily associated with' producer

- Trade mark must '*identify*' or be '*readily associated with*' the entity as the producer of the wine – identifiable as the producer's brand to the '*ordinary reasonable consumer*'
- Question of fact in each case
- Co-branding may meet requirements in certain circumstances:
 - may meet requirements where producer's brand is dominant on packaging (e.g. front label)
 - unlikely to meet requirements where producer's brand is not readily visible (e.g. small print on the back label), especially where multiple producers manufacture wine sold under the same dominant 'brand'

Branding – ownership of trade mark

Producer or ‘associated’ entity must ‘own’ the trade mark:

- ‘Ownership’ - right to use trade mark to the exclusion of all others – excludes use under licence or other permission. Question of fact - indicators include:
 - registered as owner with IP Australia
 - right to sell, license, mortgage
 - legal action can be taken for infringement
- ‘Associated’ entity – association est. under first limb of associated producer rules (40% control test is met)

Branding – permitted trade marks

- Registered trade mark (with IP Australia)
- Application to register pending
- Unregistered (incl common law) in use since 1 July 2015 until time of assessable dealing – question of fact, evidenced by:
 - details of specific goods or services sold using the trade mark
 - advertising and marketing material, photos, or signage, or other images
 - historical context
 - details of any confusion or dispute about use of the trade mark

Quoting

Quoting

- Quotation of ABN in the approved form
- Quoting grounds remain unchanged:
 - intend to make a wholesale sale or indirect marketing sale in Australia
 - intend to sell wine by any kind of sale if you are mainly a wholesaler
 - intend to use the wine as a material in manufacture or other treatment or processing
 - intend to make a GST-free supply of the wine
- Quote must be made at or before the time of the dealing
- Can be for each purchase or for a period up to one year (periodic)

Quoting - changes

- Once WET is paid on wine, it can no longer be sold under quote (Note - a credit may be claimed where the wine is subject to a further taxable dealing)
- Wine purchased from a producer – purchaser must state in their quote if they intend to:
 - make a GST-free supply
 - use the wine in manufacture or other process
 - sell the wine under quote

Quoting - changes

- Where a purchaser indicates they:
 - will have a taxable dealing, producer may claim rebate
 - will not have a taxable dealing, producer cannot claim rebate
 - they will have a taxable dealing and subsequently do not, purchaser must pay WET
- New quoting forms
- New rules may impact current distribution arrangements

WET credits

Credit grounds

- Some WET credit grounds removed - ensures a credit can only be claimed where subsequent dealing is taxable
- Closer link between payment of the producer rebate and payment of WET liability for wine
- Main grounds removed:
 - CR2 – borne wine tax even though entitled to quote
 - CR6 – Tax excluded from sale price of tax-paid wine sold to a quoting purchaser
 - CR10 – Wine exported while still assessable wine
- Others removed – CR3, CR5, CR11, CR13

Transitional arrangements

2017 and earlier wine – sold before 1 July 2018

- 2017 and earlier wine - *more than* 50% of the grapes (or other source product) used to make the wine were crushed (or fermented for mead and sake) before 1 January 2018

Sold BEFORE 1 July 2018

- No change to rules for claiming producer rebate
- Earlier rebate rules continue to apply

2018 and later wine – 1 January 2018

- 2018 and later wine - *more than* 50% of the grapes (or other source product) used to make the wine crushed (or fermented for mead and sake) *on or after* 1 January 2018
- **From 1 JANUARY 2018**, new rules apply:
 - Quoting
 - Ownership of source product for at least 85% of the wine
 - Packaged in a container that meets the size and branding requirements
 - Reduced credit grounds

2017 and earlier wine – from 1 July 2018

FROM 1 July 2018, new rules:

- Quoting
- Ownership of source product for at least 85%* of the wine
- Packaged in a container that meets the size and branding requirements
- Reduced credit grounds

Except.....

2017 and earlier wine – *deemed ownership of source product

Source product ownership test deemed to be met where:

- producer owned the wine throughout the period:
 - from immediately before 1 January 2018
 - until the time of the assessable dealing,
- the assessable dealing occurs before 1 July 2023
- the wine is in a container at the time of the dealing and:
 - the container clearly displays the vintage date; OR
 - the wine was in the container before 1 July 2018

Earlier rebate rules apply

Fortified wine

- Separate transitional rules for ‘fortified wine’ (under Food Standards) - 85% source product test deemed to be met:
 - Wine owned before 1 January 2018
 - Sold or dealt with before 1 July 2025
 - On 1 January 2018:
 - in a multi-staged ageing system; or
 - in the container in which it is sold
 - Stored bulk wine rule
 - Earlier rebate rules apply

ATO support

ATO Resources

Website

www.ato.gov.au

New Measures Guidance

wetnewmeasures@ato.gov.au

General WET Guidance

wettechadvice@ato.gov.au

Questions?



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If you make an honest mistake in trying to follow our information in this presentation and you fail to comply with the law as a result, we will take the reason for the mistake into account in deciding what action to take.

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The information in this presentation was current at November 2017.