Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2016/ITX/0057

Explanatory Statement

Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination (No. 57) 2016

General Outline of Instrument

1. This instrument sets out the manner in which a component of the approved selling price of wine expressed in a currency other than Australian currency may be converted to Australian currency for the purposes of calculating the wine equalisation tax (WET) producer rebate by eligible New Zealand wine producers. This instrument may be cited as the *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Determination (No. 57) 2016.*
2. The authority for this instrument is provided by subsection 19-15(1B) of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act).
3. Under subsection 33(3) of the *Acts Interpretation Act 1901,* where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.
4. This Determination replaces *Wine Equalisation Tax New Zealand Producer Rebate Foreign Exchange Conversion Determination (No. 35) 2016* (the previous instrument). The replaced instrument is repealed on the commencement of this determination.
5. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003.*

Date of effect

6. The instrument is taken to have commenced on the day after registration.

What is this instrument about

7. Under the WET Act, eligible wine producers can claim a WET producer rebate of up to A$500,000 per year. The WET producer rebate was originally only available to wine producers who were registered for goods and services tax (GST) in Australia. However, from 6 June 2006, entitlement to the rebate was extended to include non-GST registered producers of wine in New Zealand that export their wine to Australia and that meet certain eligibility criteria.
8. The New Zealand WET producer rebate is calculated at the rate of 29% of the *approved selling price* of the relevant wine, up to the maximum limit of A$500,000. The approved selling price is the New Zealand producer's selling price of the wine

net of any expenses unrelated to the production of the wine in New Zealand. The WET Act provides that when any component used to determine the approved selling price is expressed in a currency other than Australian currency, the Australian Commissioner of Taxation may determine how the value of that component should be converted to Australian currency.

9. This instrument sets out the manner in which any component of the approved selling price that is not expressed in Australian currency may be converted into Australian currency.

What is the effect of this instrument

10. This instrument provides two options to convert a component of the approved selling price of wine for a New Zealand wine producer into Australian currency. Whichever option is chosen must be used consistently.

Option 1 – conversion for components expressed in any foreign currency

11. Under this option, a New Zealand wine producer can convert a component of the approved selling price of their wine that is expressed in any foreign currency into Australian currency. It is anticipated that in the overwhelming majority of circumstances, the foreign currency to be converted will be New Zealand currency.

12. The conversion under this option is to be calculated by multiplying the value of the component of the approved selling price, expressed in foreign currency, by the inverse of the *New Zealand participant's particular exchange rate* on the *conversion day*.

13. The *New Zealand participant's particular exchange rate* will be either:

    - the foreign exchange rate calculated by the Reserve Bank of Australia, or
    - the foreign exchange rate agreed to between the New Zealand participant and the recipient of their wine.

14. In applying the formula, a New Zealand participant may use either of these rates, as long as the rate they choose is used consistently. These rates have been chosen because they will be easy for New Zealand wine producers to obtain and to substantiate.

15. The *conversion day* is the date the New Zealand wine producer will use to convert foreign currency into Australian currency for the purposes of the WET producer rebate. This date will be the earlier of:

    - the day on which any of the consideration is received by the New Zealand wine producer for the supply of their wine, or
    - the date the invoice is issued for that supply.

16. These dates have been chosen to align with the usual method of attributing WET and goods and services tax (GST) for example, the non-cash basis.

<u>Option 2 – additional option for components expressed in New Zealand currency</u>

17. For most New Zealand participants for the WET producer rebate, foreign currency conversions will be generally made from New Zealand currency to Australian currency. It was therefore decided to provide an alternative option to convert currency in this circumstance, by allowing approved New Zealand participants to convert components of the approved selling price that are expressed in New Zealand currency by using a single average rate of conversion for a financial year. This option will provide greater flexibility and reduce compliance costs for affected entities, particularly in instances where they might have a significant number of dealings at different times during a financial year.

18. The conversion under this option is to be calculated by multiplying the value of the component of the approved selling price on the *conversion day*, expressed in New Zealand currency, by the *average yearly Reserve Bank of New Zealand (RBNZ) rate*.

19. The *average yearly RBNZ rate* is the total of the RBNZ average monthly exchange rates for an Australian financial year, divided by twelve. The RBNZ publishes average RBNZ exchange rates every month. The Australian Taxation Office (ATO) will publish on its website the average yearly RBNZ rate for each financial year. These rates have been chosen because they are easy to obtain and to calculate.

Compliance Costs

20. Compliance Cost Impact: Minor – there will be no or minimal impacts for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.

Consultation

21. Section 17 of the *Legislation Act 2003* requires consultation that is appropriate and reasonably practicable to undertake.

22. In this case, a sample of 10 registered New Zealand participants were provided with a copy of the draft determination for comment. As this determination only impacts entities registered for WET in New Zealand, and there was no substantive change from the previous determination, the small sample size was considered reasonable.

23. As a result of this consultation, a response was received from one participant who had no objections to the document. He questioned whether the rate on the website would be “the same as NZ” or whether the ATO uses an “unknown calculation”. Information was provided to the participant to advise the rate is provided to the ATO by New Zealand Inland Revenue and the calculation is based on the RBNZ average monthly exchange rates.

Legislative references:

A New Tax System (Wine Equalisation Tax) Act 1999

Legislation Act 2003

Statement of compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Legislative Instrument

This instrument sets out the manner in which a component of the approved selling price of wine expressed in a currency other than Australian currency may be converted to Australian currency for the purposes of calculating the wine equalisation tax (WET) producer rebate by eligible New Zealand wine producers.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. It is considered to be minor or machinery in nature. The two options provide flexibility to New Zealand wine producers in relation to converting to Australian currency for their WET rebate claims.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.