

EXPOSURE DRAFT

TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING)
BILL 2017

EXPLANATORY MATERIAL

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
WET	wine equalisation tax
WET Act	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>

Chapter 1

Wine equalisation tax producer rebate

Outline of chapter

1.1 Schedule 1 to this Bill amends the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) to improve the integrity of the wine equalisation tax (WET) producer rebate.

1.2 The amendments make integrity changes to the WET producer rebate and the WET credit rules, reduce the WET rebate cap (currently \$500,000) to \$350,000 from 1 July 2018, amend the definition of grape wine product and tighten the associated producers rule.

1.3 An amendment is also made to the definition of grape wine-based beverage in the *Customs Tariff Act 1995* to ensure it aligns with the WET Act definition.

1.4 All legislative references in this Chapter are to the WET Act, unless otherwise stated. All references in this Chapter to:

- dollars (\$) are to Australian dollars; and
- purchasers are to entities that purchase wine for the purpose of resale other than for retail sale (as defined in the WET Act).

Context of amendments

1.5 A WET producer rebate of wine tax is available under the WET Act for producers of eligible wine that are registered or required to be registered for GST in Australia and also for New Zealand participants. The maximum WET producer rebate is currently \$500,000 for a financial year. The rebate is in the form of a WET credit.

1.6 These amendments to the WET producer rebate are intended to support the Australian wine industry by ensuring that wine producers who build brands, invest in regional communities and create local jobs are the beneficiaries of the rebate and not wine traders and retailers.

1.7 The Government announced these reforms to support the Australian wine industry by addressing industry concerns about

distortions in the market through the misuse and exploitation of the WET producer rebate. The rebate has encouraged artificial business restructuring to maximise claims and has also contributed to excessive wine grape production particularly of low value wine, leading to distortions in the wine market in recent years.

Summary of new law

1.8 This Schedule amends the WET Act to improve the integrity of the WET producer rebate scheme. The reforms limit the WET producer rebate to wine for which:

- producers maintain ownership throughout the wine-making process;
- 85 per cent of the final product originated from source product that was owned by the producer; and
- producers have branded and packaged for retail sale.

1.9 The reforms also:

- create a stronger link between entitlement to the WET producer rebate and WET being paid;
- make integrity changes to the WET credit rules;
- reduce the WET producer rebate cap from \$500,000 to \$350,000;
- ensure that wine containing between 700 millilitres and less than 850 millilitres of grape wine per litre is now subject to excise and excise equivalent customs duty rather than WET;
- tighten the associated producers rule; and
- repeal the earlier producer rebate rule.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
WET producer rebate eligibility criteria	
<p>To qualify for a WET producer rebate for wine the following criteria must be met:</p> <ul style="list-style-type: none"> • an ownership test of the wine's source product throughout the wine-making process; • a wine packaging test for retail sale; and • WET must have been paid or is liable to be paid on the wine. 	Not applicable.
WET producer rebate eligibility criteria: Ownership of source product throughout the wine-making process	
<p>Wine satisfies this criterion if:</p> <ul style="list-style-type: none"> • at the conclusion of the wine-making process, 85 per cent of the wine that is in its final form as packaged branded product fit for retail sale was produced from the source product owned by the producer before the wine-making process commenced (excluding crushing); and • the producer owned the wine throughout the wine-making process. 	Not applicable.
WET producer rebate eligibility criteria: Packaging requirements	
<p>Wine must be packaged in a container that does not exceed five litres (51 litres for cider and perry), be branded with a registered trademark owned by the producer or a common law trade mark and, as packaged, be suitable for retail sale.</p>	Not applicable.
WET producer eligibility criteria: WET must have been paid or is liable to be paid	
<p>A producer is eligible for a WET producer rebate (subject to the other criteria) if the producer:</p> <ul style="list-style-type: none"> • has or will have a WET liability; or • sells wine to a purchaser under 	<p>A producer is eligible for a WET producer rebate if the producer:</p> <ul style="list-style-type: none"> • has or will have a WET liability; or • sells wine to a purchaser under quote and the purchaser

<i>New law</i>	<i>Current law</i>
<p>quote and the purchaser quotes that they intend to use the wine to make a dealing other than:</p> <ul style="list-style-type: none"> – a dealing that is a GST-free supply; – use it as an input into manufacture; or – on-sell it under quote. 	<p>notifies them that they intend to use the wine other than for making a GST-free supply.</p>
Purchaser has an assessable dealing with certain wine they purchase under quote from a producer	
<p>A purchaser will have a taxable dealing (without an exemption or exclusion from WET applying) for wine if:</p> <ul style="list-style-type: none"> • they purchased the wine under quote from a producer; • they quoted to the producer that they intend to make a taxable dealing with that wine; and • the wine was: <ul style="list-style-type: none"> – used to make a GST-free supply; – sold under quote; or – used as an input into manufacture. 	<p>Not applicable.</p>
Quote for the purchase of certain wine is ineffective	
<p>A quote for the purchase of wine is ineffective if the entity to which the quote is made purchased the wine for a price that included WET.</p>	<p>Not applicable.</p>
WET credits	
<p>A purchaser is only entitled to claim a WET credit for WET imposed on wine if it makes a taxable dealing with that wine.</p>	<p>A WET credit is available for all WET credit events.</p>
WET producer rebate cap	
<p>Producers of eligible wine that are registered or required to be registered for GST in Australia and New Zealand participants are entitled to a maximum \$350,000 WET producer rebate for a financial year.</p>	<p>Producers of eligible wine that are registered or required to be registered for GST in Australia and New Zealand participants are entitled to a maximum \$500,000 WET producer rebate for a financial year.</p>

<i>New law</i>	<i>Current law</i>
Definition of grape wine product	
Grape wine product and grape wine-based product must contain at least 850 milliliters of grape wine or grape wine-based product respectively per litre (and satisfy other existing requirements in section 31-3 of the WET Act and Chapter 22 of Schedule 3 to the <i>Customs Tariff Act 1995</i> respectively).	Grape wine product and grape wine-based product must contain at least 700 milliliters of grape wine or grape wine-based product respectively per litre (and satisfy other existing requirements in section 31-3 of the WET Act and Chapter 22 of Schedule 3 to the <i>Customs Tariff Act 1995</i> respectively).
Associated producers rule	
A producer is an associated producer of another producer for a financial year if the associated producers control test is met at any time during that financial year.	A producer is an associated producer of another producer for a financial year if the associated producers control test is met at the end of that financial year.

Detailed explanation of new law

1.10 The amendments made by this Schedule improve the integrity of the WET producer rebate to better target the rebate so it supports wine producers who build brands, invest in regional communities and create local jobs.

WET producer rebate eligibility criteria

1.11 Schedule 1 amends the WET Act to introduce additional criteria to claim the WET producer rebate to ensure that the rebate is available as intended and is not subject to exploitation. A producer is only entitled to a WET producer rebate for wine if all of the WET producer rebate eligibility criteria are satisfied for that wine.

1.12 Accordingly, if a wine producer sells multiple batches of wine, some of which satisfy all of the WET producer rebate eligibility criteria and some batches that do not, then the producer is only entitled to a WET producer rebate for the qualifying batches.

Ownership of source product throughout the wine-making process

1.13 A producer is not entitled to the WET producer rebate for wine unless they satisfy a test concerning the ownership of the wine's source product throughout the wine-making process.

1.14 Wine satisfies the ownership test during the wine-making process, if:

- at the conclusion of the wine-making process, 85 per cent of the wine that is in its final form as packaged branded product fit for retail sale was produced from the source product (or a product made from the source product) owned by the producer before the wine-making process commenced (excluding crushing); and
- the producer maintained ownership of the source product and resultant wine throughout the wine-making process.

[Schedule 1, item 6, section 19-5]

1.15 Source product is the constituent product, in its original unprocessed form, from which the wine is made. Accordingly, the source product for each type of wine is as set out in the table below:

Table 1.1: Source products for wine types

<i>Type of wine</i>	<i>Source product for this wine</i>
grape wine	whole unprocessed grapes (other than crushing)
grape wine product	whole unprocessed grapes (other than crushing)
fruit or vegetable wine	whole unprocessed fruit or vegetables (other than crushing)
cider or perry	whole unprocessed apples or pears (other than crushing)
mead	honey that has not been subject to fermentation
sake	rice that has not been subject to fermentation

1.16 The source product must be in its unprocessed form (other than for grapes, fruit or vegetables being crushed), for example for grape wine, fresh grapes would satisfy this requirement. However, purchased dried grapes, grape juice or concentrated grape juice do not qualify as source product. This exclusion applies, even if the wine producer owned them before the wine making process commenced (other than crushed grapes, fruit or vegetables purchased immediately after the crushing process ended). *[Schedule 1, items 6 and 17, subsections 19-5(3) and (4) and section 33-1]*

1.17 The producer must own 100 per cent, that is, all of the source product used to satisfy the 85 per cent requirement immediately following crushing and maintain that ownership throughout the wine-making process. The exception is mead and sake, for which the source product must be owned immediately prior to initial fermentation as honey and rice are not crushed as part of the wine-making process. The wine-making process includes all steps in the manufacturing of wine from its source product form to when the wine is packaged, ready for sale. The exception is the crushing of the source product. This ensures that wine producers who may only gain legal ownership of the source product after it is crushed are not adversely impacted. This is a common industry practice. *[Schedule 1, item 6, subsections 19-5(1), (2) and (3)]*

1.18 At the conclusion of the wine-making process, 85 per cent of the wine, by volume, in its final form as packaged branded product fit for sale must have originated from the wine producer's source product. This means that 15 per cent of the wine, by volume, can come from other sources. This can include purchased grape juice, purchased grape juice concentrate, purchased wine (including partially fermented wine or wine in its final form), purchased grape spirit, purchased brandy or other additives. Other additives, include yeast, preservatives and other ingredients such as energisers and enzymes. *[Schedule 1, item 6, paragraphs 19-5(1)(c) and (2)(d) and subsection 19-5(4)]*

1.19 These amendments also revise the definition of producer which defines the concept of 'producer of wine'. This definition refers to an entity that 'manufactures the wine' removing the words 'or supplies to another entity the grapes, other fruit, vegetables or honey from which the wine is manufactured'. This part of the definition is redundant as the producer must now maintain ownership of the source product throughout the wine-making process. *[Schedule 1, item 16, definition of producer in section 33-1]*

1.20 Manufacturing includes having a product made by a contract manufacturer on your behalf from inputs that you own. Therefore an entity that owns the source product and maintains that ownership throughout the wine-making process but has that wine manufactured under contract on its behalf by another entity is still regarded as the producer of that wine for the purposes of the WET and eligible to claim the WET producer rebate (provided that it satisfied all of the other criteria for claiming the rebate).

Example 1.1 Ownership of source product through the wine-making process

Chris is a producer of fine sparkling white wines. Chris purchases his grapes from wine growers, taking full ownership of the grapes immediately after they are crushed. Chris contracts Kylie to undertake the wine-making on his behalf. Chris continues to maintain ownership

of the wine throughout the wine-making process, up to and including the bottling, labelling and packaging of the wine.

To make the wine to Chris' specifications Kylie adds purchased grape juice, and other wine making additives including yeast. Combined the purchased grape wine and other additives comprise 13 per cent and the source product 87 per cent by volume of the final wine.

The wine that Chris has produced satisfies the ownership of source product throughout the wine-making process eligibility criterion.

Packaging requirements

1.21 To qualify for the WET producer rebate wine must also be packaged in a container that does not exceed five litres, be branded with a trademark owned by the producer and that wine, as packaged, must be ready for retail sale.

1.22 The wine must be packaged in a container that does not exceed five litres in capacity. The container (such as a bottle) in which wine is sold would be suitable for retail sale if purchasers would ordinarily expect to find wine packaged in such a container when it is sold on a retail basis. The exception is cider and perry for which the container (such as a keg) must not exceed a capacity of 51 litres and the container must be suitable for making retail sales of portions of the cider or perry in the container, such as 'on-tap' sales over the counter. *[Schedule 1, item 6, paragraph 19-5(5)(a)]*

1.23 The wine must be packaged so that each container is branded with a trademark that is owned by the producer. Generally this must be a registered trademark, however a common law trademark is allowed in certain circumstances. *[Schedule 1, item 6, paragraphs 19-5(5)(b) and (c)]*

1.24 For the purposes of the WET producer rebate a trademark is a registered trademark if it is registered under:

- Australian producer – the *Trade Marks Act 1995* with IP Australia (see <https://www.ipaustralia.gov.au/trade-marks> for further information); or
- New Zealand producer – the *Trade Marks Act 1995* with IP Australia or with the Intellectual Property Office under New Zealand Law (see <https://www.iponz.govt.nz/about-ip/trade-marks/> for further information).

1.25 A producer may brand wine with a common law trademark only if the producer is unable to register the trademark as it does not qualify for registration. An example is a brand based on a regional or geographical name. [*Schedule 1, item 6, subparagraphs 19-5(5 (c)(ii) and (iv))*]

1.26 Producers self-assess their entitlement to the WET wine producer rebate. Therefore for a producer with a trademark that is currently not a registered trademark, to continue to be eligible for the WET producer rebate, they must either register the trademark or be able to demonstrate that they cannot register that trademark as it is a common law trademark which does not qualify for registration.

1.27 Examples of evidence that a trademark is a common law trademark that cannot be registered include:

- documents from IP Australia, or for New Zealand producers from the Intellectual Property Office, that their brand could not be registered as a trademark;
- being able to show the longevity of the brand and its use and the reputation that has been established; and
- that the brand name includes a geographical region listed on the Register of Protected Names by the Geographical Indications Committee (a subcommittee of the Australian Grape and Wine Authority) or its New Zealand equivalent.

Example 1.2 Packaging requirements

Kerry is an Australian red wine producer. Kerry bottles her wine in 750 millilitre bottles which each contain a label that prominently displays the brand name and the information required to satisfy regulatory requirements. Kerry has registered her brand name as a registered trademark with IP Australia. This wine therefore meets the packaging requirement for the WET producer rebate.

Had Kerry chosen to, she could have also used a common law trademark as a brand name to satisfy this WET producer rebate eligibility criterion provided that this trademark is not able to be registered. An example would be Kerry's Margaret River Merlot which is not registerable as a trademark as it is based on a regional or geographic name.

Offsetting the WET producer rebate against WET that is ultimately paid

1.28 For a producer to qualify for the WET producer rebate for wine, WET must ultimately be paid on that wine. This eligibility criterion ensures that the claiming of a WET producer rebate can no longer result in

the sum of the rebate and credits claimed for the wine exceeding the WET that is paid on that wine. This is achieved by:

- only permitting a producer to claim the WET producer rebate if:
 - the producer is liable for WET for a taxable dealing in the wine; or
 - a purchaser purchased the wine under quote to the producer quoting that they intend to make a taxable dealing with the wine; and
- making the purchaser liable for WET if they purchase wine under quote to the producer quoting that they intend to make a taxable dealing; and
- making a quote for the purchase of wine ineffective if the entity to which the quote is made purchased the wine for a price that included WET.

When the producer can claim the WET producer rebate

1.29 A producer is entitled to claim a WET producer rebate if either the producer has or the purchaser of the wine is taken to have a WET liability for the wine.

1.30 The producer of the wine has a WET liability for the wine if they undertake a taxable dealing with the wine. *[Schedule 1, item 6, paragraph 19-5(1)(a)]*

1.31 A purchaser of wine is taken to have a WET liability for wine if they purchase the wine by quoting to the purchaser that they intend to make a taxable dealing with the wine. *[Schedule 1, items 6 and 7, paragraph 19-5(1)(b) and subsection 19-10(1)]*

1.32 Section 13-20 of the WET Act requires a quote to be made in the approved form. It is expected that the approved form for quoting will be updated to require the purchaser, as part of the quote, to specify whether they intend to use the wine to make a taxable dealing. They will do this if they specify that they do not intend to use the wine:

- to make a GST-free supply;
- to sell it under quote; or
- as an input into manufacture.

1.33 Consequential amendments are also made to repeal subsections 19-10(2) and 19-10(3) as they no longer apply. [*Schedule 1, item 8, subsections 19-10(2) and (3)*]

Purchaser of wine under quote liable for WET if they quote to the producer of their intention to make a taxable dealing with the wine

1.34 A purchaser that purchases wine from a producer under quote and quotes to the producer that they intend to make a taxable dealing with the wine is liable to pay WET. This is because no exemption or exclusion from WET applies for wine if that purchaser:

- uses the wine to make a GST-free supply;
- sells it under quote; or
- uses the wine as an input into manufacture.

[*Schedule 1, item 1, section 5-50*]

Example 1.3 Purchaser of wine under quote from producer notifies they intend to use the wine to make a taxable dealing

Yvonne purchases wine from a producer under quote. At the time of quoting, Yvonne notifies the producer that she intends to use the wine to make a taxable dealing.

If Yvonne exports the wine she will have an assessable dealing giving rise to a WET liability for that wine. This is because in this situation the exemption for dealings that are GST-free supplies or non-taxable importations will not apply.

If Yvonne sells the wine under quote she will have a taxable assessable dealing for that wine. This is because in this situation the exemption for quoting will not apply.

If Yvonne uses the wine as an input into manufacture then she will have a taxable assessable dealing for that wine. This is because in this situation the wine is treated as being an application to own use of that wine.

1.35 Section 19-30 is also repealed. The removal of the exemptions and exclusion outlined in paragraph 1.34 now apply where section 19-30 would have previously applied to recover the loss to the WET system from the producer claiming a WET producer rebate in this instance. This provides a more appropriate outcome as this Schedule ensures that the WET producer rebate can only be claimed if WET is ultimately paid. Section 19-30 imposed a penalty on an entity that purchased wine from a producer if it purchased that wine under quote and intended to use the

wine to make a GST-free supply, but failed to notify the producer correctly of that intention. [Schedule 1, item 11, section 19-30]

Quote for purchase of wine is ineffective if the entity to which the quote is made purchased the wine for a WET inclusive price

1.36 A quote for the purchase of wine is ineffective for a dealing if the entity to which the quote is made purchased the wine that is supplied in that dealing for a price that included WET. Therefore the entity will be liable to pay WET for the assessable dealing it makes as an exemption under section 7-10 based on quoting will not apply. [Schedule 1, item 3, section 13-32]

1.37 In conjunction with the amendments to the WET credit rules (see paragraphs 1.38 to 1.42) this ensures that WET that has been imposed to offset the WET producer rebate that a producer has claimed remains included in the price of the wine. Therefore there is no net outflow of funds from the WET system. Otherwise a net outflow could result, if the wine that has WET applied to it to offset the producer rebate claimed could be sold under quote. This is because the purchaser selling the wine under quote could claim a WET credit for any WET that had been paid, effectively cancelling out its collection. There would then be an outflow of funds if there is no later taxable dealing with that wine under which further WET is imposed.

Example 1.4 Selling wine that has had WET imposed on it

Nick is a fine wine trader. He purchases wine from a range of producers and purchasers. Some of the wine has previously been taxed, and includes WET in the purchase price. Nick sells this wine to a purchaser who quotes for the purchase of the wine.

As the purchase price of the wine included WET, the purchaser's quote is ineffective. Therefore Nick is liable to pay WET on the supply of the wine to the purchaser as it is an assessable dealing with the wine. WET applies because the exemption based on quoting does not apply.

WET credits

1.38 The WET crediting provisions are amended so that a purchaser of wine is only able to claim a WET credit for WET included in the purchase price of that wine if it makes a taxable dealing with the wine. To give effect to this rule, the following WET credit events that give rise to WET credits in other circumstances are repealed:

- CR2 – borne wine tax even though entitled to quote;

- CR3 – liable to tax because the quote was ineffective under section 13-30;
- CR5 – exemption applies if latest assessable dealing is non-taxable;
- CR6 – tax excluded from sale price of tax-paid wine sold to quoting purchaser;
- CR 10 - wine exported while still assessable wine;
- CR 11 – tax excluded from sale price of a GST-free supply of tax paid wine; and
- CR 13 – refund of customs duty following destruction of imported wine.

[Schedule 1, item 4, subsection 17-5(3)]

1.39 Section 17-37 and paragraph 31-15(4)(c), which deal with the application of CR10 and CR2 respectively, are also repealed. Section 13-30 and the definition of CR1 in section 33-1, which refer to CR6 and CR2 and 3 respectively, are amended to remove those references. *[Schedule 1, items 2, 5, 12, 13 and 14, sections 13-30 and 17-37, paragraph 31-15(4)(c) and the definition of CR1 in section 33-1]*

1.40 The linking of the WET producer rebate to WET paid in all circumstances (refer paragraphs 1.28 to 1.37) ensures that if the WET producer rebate is claimed then a WET liability must arise for the producer or the purchaser of that wine from the producer. If a purchaser of wine claimed a WET credit for WET paid for which a WET producer rebate has also been claimed without that entity making a taxable dealing with the wine then this could result in a net outflow of funds from the WET system. For example a net outflow arises if the wine was subsequently exported, as WET is paid once, but there are two outflows in the form of the producer rebate and the WET credit.

1.41 However a purchaser of wine is able to continue to claim a WET credit for WET embedded in the purchase price of wine if that entity makes a taxable dealing with the wine. This ensures that the correct amount of WET is ultimately imposed on wine, being an amount equal to 29 per cent of the taxable value (excluding WET and GST) that applies to the last taxable dealing of that wine (for wine that is subject to a taxable dealing).

1.42 Purchasers of wine for a non-taxable purpose (such as making a GST-free supply, on-selling under quote or an input into manufacture)

should ensure that they purchase wine under quote notifying the producer that they intend to make a non-taxable dealing with that wine. This ensures that wine that is used for non-taxable purposes does not have any WET included in its price. This also maintains the integrity of the WET system as a producer is not able to claim a WET producer rebate for such wine. This outcome is consistent with the original intent that the producer rebate only apply to wine to which WET applies (see paragraph 1.17 of the Explanatory Memorandum to Tax Laws Amendment (Wine Producer Rebate and Other Measures) Bill 2004).

Example 1.5 Purchaser acquires wine that has wine tax embedded in the purchase price and makes a taxable dealing with the wine

George, a purchaser of specialty wines, purchased wine from another entity (not being the producer of the wine). George bore WET on that purchase as the purchase price included WET. George sells the wine to a wine retailer.

As George has made a taxable dealing, he is entitled to claim a WET credit for the WET that was included in the purchase price under WET credit event CR4.

Example 1.6 Purchaser acquires wine that has wine tax embedded in the purchase price and makes a non-taxable dealing with the wine

Aaron, a purchaser of fine wine, bears WET on the purchase of wine as the purchase price included WET. Aaron exports the wine.

As Aaron has not made a taxable dealing with the wine, he is not entitled to claim a WET credit for the WET borne on that wine. This is because there is no WET credit event that allows for a WET credit to be claimed in this circumstance.

WET producer rebate cap

1.43 This Schedule amends the WET Act to reduce the WET producer rebate cap to \$350,000. Producers of eligible wine are entitled to a maximum \$350,000 WET producer rebate. [*Schedule 1, items 19 and 20, subsections 19-15(2) and (3) and 19-25(2)*]

Definition of grape wine product

1.44 The definition of grape wine product in section 31-3 of the WET Act is amended so that grape wine product must contain at least 850 millilitres of grape wine per litre rather than 700 millilitres. This change is consistent with the requirement that 85 per cent of the wine, in its final packaged form, must have originated from source product owned

by the producer (refer to paragraphs 1.13 to 1.20). [*Schedule 1, item 21, paragraph 31-3(a)*]

1.45 A wine that contains grape wine of 700 millilitres but less than 850 millilitres is no longer regarded as grape wine product. Therefore it is now not taxed under the WET, but is instead subject to taxation under the excise regime with excise duty applying at the time of entry into home consumption following its manufacture at the rate specified in the *Excise Tariff Act 1921*.

1.46 An amendment is also made to the definition of grape wine-based beverage in the *Customs Tariff Act 1995* to ensure that it aligns with the definition of grape wine product in the WET Act. This allows excise-equivalent customs duty to be imposed on imported wine if it contains between 700 millilitres but less than 850 millilitres per litre of grape wine to ensure consistent treatment with domestically produced products. [*Amendment to be drafted*]

Associated producers rule

1.47 This Schedule amends the WET Act to tighten the associated producers rule by amending the timing of application of the rule. There are no other changes to the operation of the associated producers rule.

1.48 A producer is taken to be an associated producer of another producer for a financial year if the associated producers test is met at any time during that financial year. [*Schedule 1, item 23, subsection 19-20(1)*]

1.49 This change prevents artificial restructuring just prior to the end of a financial year to avoid the application of the associated producers rule for that financial year.

Example 1.7 – Associated producers rule

Black Pty Ltd is a wine producer. A review of Black Pty Ltd's ownership structure and operations finds that under the associated producers rule for the WET producer rebate it is associated with Red Pty Ltd from 1 July 2018 until 31 December 2018 and White Pty Ltd from 1 February 2019 until 30 June 2019.

Under the associated producers rule, prior to this amendment, only White Pty Ltd is taken to be an associated producer of Black Ltd for the financial year as only it was an associated producer at the end of the financial year (that is on 30 June 2019). Red Pty Ltd is not an associated producer of Black Pty Ltd as it was not one at the end of the financial year (irrespective of whether it was such a producer at any other time during the financial year).

Under the associated producer rule, following this amendment, both Red Pty Ltd and White Pty Ltd are taken to be associated producers of Black Pty Ltd for the financial year. This is because they were both associated producers of Black Pty Ltd at some (any) time during the financial year.

Repeal of the earlier producer rebate rule

1.50 Schedule 1 repeals the earlier producer rebate rule in section 19-17 and the associated offence provision in section 19-28. The earlier producer rebate rule is being repealed as it is expected to no longer apply to the claiming of more than one WET producer rebate by multiple producers for the same wine. This is because of the requirement included in this Schedule to own the source product throughout the wine-making process and the inability to claim a WET producer rebate on wine that is sold in bulk (rather than packaged in a form that is suitable for retail sale) make the rule redundant. The definition of earlier producer rebate in section 33-1 is also repealed. *[Schedule 1, items 9, 10 and 15, sections 19-17 and 19-28 and definition of earlier producer rebate in section 33-1]*

Application provisions

1.51 Schedule 1 commences on the first day of the next quarter following the day of Royal Assent.

1.52 The WET eligibility criteria apply to assessable dealings in wine in the 2018-19 and later financial years. *[Schedule 1, subitem 18(1)]*.

1.53 The amendments to reduce the WET producer rebate cap from \$500,000 to \$350,000 and amend the definition of grape wine product apply on and after 1 July 2018. *[Schedule 1, item 22]*

1.54 The amendment to the associated producers rule applies to dealings in wine made from the first financial year occurring on or after the day that Schedule 1 to the Bill commences. Accordingly, for example if the day that Schedule 1 commences is 1 January 2018 then the associated producers rule amendment applies to the 2018-19 financial year and later years. *[Schedule 1, subitem 24(1)]*

Transitional provisions

Amendments to introduce the WET eligibility criteria

1.55 The amendments to introduce the WET eligibility criteria also apply to:

- grape wine, grape wine products, fruit and vegetable wine and cider and perry if the crushing of the source product for more than 50 per cent of the wine (measured by volume) occurred on or after 1 January 2018; and
- mead and sake if the initial fermentation of the source product for more than 50 per cent of the wine (measured by volume) occurred on or after 1 January 2018.

[Schedule 1, subitem 18(2)]

Example 1.8 Wine to which transitional application provision applies

Maria is a wine producer. Maria has produced and packaged grape wine ready for retail sale. The wine, by volume, contains the following ingredients:

- 300 millilitres of grape wine made from source product for which crushing occurred on 1 February 2018;
- 200 millilitres of grape wine made from source product for which crushing occurred on 1 March 2018;
- 350 millilitres of grape wine made from source product for which crushing occurred on 1 March 2015;
- 100 millilitres of purchased grape juice made from source product that Maria did not own; and
- 50 millilitres of other ingredients and additives.

The transitional application rule applies to this wine as 53 per cent of the source product that constitutes the wine was crushed on or after 1 January 2018. This is because 950 millilitres of the wine is source product and 500 millilitres of this source product was crushed on or after 1 January 2018.

Associated producers rule

1.56 A transitional rule applies to dealings in wine on and from the date of commencement of Schedule 1 to the Bill until the end of the financial year in which the day of commencement occurs. Accordingly if

Schedule 1 commenced on 1 January, for example, then the transitional rule would apply from 1 January to 30 June of that calendar year. A producer is an associated producer of another producer for that period if the associated producers control test is met at any time during that period.
[Schedule 1, subitem 24(2)]