

The WET: is it a good drop?

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Abstract: The wine equalisation tax (WET), introduced by the *A New Tax System (Wine Equalisation Tax) Act 1999* (Cth), is, in essence, a wholesale sales tax on certain wine containing a specified content of potable alcohol that is sold for consumption in Australia. The apparent fiscal purpose of the Act is to reduce and recoup the public costs of alcohol abuse. The hallmarks of sound tax legislation are traditionally encapsulated in the tax policy principles of simplicity, equity, economic efficiency and fiscal adequacy. This article explores the extent to which these hallmarks are reflected in the rules of the Act. The authors conclude that the WET is not a “good tax” in light of any of the principles, and its deficiencies raise the threshold issue of whether alcohol taxation is an appropriate way to address the public costs of alcohol abuse. In the authors’ opinion, there is no valid argument for its retention.

Introduction

It is generally accepted in Australia that government revenue should be raised, to the greatest extent possible, by legislation that is readily understood by taxpayers and their advisers, that allocates tax liabilities fairly and without causing taxpayers to distort their commercial decisions, and that raises the intended amount of revenue at a reasonable cost to taxpayers and to government. These hallmarks of sound tax legislation are traditionally encapsulated in the tax policy principles of simplicity, equity, economic efficiency and fiscal adequacy. They were included in the terms of reference of the most recent review of Australia’s tax system.¹

This article explores the extent to which these hallmarks are reflected in the rules of the *A New Tax System (Wine Equalisation Tax) Act 1999* (Cth) (WET Act) which commenced on 1 July 2000.² The WET Act currently applies, on an ad valorem basis, to certain sales of potable alcohol defined as “wine” and that contains more than 1.15% by volume of ethyl alcohol, at a rate of 29%.³ Alcoholic beverages that contain more than 1.15% by volume of ethyl alcohol and that are not wine for the purposes of the WET Act are generally taxed under the rules for excise or customs duty.⁴ Excise duty is imposed by volume at a rate adjusted biannually by reference to changes in the consumer price index compiled by the Australian Bureau of Statistics. Customs duty on imported products is calculated by volume and value.⁵ In addition, all taxable supplies of

potable alcohol in Australia are subject to the provisions of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GSTA). GST is currently levied at the rate of 10% on the taxable value of the supply. This two-tier system of indirect taxation has the practical effect of elevating the consumer price of drinkable alcohol in Australia beyond what it would be under the GST alone. The apparent principal reason for the additional revenue take is to offset the direct and indirect public cost of alcohol abuse.

Salient features of the WET Act⁶

“Wine” is defined to mean any of the following: grape wine, a grape wine product, a fruit or vegetable wine, cider or perry, mead or sake, excluding beverages that contain 1.15% or less, by volume, of ethyl alcohol.⁷ “Beverage” is not specifically defined for the purposes of the Act and each of the six types of wine referred to in the general definition is defined subject to any further requirements set out in the regulations.⁸

Section 5-5(4) WET Act contains an assessable dealings table which lists a total of 24 assessable dealings in wine, 13 for Australian wine and 11 for imported wine. In summary, they are: wholesale sales in Australia of Australian wine or imported wine to a retailer; retail sales, such as cellar door sales, in Australia of Australian or imported wine by the manufacturer; and applications for one’s own use, such as tasting and other promotional activities.

The assessable dealings table also specifies the time of the particular dealing, the entity liable for the wine equalisation tax (WET) if the dealing is taxable and the normal taxable value of the dealing. Item AD10 of the table makes a local entry of imported wine an assessable dealing at the customs barrier. The 15 situations that give rise to a local entry are listed in the local entry table in s 5-30 WET Act together with the entity that is regarded as making the local entry for each situation. If an assessable dealing is a taxable dealing under the WET rules, WET is payable at 29% of the dealing’s taxable value.

The taxable value for taxable wholesale sales is the selling price of the wine excluding WET and GST but including adjustments for royalty payments, the value of containers and non-arm’s length transactions. A “wholesale sale” is a sale to a purchaser who intends reselling the wine — all other sales are treated as retail sales.⁹ The taxable value for a taxable retail sale is the notional wholesale price adjusted for any additional costs such as those for marketing, packaging and royalty payments.¹⁰ Likewise, the taxable value of taxable applications for own use in the course of business is the notional wholesale selling price. In regard to wholesale sales, the intent of the WET Act is that the taxing point is the last wholesale sale.

Where there is an assessable wholesale dealing in wine with the intention to resell wholesale, the intent of the Act is achieved in one of two ways. Either the

assessable dealing is not taxable because the purchaser has deferred the imposition of WET by validly quoting its Australian business number (ABN) to the seller or customs authority under the rules for a quotation¹¹ or, if the dealing is taxed, the purchaser is entitled to a wine tax credit in the amount of the WET paid in calculating its net WET liability on its taxable wholesale sales of the wine. A credit does not arise to the extent that the prior WET amount has been passed on to the purchaser in the subsequent sale. Generally, the purchaser, like all retailers, is not entitled to a wine tax credit on any retail sales of the wine and, if the wine was obtained WET-free under a valid ABN quotation, the sale is an assessable dealing. An exception arises for taxed retail sales of wine that has previously borne WET, such as the retail sale of repackaged bulk wine mentioned above,⁹ where double taxation would occur without an offsetting wine tax credit for the WET previously paid. The wine tax credit table in s 17-5 WET Act lists 14 grounds that entitle a WET taxpayer to claim a wine tax credit.¹² It also specifies the amount of the credit for each ground and the time when it arises. The taxable value for a local entry of imported wine that is a taxable dealing is the GST importation value.

Not all assessable dealings in wine are taxable. The WET Act operated prospectively from 1 July 2000 and so if the time of an assessable dealing, as stipulated in the assessable dealings table, is before 1 July 2000, the dealing is not taxable. A post-1 July 2000 assessable dealing, other than an assessable customs dealing, is not taxable if the entity liable for the dealing is not registered, and is not required to be registered, under the GSTA.¹³ In the view of the Australian Tax Office, this does not render the wine exempt, but rather untaxed so that any further assessable dealing in the wine by an entity that is registered for GST would be taxable.¹⁴ An assessable dealing in wine that is a GST-free supply of the wine, or a non-taxable importation of the wine,¹⁵ is not a taxable dealing. Wine exports are GST-free,¹⁶ as are stores of wine for use, consumption or sale on an international sea or air journey.¹⁷ Wine exported as accompanied baggage in accordance with the relevant provisions and regulations by international sea or air passengers or crew is GST-free and so WET-free.¹⁸ Sales of alcoholic beverages, including wine, in sealed containers up to 2,250 ml in an inwards duty free shop to persons arriving in Australia who have not

yet passed through the customs barrier are GST-free and customs-free or, in the case of wine, WET-free.¹⁹ A customs dealing that is an importation of wine covered by Sch 4 of the *Customs Tariff Act 1995* (Cth) is not taxable.²⁰ A local entry of wine is not taxable if it was the subject of a taxable dealing while in bond²¹ or it is reimported unaltered wine and the importer is the manufacturer or an entity that previously acquired the wine in a taxable dealing.²² Since 1 October 2004, WET taxpayers who manufacture rebatable wine in Australia, directly, indirectly, individually or as a member of an associated producer group are entitled to a capped producer rebate in the form of a wine tax credit in the amount of 29% of the price (excluding WET and GST) for taxed or quoted for wholesale sales, and 29% of the notional wholesale selling price for retail sales and applications for own use.²³ The maximum amount of the rebate for a producer or producer group is currently \$500 000 per financial year.²⁴ The producer rebate is also available to a taxpayer, approved by the Commissioner as a New Zealand participant, who produces the rebatable wine in New Zealand²⁵ and exports it to Australia and the taxpayer, or another entity, paid WET on the taxable dealing in the wine in the relevant financial year.²⁶ An approved New Zealand participant may claim the rebate at 29% of the approved selling price.²⁷

Evaluation and analysis of WET against the hallmarks of sound tax legislation

Policy behind WET

It is difficult to conceive of any meaningful evaluation of the WET Act in terms of its simplicity, equity, economic efficiency and fiscal adequacy without referring to its purpose or purported purpose. It is apparent from the above overview that WET is principally a wholesale sales tax on certain wine containing a specified content of potable alcohol that is sold for consumption in Australia. Taxpayers, endeavouring to determine the Act's reach, are required to work through a series of complex definitions in order to establish whether they are dealing with wine for the purposes of the Act. The tax, when it applies, is calculated on the value of the wine, including costs such as packaging, at a rate apparently based on no consideration other than ensuring that consumer prices of wine did not fall

when sales tax was abolished and the GST introduced in its place. As stated above, the apparent fiscal purpose of the Act is to reduce and recoup the public costs of alcohol abuse. The correlation between these costs as they relate to wine and the WET revenue is unclear. In any event, such a purpose does not sit easily with the fact that the Act is restricted to the delivery of drinkable alcohol through wine as defined, to the exclusion of other alcoholic beverages, and that it imposes a tax on wine different from that applied to other alcoholic beverages in a manner that compromises any underlying policy to address alcohol abuse. The link to the GST registration turnover threshold, the producer rebate (including the rebate for approved New Zealand participants), the exemptions and the fact that WET is levied by value and not volume, run counter to recouping costs and, more significantly, raising price barriers against alcohol abuse.²⁸

The Henry Review²⁹ considered Australia's alcohol taxation³⁰ and made the key point that:³¹

"[T]axes on alcohol should be set to address the spillover costs imposed on the community of alcohol abuse, when this delivers a net gain to the community's wellbeing and is more effective than alternative policies. Raising revenue is a by-product, not the goal, of taxing alcohol."

It reported two recommendations in relation to alcohol taxation.³²

Recommendation 71:

"... all alcoholic beverages should be taxed on a volumetric basis, which, over time, should converge to a single rate, with a low-alcohol threshold introduced for all products. The rate of alcohol tax should be based on evidence of the net marginal spillover cost of alcohol."

And recommendation 72:

"... the introduction of a common alcohol tax should be accompanied by a review of the administration of alcohol tax, to ensure that alcohol taxpayers do not face redundant compliance obligations."

This article is based on the assumption that the WET Act is a part of the Commonwealth's policy and strategy to recoup the public costs of alcohol abuse and simultaneously reduce that abuse by reducing the consumption of price-sensitive would-be abusers.

Simplicity

The WET Act is clearly not absolutely simple — taxation legislation seldom is.

The principle of simplicity is, of necessity, relative to its associated principles of equity, economic efficiency and fiscal adequacy; to the fiscal and social goals of the legislation under scrutiny and to the complexity and predictability of the effected transactions and processes in the supply chain. The question is not whether the legislation is simple per se, but rather whether it is appropriate, technically and administratively, for its purpose.³³ The Act is confined to manufacturers of wine. When it comes to the abuse of potable alcohol, it is difficult to know on what rational basis one form of delivery is to be treated differently from another. The distinction between wine and other alcoholic beverages is made in the WET Act by a number of technical definitions commencing with a general definition of wine as any of: grape wine, a grape wine product, a fruit or vegetable wine, cider or perry, mead and sake, unless they contain 1.15% or less, by volume, of ethyl alcohol.³⁴ Each of the beverages referred to in the general definition is then defined and made subject to any regulations.³⁵ Some rules in the WET Act in relation to taxable value apply specifically to grape wine to the exclusion of other wines.³⁶ These complex provisions confining the scope of the Act, the multiple taxing points, the exemptions and rebates and the associated system of wine tax credits are not justified by the assumed purpose of the Act. The assessment in this regard would be different if the purpose of the WET were taken to be a general revenue impost on the wine industry in a manner that did not inhibit start-ups and boutique manufacture, increased competition from New Zealand and provided a product range to suit all pockets. Clearly the Act fails the simplicity test when measured against the purpose assumed in this article and the volumetric alcohol tax recommended by the Henry Review.³⁷

Equity

Inequity arises when tax legislation discriminates unfairly between taxpayers in the same material circumstances or produces economic or other outcomes that cannot be reconciled with the purpose of the legislation.

It has never been suggested that Australia's taxation of potable alcohol is designed to eliminate its consumption.³⁸ In the case of wine, the WET Act provides producer rebates and exemptions that stimulate production and encourage consumption.

Ostensibly, it targets alcohol abuse and the associated costs to the public purse. This, in turn, raises the question of whether a tax on alcohol such as WET, be it by value or volume, can ever be fair to taxpayers who consume it responsibly. If an abuser-pays policy is impractical, the relevant costs should be met out of general revenue, rather than additional taxes collected indiscriminately from all consumers. The responsible consumption of wine, at present, is to be distinguished from the use of products such as tobacco, which, it is generally agreed, almost invariably comes at a public social cost.

Consumption taxes such as WET are regressive. The WET on a bottle of wine as a percentage of the consumer's income decreases as that income rises. This effect is compounded by the GST, a similarly regressive tax. The WET as a cost of business is included in the GST price taxed to the supplier who, in turn, sells to the consumer at a GST-inclusive price. As both the WET and GST are currently ad valorem, it is open to a lower-income consumer to mitigate this effect by purchasing cheaper wine, a fact that does nothing to diminish the vertical inequity of the WET.³⁹ Two common measures of equity include horizontal equity and vertical equity. Horizontal equity holds that taxpayers who have the same income should pay the same amount in taxes while vertical equity requires people with higher incomes should pay more tax. If a volumetric tax were adopted as recommended by the Henry Review, the tax amount would be the same regardless of price.

Horizontal equity as between producers and consumers of potable alcohol is compromised by the fact that alcohol taxation in Australia is not uniform. The WET producer rebate is more generous than that for beer and there are no rebates for spirits. These differences are not justified given the avowed purpose of alcohol taxation. The sense of unfairness they engender is evident in comments such as the following in relation to the beer industry:⁴⁰

"If the system [indirect taxation of potable alcohol] has one consistent feature, it is the historically favoured treatment of wine over beer, most evident today in the bizarre double standard that allows a small winery to receive a rebate of the first \$500,000 of WET paid, whereas only \$30,000 excise is returned to a small brewery."

The Distilled Spirits Industry Council of Australia has submitted, in a similar vein,

that "there is simply no justification for government to subsidise one product (wine) whilst forcing other products to pay excessively".⁴¹

Horizontal and vertical equity between producers and taxpayers alike is further compromised by the fact that Australian alcohol taxation at varying rates is applied by volume or value, or both, depending on the kind of beverage and the applicable legislation. For example, the amount of WET collected by value on taxable dealings in low-price cask wine is less than that for more expensive wine, even though the amount of ethyl alcohol delivered is the same or higher. These variations are indefensible in terms of avowed alcohol taxation policy.

Economic efficiency

As a general rule, good tax legislation does not hinder the development of the geese that lay the revenue eggs. In other words, taxes should not have a distortionary impact on business and the economy. The position may be different, however, in the case of legislation such as the WET, which raises revenue specifically to address a social problem in relation to a particular product. The producer rebate provisions in the WET Act, however, suggest that although a purpose of the WET is to erect a price barrier to wine abuse, it was not intended to reduce, or stifle growth in, the responsible consumption of wine at the expense of jobs and revenue. For this reason, this article, when addressing the criterion of economic efficiency, is predicated on the assumption that it is in Australia's economic interest to develop a competitive and profitable potable alcohol industry that is socially and environmentally sustainable and that the WET should not impede that development. The shortcomings of the WET in this regard are foreshadowed by its inequities.

It is generally accepted that the social costs of alcohol abuse include:⁴²

"... additional motor vehicle accidents, additional outlays on health care and law enforcement, mistreatment of other family members, and some of the costs of reduced market participation and productivity."

It is technically and administratively unrealistic to expect that the WET, or taxes on alcohol generally, be levied on an abuser-pays basis.⁴³ The question is whether the WET, levied on all consumers by value, distorts the market behaviour of consumers and producers.⁴⁴

There is empirical evidence that higher prices curtail alcohol consumption, albeit more so for moderate than heavy drinkers.⁴⁵ By the same token, if the tax is not levied at the same rate by volume across all alcohol products, as is currently the case in Australia, tax-related price hikes may not reduce consumption but simply drive consumers to the products least affected. This is especially so in the case of the ad valorem WET. Mention is made above, in relation to the inequities of the WET, that lower-income consumers of wine may mitigate its effect by resorting to cheaper brands as an alternative to abstinence.⁴⁶ The same option is open to consumers of alcoholic beverages other than wine.⁴⁷ This counterproductive WET-induced spike in the production of high-volume, low-cost wine is also potentially detrimental to the environment, particularly in relation to Australia's scarce water resources,⁴⁸ and the wine industry.⁴⁹

Fiscal adequacy

Tax legislation is fiscally adequate when it raises the right amount of revenue for its purpose. In the case of the WET, this amount is the net marginal public expenditure related to the abuse of wine. Revenue from alcohol taxation is roughly 0.2% of total federal tax revenue.⁵⁰ In the absence of reliable evidence of the amount of public expenditure, at both the state and federal level, attributable to wine abuse, it is not possible to say whether the WET is fiscally adequate or not. In this regard, it is noteworthy that the Henry Review recommended that "[T]he rate of alcohol tax should be based on evidence of the net marginal spillover cost of alcohol".⁵¹

Conclusion

The WET is clearly not a "good tax" in light of any of the hallmarks of sound tax legislation. Its deficiencies raise the threshold issue of whether alcohol taxation is an appropriate way to address the public cost of alcohol abuse. If the general economic benefits derived from the alcohol industry outweigh this disadvantage, it is difficult, as a matter of fairness, to justify a product-specific tax borne ultimately by responsible consumers. There is a case to be made that governments should combat alcohol abuse in other ways and that its cost is appropriately expensed to general revenue. This is especially so given the practical difficulties in quantifying the public cost of alcohol abuse and recouping it on an abuser-pays basis.

The producer rebates in the WET Act exemplify the policy folly of encouraging the production of wine in tax legislation that has the purpose of discouraging its consumption.⁵²

There is no denying, on the available evidence, that alcohol taxation does, to some degree,⁵³ reduce its consumption and there is a body of opinion that it is the most effective method for addressing alcohol-related problems,⁴⁶ albeit that cross subsidisation and retailer promotions⁵⁴ may frustrate its efficacy in regard to consumption.⁵⁵ If the prevailing opinion is that alcohol taxation be retained, then it should apply uniformly across the alcohol industry either by volume or value. The simplest way to achieve the latter is by a hike in the GST, as it applies to alcoholic beverages, at a rate based on reliable evidence of relevant state and federal expenditure.⁵⁶ Alternatively, there is the volumetric alcohol tax as recommended in the report of the Henry Review.⁵⁷ Whatever the way forward, it is submitted that there is no valid argument for the retention of the WET.

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- 1 Treasury, *Report on Australia's future tax system* (the Henry Review), December 2009, part one overview, p vii.
- 2 WET is imposed by the *A New Tax System (Wine Equalisation Tax Imposition – Customs) Act 1999*; the *A New Tax System (Wine Equalisation Tax Imposition – Excise) Act 1999*; and the *A New Tax System (Wine Equalisation Tax Imposition – General) Act 1999*.
- 3 S 5-5(3) WET Act.
- 4 Wine Equalisation Tax Ruling (WETR) 2009/2.
- 5 See "Indirect taxes on potable alcohol (ITPA) 101 – is the glass half full?", a paper by the authors presented at The Tax Institute's Tax Through the Bottom of a Glass Symposium, Tasmania, 23 May 2013, at p 8.

6 This is a brief summary of the operation of the WET Act. A comprehensive explanation of the technical operation of the Act is included in the authors' paper referred to in note 5 above.

7 Subdiv 31-A WET Act.

8 See, generally, Subdiv 31-A WET Act, and on the meaning of "beverage", *Bristol-Myers Company Pty Ltd v FCT* 90 ATC 4553; ss 195-1 and 38-4(2) GSTA.

9 S 33-1 WET Act – "wholesale sale" and "retail sale".

10 For example, where a retailer acquires bulk wine and repackages it in bottles or other containers for retail sale, the retail sales are assessable even if the bulk purchase has borne WET; s 5-5(4) WET Act, assessable dealings table item AD2f.

11 Broadly, a purchaser registered for GST may make a specific quote, or a periodic quote for a period up to 12 months, on the approved form if it intends: selling the wine wholesale or by indirect marketing sale while the wine is in Australia; selling the wine by any kind of sale provided wholesale and indirect marketing sales account for more than half of the value of its sales of assessable wine in the preceding 12 months; using the wine in manufacture or making a supply of the wine that will be GST-free.

12 Wine tax credits arise not only to ensure that the WET taxing point is the last wholesale sale, but also to correct overpayments of WET including: payments on exempt dealings and dealings where the price is later discounted in settlement of a dispute; to provide producer rebates, export and import-related credits and a credit for bad debts. The wine tax credit table contains the requirements, the amount of the credit and the time it arises, for each ground.

13 S 5-5(2) WET Act – so any liability for WET on domestic sales of wine is linked to registration for GST resulting in a net overall liability or refund for any GST and WET as reported through the taxpayer's periodic business activity statements; the customs authorities collect WET on taxable customs dealings; the assessable customs dealings are items AD4b, AD10 and AD14b in the assessable dealings table.

14 S 5-25(1)(b) WET Act; para 163 of WETR 2009/1.

15 S 13-10 and Div 42 GSTA.

16 See items 1-2A in the table in s 38-185(1) GSTA.

17 S 38-185(1) item 5 GSTA.

18 S 38-185(1) item 7(3) GSTA; *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth) (GSTR) reg 38-185.01; Sch 5 table 1; paras 165 to 170 of WETR 2009/1.

19 S 38-415 GSTA; s 33-1 WET Act; s 96B of the *Customs Act 1901* (Cth); by-law 1300953 in the Schedule of Concessional Instruments in Pt 2 of the *Customs Tariff Act 1995* (Cth); reg 94 of the *Customs Regulations 1926*.

20 S 7-15 WET Act.

21 Ss 7-20 and 33-1 WET Act.

22 S 7-25 WET Act; para 163 of WETR 2009/1.

23 Div 19 ss 17-10(1) and 19-25(1)(a)(b) WET Act; s 33-1 WET Act – "rebataable wine", "producer of rebataable wine" s 17-5 wine tax credit table, item CR9; paras 2, 15-17, 21, 56-60, 64 and 67-68 of WETR 2009/2.

24 S 19-15(2)(3) WET Act; the full rebate offsets WET on approx. \$1.7m of taxable or quoted for wholesales and applications for own use per year; paras 10-13, 65 of WETR 2009/2; paras 11-12 of WETR 2006/1.

25 S 33-1 WET Act, "New Zealand".

26 S 19-5(2) WET Act.

27 S 19-15(1A) WET Act; paras 82-83 of WETR 2006/1.

28 On the question of policy, it has been said that the WET Act is the product of "a cocktail of mixed methodologies, ideologies, idiosyncrasies and the remnant battle-lines of long-forgotten policy negotiations"; see A Shakeshaft and J Brynes, "Calling time on alcohol taxation in Australia", *The Conversation*, 11 May 2012. Available at <http://>

- theconversation.com/calling-time-on-alcohol-taxation-in-australia-6585; see also the taxation policy study by Fogarty and Chapman confirming that policy decisions are often decisions of political expediency. Available at www.ncbi.nlm.nih.gov/pmc/articles/PMC3717017/#B28.
- 29 Treasury, *Report on Australia's future tax system* (the Henry Review), December 2009.
- 30 Ibid part 2, detailed analysis vol 2, pp 431–443.
- 31 Ibid p 431.
- 32 Ibid p 442.
- 33 An assertion was made in the explanatory memorandum to the Bill to enact WET that it would be less complex than the wholesale sales tax it replaced, a comparison that is unhelpful in applying the principle of simplicity.
- 34 Subdiv 31-A WET Act, "wine".
- 35 See generally Subdiv 31-A WET Act; *A New Tax System (Wine Equalisation Tax) Regulations 2000* (WET Regs) regs 31-2.01, 31-3.01 and 31-4.01.
- 36 Reg 31-2.01 WET Regs; paras 10 to 12 WETR 2009/1.
- 37 See generally the following in regard to the complexity of the legislation: P Kenny, "Indirect taxation of wine: an international comparison", (2009), 4(1) *Journal of the Australasian Tax Teachers Association*; A Salleh, "Tax review gets a good health report" (May 3 2010) ABC Science. Available at www.abc.net.au/science/articles/2010/05/03/2889002; Alcohol Education & Rehabilitation Foundation, "Submission to the federal government's tax forum", 2011, p 2; Alcohol Education & Rehabilitation Foundation, "The wine glut: an analysis of the oversupply of wine in Australia and the progress of the voluntary industry restructure", October 2012; Winemakers' Federation of Australia, "Submission to Australia's future tax system review", 2008; Premium Wine Australia; Treasury Estate Wines, Distillery Spirits Industry Council Australia, "Tax forum submission, September 2011; see also the finding of the Australian National Audit Office that there is "considerable complexity in calculating the wine tax"; Australian National Audit Office, "Administration of the wine equalisation tax", 2010.
- 38 Indeed, it has been argued that, when used prudently, potable alcohol may prevent illness and reduce recourse to some social welfare benefits; see Wine Economics Research Centre, Working paper 0610: Special taxation of alcoholic beverages to correct market failures by J Freebairn, Department of Economics in the University of Melbourne, April 2010; C Karmel (2010), "Heart disease, cirrhosis of the liver, and changing alcohol consumption in ten countries, 1966–2001", paper presented at pre-AARES conference workshop on the world's wine markets by 2030; S Renaud and M De Lorgeril, "Wine, alcohol, platelets and the French paradox for coronary heart disease" (1992) *Lancet* 339, 1523–1526; JE Kinsella, EN Franknell, JB German and J Kanner, "Possible mechanisms for the protective role of antioxidants in wine and plant foods: physiological mechanisms by which flavonoids, phenolics, and other phytochemicals in wine and plant foods" (1993) 47 *Food Tech* 85–89; P Srivastava and Zhao, "What do the bingers drink? Micro-unit evidence on negative externalities and drinker characteristics of alcohol consumption by beverage types", 2010, Department of Econometrics and Business Statistics, Monash University.
- 39 Data collated by the Australian Bureau of Statistics confirms that the WET is vertically inequitable: see Australian Bureau of Statistics, *Household expenditure survey: detailed expenditure items Australia 2003–04*, ABS Cat No. 6530.0, tables 2 and 4.
- 40 BJ Stubbs, "A taxing double standard", *Australian Brews News*, 17 June 2013. Available at www.brewsnews.com.au/2013/06/a-taxing-double-standard/.
- 41 Website at http://taxreview.treasury.gov.au/content/submissions/pre_14_november_2008/Independent_Distillers_Australia.pdf.
- 42 See J Freebairn, Wine Economics Research Centre, Working paper 0610: Special taxation of alcoholic beverages to correct market failures, Department of Economics in the University of Melbourne, April 2010.
- 43 Treasury, *Report on Australia's future tax system* (the Henry Review), December 2009, part 2 – Detailed analysis, vol 2 at pp 432–434. For opinion to the contrary, see ACIL Consultants, "Pathways to profitability" (2002), report commissioned by the Commonwealth Department of Agriculture, Fisheries and Forestry, pp 97–98; WJ McCarten and J Stotsky, "Excise taxes" in *Tax Policy Handbook* (1995) (PS Shome ed) International Monetary Fund, Washington — cited in P Kenny, "Indirect taxation of wine: an international comparison", (2009) *Journal of the Australasian Tax Teachers Association* 1. Available at www.asb.unsw.edu.au/schools/taxationandbusinesslaw/atta/attajournal/Documents/8_JATTA_vol4_no1.pdf.
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- 45 See the economic studies referred to in the Henry Review, part 2 – Detailed analysis, vol 2 at p 432.
- 46 DJ Collins and HM Lapsley, *The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05*, Canberra, Commonwealth of Australia, 2008.
- 47 B Speedy, "Diageo renews call to tax alcohol content", *The Australian*, 29 October. Accessed at www.theaustralian.com.au/business/companies/diageo-renews-call-to-tax-alcohol-content/story-f91v9q3-1226748516425; Foundation of Alcohol Research and Education, "Treasury FOI docs expose WFA's fudged WET submission", May 2012. Available at www.fare.org.au/2012/05/treasury-foi-expose-wfas-fudged-wet-submission/.
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- 50 Treasury, "Architecture of Australia's tax and transfer system", August 2008. Available at www.taxreview.treasury.gov.au — this figure may have slightly increased following the introduction of the alcopops tax in 2009.
- 51 See the Henry Review, recommendation 71 (quoted above in the text).
- 52 See generally CCW Co-op Limited, "The impact of a volumetric tax on wine: a submission to the October taxation summit in reference to environmental and social taxes; specifically alcohol taxation", September 2011; Supporting Australian Wine, "Submission to the federal government October 2011 Tax Forum: a response to recommendations of Australia's future tax system — the Henry Tax Review", September 2011; Winemakers' Federation of Australia, "Submission to Australia's future tax system review (AFTS)", May 2009; J Freebairn, "Special taxation of alcoholic beverages to correct market failures", (April 2010) Wine Economics Research Centre Working paper no. 0610, Department of Economics University of Melbourne 27; P Kenny, "Indirect taxation of wine: an international comparison", (2009), 4(1) *Journal of the Australasian Tax Teachers Association*, 171.
- 53 P Ayyagari, P Deb, J Fletcher, WT Gallo and JL Sindelar, "Sin taxes: do heterogeneous responses undercut their value?" NBER Working paper no. 15124, 2009.
- 54 For example, in the month before Christmas 2004, Safeway (the Victorian vehicle of Woolworths) heavily discounted Fosters Group liquor – beer and Beringer Blass wines, complemented by a cross-subsidised docketing discount associated with grocery purchases (as with petrol sales). Coles responded to Woolworth's cross-subsidisation by offering comparably low prices on comparable products, even renouncing the docket. Cases of Cougar (bourbon and cola) were being offered at \$40.00, below the wholesale price. The wholesale price for Victoria Bitter was \$32.55; Safeway was offering it at \$3.57 less; E Jones, "Liquor retailing and the Woolworths/Coles juggernaut", *Journal of Australian Political Economy* 55.
- 55 Allen Consulting Group, "Alcohol taxation reform – starting with the wine equalisation tax", commissioned by the Alcohol Education Rehabilitation Foundation, August 2011, 8, 2.2
- 56 R Mcleod, D Patterson, S Jones, S Chatterjee, E Slipper, "Tax review final report" (2001) Wellington; P Kenny, "Indirect taxation of wine: an international comparison" (2009) 4(1) *Journal of the Australasian Tax Teachers Association*, 168.
- 57 See the following on the merits and demerits of the Henry Review recommendation: CCW Co-op Limited, "The impact of a volumetric tax on wine: a submission to the October taxation summit in reference to environmental and social taxes; specifically alcohol taxation", September 2011; Supporting Australian Wine, "Submission to the federal government October 2011 tax forum: a response to recommendations of Australia's future tax system — the Henry Tax Review", September 2011; Winemakers' Federation of Australia, "Submission to Australia's future tax system review (AFTS)", May 2009; P White, "Wet rebate doomed to dry right out" on *Drinkster*, 22 September 2011. Available at <http://drinkster.blogspot.com>; Alcohol Education Rehabilitation Foundation, "Fact or fiction — the real impacts of tax reform on the Australian wine industry", media release 28 September 2009; A Creighton, "The Henry Tax Review: a liberal critique" (2012) 130, *The Centre for Independent Studies*, 1. Available at www.cis.org.au/images/stories/issue-analysis/ia130.pdf.
- 58 Available from the ATO website at www.ato.gov.au.

Appendix

Australian Taxation Office publications on the WET 58

ATO rulings

- (1) WET Ruling 2002/1: The WET rulings system
- (2) WET Ruling 2004/1: The operation of the wine equalisation tax system
- (3) WET Ruling 2006/1: The operation of the producer rebate for producers of wine in New Zealand

Fact sheets

- (1) Overview of wine equalisation tax
- (2) Excise – wine fortification NAT 15677
- (3) What is mead?
- (4) Wine equalisation tax – packaging of wine by retailers
- (5) Wine equalisation tax – quoting for GST free supplies
- (6) Wine equalisation tax – wine export and re-entry
- (7) Wine equalisation tax (WET) – associated producers
- (8) Wine equalisation tax (WET) – wine producer rebate
- (9) Wine equalisation tax – frequently asked questions

Forms

- (1) Application for refund of wine equalisation tax NAT 9241
- (2) Approved quoting forms

How to complete your business activity statement

- (1) Wine equalisation tax – how to complete your activity statement NAT 7390
- (2) Wine equalisation tax and the business activity statement for wine producers
- (3) Wine equalisation tax and the business activity statement for wine retailers

New Zealand WET rebate

- (1) Application for approval as a New Zealand participant for a wine equalisation tax rebate NAT 15344
- (2) Application for payment of wine equalisation tax rebate by an approved New Zealand participant NAT 14199
- (3) WET Ruling 2006/1: The operation of the producer rebate for producers of wine in New Zealand
- (4) Wine equalisation producer rebate calculation sheet for New Zealand wine producers NAT 15345
- (5) Calculation sheet for New Zealand wine when values are expressed in New Zealand currency NAT 15345
- (6) Wine equalisation tax – producer rebate for New Zealand wine producers NAT 15256
- (7) Wine equalisation tax (WET) – foreign currency conversions for New Zealand wine producers NAT 15346