

The Auditor-General
Audit Report No.20 2010-11
Performance Audit

Administration of the Wine Equalisation Tax

Australian Taxation Office

Australian National Audit Office

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of Australia 2010

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Canberra ACT
14 December 2010

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the *Australian Taxation Office* in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to *Senate Standing Order 166* relating to the presentation of documents when the Senate is not sitting, I present the report of this audit, and the accompanying brochure, to the Parliament. The report is titled *Administration of the Wine Equalisation Tax*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely



Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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Abbreviations

ABN	Australian Business Number
ANAO	Australian National Audit Office
ATOID	ATO Interpretative Decision
ATOUCA	ATO Unit Cost Analysis
BAS	Business Activity Statement
CRM	Client Relationship Manager
Customs	The Australian Customs and Border Protection Service
DAFF	Department of Agriculture, Fisheries and Forestry
GST	Goods and Services Tax
Henry Review	<i>Australia's Future Tax System Review</i>
NZIR	New Zealand Inland Revenue
RIM	Refund Integrity Micro
Tax Office	Australian Taxation Office
Treasury	Department of the Treasury
WFA	Winemakers' Federation of Australia
wine tax	The Wine Equalisation Tax
Wine Tax Act	<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>

Glossary

Application to own use	Wine that is not sold but rather taken for own consumption or used for purposes such as cellar door tastings, various promotions and samplings, or given to staff or charity.
Associated producer	Producers are considered to be associated according to specific criteria, and where these are met, producers can only claim up to the maximum producer rebate as a group, not individually.
Gross wine tax	The value of wine tax payable before rebates and credits.
Indirect marketing	Where an entity that is not the manufacturer of the wine makes a retail sale through another seller or at other premises.
Net wine tax	The value of wine tax payable after rebates and credits.
Private Binding Ruling	A key mechanism in Australia's self-assessment system to provide taxpayers with certainty of tax treatment in respect to their specific transactions or structures.
Producer Rebate Scheme	Entitles wine producers to a rebate of 29 per cent of the last wholesale value of the domestic wine sales and applications to own use.
Quoting	Quoting is a mechanism to defer wine tax on wine to a later assessable dealing or to give effect to exemption from wine tax for a particular supply of wine.
Wine Equalisation Tax (wine tax)	A value-based tax which is applied to assessable dealings in wine consumed in Australia. The wine tax rate is 29 per cent of the last wholesale sale price.
Wine producer	An entity that manufactures wine or supplies to another entity the grapes, other fruit, vegetables or honey from which the wine is manufactured.
Wholesale sale	A sale to an entity that purchases the wine for the purpose of resale.

Summary and Recommendations

Summary

Introduction

1. Wine production is a major agricultural industry in Australia, employing around 30 000 people directly, that many more indirectly,¹ and is important to tourism and regional development. Over 2400 wineries operated in Australia in 2009, comprising mostly small operations located in South Australia, New South Wales and Victoria. Australia is consistently among the 10 largest wine-producing countries, with around two-thirds of this wine exported and the other third consumed domestically. Export sales were valued at \$2.3 billion in 2009, and domestic sales of wine reached \$2.1 billion in 2007–08.²

2. The Wine Equalisation Tax (wine tax) is a value-based tax applying to wine consumed in Australia. It applies at a rate of 29 per cent to assessable dealings in wine which include wholesale sales, sales under quote³ and applications to own use.⁴ Wine tax is generally included in the price paid by retailers when they purchase the wine from a wholesaler, and is passed on in the retail price of the wine to the end consumer.

3. The wine tax was introduced from 1 July 2000 under the framework of *A New Tax System*, which also introduced the Goods and Services Tax (GST). A range of alcoholic beverages is subject to the tax, including grape wine, grape wine products such as marsala and vermouth, other fruit wines and vegetable wines, cider, perry, mead and sake. Those entities that are registered or required to be registered for GST purposes are typically liable to pay the wine tax,⁵ and this is recorded and paid via the Business Activity Statement (BAS). Since introduction, the wine tax has raised almost \$6.7 billion in net revenue.

¹ Winemakers' Federation of Australia, *Winescope*, Spring 2009, p. 2.

² Winetitles, *The Australian and New Zealand Wine Industry Directory*, 2010, p. 8.

³ Quoting is a mechanism to defer wine tax to a later assessable dealing or to give effect to exemption from wine tax for a particular supply of wine.

⁴ Application to own use refers to wine that is not sold but rather taken for own consumption or used for purposes such as cellar door tastings, various promotions and samplings, or given to staff or charity.

⁵ An exception is where an importer pays the wine tax at the border to the Australian Customs and Border Protection Service. The importer is not necessarily required to be registered for GST.

4. A rebate scheme for Australian wine producers was introduced on 1 October 2004. The rebate entitles eligible producers to a rebate of 29 per cent of the assessable dealing, which is typically the price for which the producer sells the wine, excluding wine tax and GST. The maximum rebate that can be claimed for each financial year from July 2006 is \$500 000 per eligible producer. In addition to being offered to Australian wine producers, from 1 July 2005 a producer rebate has also been available to New Zealand producers, where that wine is subject to dealing in Australia on which the wine tax is paid.

5. There is considerable complexity in calculating the wine tax. To calculate wine tax payable, the *A New Tax System (Wine Equalisation Tax) Act 1999* covers a number of factors such as the type of wine product, the point of sale, whether an exemption applies and the appropriate taxable value.

6. The wine tax is predominantly administered by the Australian Taxation Office (Tax Office), which collects wine tax on assessable dealings in wine in Australia, including on most imports. Within the Tax Office, the wine tax is primarily administered by the Interpretative Assistance, Risk and Intelligence and Client Relationship Management teams in Adelaide, as part of the Indirect Tax Business Line. The Australian Customs and Border Protection Service (Customs) collects wine tax on some imports on behalf of the Tax Office. In administering the producer rebate in New Zealand, the Tax Office works closely with New Zealand Inland Revenue.

Context for wine tax administration

7. The wine tax was introduced to maintain or 'equalise' wine prices and revenue collected from wine sales at levels prevailing at the time of the introduction of the GST and abolition of the Wholesale Sales Tax in 2000 in order to avoid 'dramatic and dislocating price falls'.⁶ A producer rebate was introduced in 2004 to support the financial viability of small wineries and their consequent capacity to generate employment and wealth in local communities. The rebate scheme was extended to New Zealand producers in 2005, largely to satisfy bilateral trade obligations.

8. Since 2006, the trend of strong export growth of Australian wine has stalled, exports have fallen, and together with other factors including increased competition from New Zealand producers in the domestic market, the

⁶ Hansard, Senate—*Parliamentary Debate*, 31 March 1999, p. 3268.

Australian wine industry has faced considerable hardship. A prime outcome has been large surpluses of grapes and wine.⁷ This glut has exacerbated fundamental problems in the industry, notably inefficient vineyard and wine operations, and decreased the cost competitiveness of the Australian wine industry. A restructuring program is underway to reduce the number of vineyards and supply of grapes. Against this backdrop, many small producers rely on the producer rebate for financial viability.

9. These operating conditions have contributed to a difficult environment for the administration of the wine tax by the Tax Office. A number of schemes have arisen in recent years where grape growers are attempting to improperly access the producer rebate, while some wholesalers and retailers have also been inventive in minimising the amount of wine tax paid. Some of these schemes are within the provision of current legislation but have the potential to erode revenue, contrary to the original intent of the tax.⁸ Other schemes and compliance issues can contravene wine tax legislation.

10. In recognition of the existence of these types of arrangements, the Winemakers' Federation of Australia has since late 2008 raised concerns with the Treasurer, the Tax Office and publicly about excessive claiming of the producer rebate that had 'turbo-charged' the wine glut. In response to apparent changes in taxpayer compliance behaviour and the extent of industry concern, the Tax Office has rated the risks to its administration of the wine tax as high.

⁷ In 2009, Australia produced around 30 million cases of wine more than it sold, with the total surplus exceeding 100 million cases.

⁸ Where such issues arise within the provision of current legislation, the key consideration is whether arrangements were established for the purposes of obtaining a tax advantage, rather than for legitimate commercial reasons.

Audit objective and scope

11. The objective of the audit was to assess the effectiveness of the Tax Office's administration of the wine tax.

12. Four key areas were examined in the audit: governance arrangements; interpretative assistance and advice; compliance approaches for Australian entities; and administering the rebate for New Zealand wine producers.

13. The ANAO conducted fieldwork in the Tax Office's Adelaide office between May and September 2010 and also held discussions with representatives from Customs, the Department of the Treasury (Treasury) and New Zealand Inland Revenue. The ANAO also consulted with representatives of wine producers, wholesalers, retailers, tax agents and key industry associations, seeking their views on elements of the Tax Office's administration of the wine tax.

Overall conclusion

14. The wine tax raised \$721 million in net revenue in 2009–10, comprising \$955 million in wine tax liabilities less \$234 million provided in credits, mainly for the producer rebate. Payment of the wine tax is highly concentrated, with around 90 per cent of the net wine tax typically paid by 20 entities.

15. The Tax Office has generally administered the wine tax effectively, having implemented sound governance arrangements and administrative practices focussed on gaining assurance of compliance by the larger taxpayers, and has responded reasonably to changes in taxpayer behaviours that have heightened compliance risks regarding the producer rebate.

16. Interpretative assistance and advice provided via taxpayer alerts, determinations and private rulings helped to reduce the incidence of major wine tax minimisation arrangements. Greater timeliness in providing such information would have reduced uncertainty for wine industry participants.

17. The program of active compliance activities has been significantly expanded in recent years, and would benefit from further sophisticated interrogation of existing databases and improved processes for selecting entities to review and audit. It would also now be timely for the Tax Office to resume discussions with Treasury about the definition of a wine producer, in order to resolve unintended outcomes regarding access to the producer rebate.

18. Administration and compliance arrangements for producers accessing the New Zealand producer rebate systems are more extensive than for the

Australian rebate. The main opportunity for further assurance about compliance by New Zealand wine producers claiming the rebate is for the Tax Office to assess risks associated with documentation provided by relevant Australian entities that demonstrates the wine tax had been paid.

19. The ANAO made three recommendations directed towards strengthening the Tax Office's compliance arrangements to better support voluntary compliance by taxpayers with the requirements of wine tax legislation.

Key findings

Governance

20. Organisational structures facilitate interaction between those areas within the Tax Office providing the major administrative functions for the wine tax. While there is a well-established framework for planning the administration of the wine tax, scope exists to improve the presentation of wine tax planning documents and to re-categorise wine tax sub-risks so they are clear, distinct and together comprehensively cover all wine tax risks in a logically consistent manner.

21. Internal and external performance monitoring and reporting is adequate, although determining budgets and monitoring against budget for the major wine tax administrative functions would assist the Tax Office to better manage the economy of wine tax administration.

Interpretative assistance and advice

22. A major and effective response by the Tax Office to address the heightened risks of administering the wine tax has been via interpretative assistance and advice. In particular, a taxpayer alert and associated determination contributed to the elimination of major indirect marketing schemes, protecting tens of millions of dollars in wine tax revenue over a number of years. Similarly, another taxpayer alert regarding changed contractual arrangements⁹ has reduced the incidence of schemes designed to allow growers to improperly access the producer rebate.

⁹ Changed contractual arrangements involve growers who had supplied grapes to wineries entering into contracts for wineries to manufacture wine on their behalf, so that the growers become eligible for the producer rebate.

23. More generally, larger wine entities are typically satisfied with the information¹⁰ provided by the Tax Office about the wine tax. However, many smaller wine entities would appreciate more information across a range of issues to enable them to confidently apply the wine tax to their particular circumstances. The main aspects nominated as requiring further advice involved the treatment of matters such as rebates, discounts and delivery costs.

24. To address concerns about the extent of information and advice available, the Tax Office could build on current initiatives by contacting mid-to-small wine entities and their advisers to determine key areas requiring additional advice, and develop an information program for common issues. There would also be benefit in the Tax Office providing all new wine tax registrants with a package of information explaining key aspects of the tax.

Compliance

25. Some significant results have been obtained from a larger program of wine tax compliance activities, with the total amount of tax liabilities raised from completed activities in 2009–10 increasing to \$8.3 million (or just over one per cent of net wine tax revenue). This was more than double that recorded in each of the previous two years. The Tax Office has recognised the importance of further upgrading the scale of wine tax compliance activities, with a significant increase in the number of activities proposed for 2010–11 compared to previous years.

26. The compliance strategy applying to the wine tax appropriately focuses on larger taxpayers. In this respect, eight of the 20 largest wine tax payers have been subject to risk reviews or audits over the past five years. Wine tax compliance activity also aims to cover the main risks related to smaller taxpayers, which typically involve the producer rebate. A major problem for the Tax Office in recent years has been that anecdotal stories of widespread non-compliance with wine tax requirements have not been supported by many specific tip-offs or other identification of entities actually conducting such inappropriate behaviour. It has therefore been difficult for the Tax Office to frame its active compliance program, or quantify the likely magnitude of risks such as those relating to inappropriate access to the producer rebate.

¹⁰ This information included public rulings, fact sheets, content on the Tax Office website and contact arrangements involving dedicated client relationship managers.

27. Given the heightened wine tax compliance risk environment and lack of specific information, it is timely for the Tax Office to review key processes underpinning its compliance focus on pre-refund BAS integrity checking processes, continue to strengthen other intelligence-gathering analytical approaches, and improve case selection processes to better target compliance activities.

28. Active compliance activities for the wine tax, including audits, risk reviews and objections, have typically been conducted in a professional manner. The most common criticism from industry participants was the length of time taken to complete audits.

29. One option to mitigate wine tax compliance risks is through amendments to the legislation. Between 2006 and 2008, the Tax Office identified a number of legislative changes relating to the producer rebate,¹¹ to address practices that were arguably within the provision of current legislation and so difficult for it to address through compliance activities. Treasury considerations were delayed pending the Government's response to the review of Australia's Future Tax System (Henry Review). As the Government's response has been provided,¹² it is timely for the Tax Office to provide further advice to Treasury about proposals for amending the definition of a wine producer in the *A New Tax System (Wine Equalisation Tax) Act 1999*.

New Zealand rebate

30. The cost of the New Zealand producer rebate has risen each year since inception, from under \$6 million in 2006–07 to over \$19 million in 2009–10. This rise was largely due to the increased value of New Zealand wine exported to Australia. Another cause of this increased cost was a greater incidence of New Zealand grape growers using contract winemakers' facilities to enable them to register as wine producers and thus access the rebate.

31. New Zealand producers must submit a refund application form with supporting documentation for each rebate claim, which New Zealand Inland

¹¹ At that time, the focus was on whether producers could access the rebate on each of multiple occasions of blending wine.

¹² That response was provided on 2 May 2010, whereby the Government stated it would not implement the report's recommendation to replace the wine tax with a volumetric tax 'in the middle of a wine glut and where there is an industry restructure underway'. The Hon. Kevin Rudd MP, Prime Minister and The Hon. Wayne Swan, MP, Treasurer, Press Release 02 May 2010, *Stronger, Fairer, Simpler: A Tax Plan for our Future*, p. 4.

Revenue then checks on behalf of the Tax Office. This is a more demanding administrative and compliance framework than the Australian producer rebate scheme, as Australian producers can claim the rebate without attaching evidence that the wine tax has been paid.

32. The Tax Office and New Zealand Inland Revenue are both satisfied that New Zealand wine producers are adequately supported with general information and access to technical advice regarding the producer rebate scheme. However, there is merit in raising awareness in New Zealand that the Tax Office has actively addressed issues involving the use of contract winemakers to access the producer rebate in Australia.

Summary of Tax Office response

33. The Tax Office's summary response to the report is reproduced below. The full response is at Appendix 1.

The Tax Office welcomes the recommendations and findings of the report. We are encouraged that the ANAO has recognised our sound governance arrangements and administrative practices and our effective general administration of the wine tax. The report also reflects positively on our major and effective response to addressing the heightened risks of administering the wine tax via interpretative assistance and advice. The Tax Office agrees with the three recommendations in the report.

Recommendations

Recommendation No. 1

Para 4.36

To improve the effectiveness of wine tax compliance activities in light of the heightened risk environment, the ANAO recommends that the Tax Office reviews:

- (a) pre-refund integrity checking of wine tax amounts reported on entities' Business Activity Statements; and
- (b) the annual active compliance program for the wine tax, including coverage of risks associated with international trade in wine.

Tax Office Response: *Agreed.*

Recommendation No. 2

Para 4.61

To resolve unintended outcomes regarding access to the wine tax producer rebate, the ANAO recommends that the Tax Office advises Treasury on options to clarify the definition of a wine producer for the purposes of the producer rebate in the *A New Tax System (Wine Equalisation Tax) Act 1999*.

Tax Office Response: *Agreed.*

Recommendation No. 3

Para 5.20

To provide greater assurance about compliance with requirements for receiving the New Zealand wine producer rebate, the ANAO recommends that the Tax Office assesses compliance risks associated with documentation provided by relevant Australian entities to New Zealand wine producers claiming the rebate.

Tax Office Response: *Agreed.*

Audit Findings

1. Introduction

This chapter provides the context for the audit, including an overview of wine production in Australia and the Wine Equalisation Tax, and outlines the audit approach.

Wine production in Australia

1.1 Wine production is a major agricultural industry in Australia, with 1.17 billion litres of wine produced in 2009 from an intake of 1.7 million tonnes of grapes.¹³ The industry employs around 30 000 people directly, that many more indirectly,¹⁴ and is important to tourism and regional development.

1.2 Over 2400 wineries operated in Australia in 2009. Most of these were small operations, with 70 per cent crushing less than 100 tonnes of grapes.¹⁵ Winemaking is undertaken in each Australian State and Territory, with the principal production areas located in south-eastern Australia, at various locations in South Australia, New South Wales and Victoria.

1.3 In global terms, Australia is consistently one of the 10 largest wine-producing countries. Being a large country with varied climate and soil types, Australia is one of the few countries to produce each major wine style. Slightly higher volumes of red than white wine are usually produced. For example, 53 per cent of the Australian grape intake in 2009 was of red varieties.¹⁶

1.4 Around two-thirds of Australian wine is typically exported, and the other third consumed domestically. Australian wine recorded remarkable export sales growth—from \$358 million in 1992–93 to almost \$3.0 billion in 2006–07. This represented 9.4 per cent of the global wine trade at that time and placed wine as Australia’s third largest agricultural export. However, export sales have moderated somewhat since then, and were valued at \$2.3 billion in

¹³ Winetitles, *The Australian and New Zealand Wine Industry Directory*, 2010. This quantity relates to beverage wine produced by winemakers crushing more than 400 tonnes of grapes.

¹⁴ Winemakers’ Federation of Australia, *Winescope*, Spring 2009, p. 2.

¹⁵ Winetitles, *op. cit.*, p. 12.

¹⁶ *ibid.*, p. 2. The main red varieties produced in Australia are shiraz, cabernet sauvignon and merlot, while chardonnay, sauvignon blanc and semillon are the main white wines produced.

2009.¹⁷ Around 60 per cent of this wine was bottled, the remainder being lower-valued bulk wine.

1.5 The Australian Bureau of Statistics estimated annual wine consumption per person in 2008 to be 28 litres, compared to 106 litres of beer.¹⁸ In 2007–08, domestic sales of wine reached \$2.1 billion.

1.6 Australia maintains national standards for wine that are administered by State and Territory governments. Commonwealth standards focus on quality control.

1.7 The Australian Wine and Brandy Corporation is a statutory body established under Commonwealth legislation to provide strategic support to the wine sector. The Corporation has recently identified the most significant issues for the sector as ‘the uncertainty of the system for taxing wine and the imbalance between supply and demand’.¹⁹ In a statement issued in November 2009, the Corporation together with three other peak wine industry bodies noted that:²⁰

Structural surpluses of grapes and wine are now so large that they are causing long-term damage to our industry by devaluing the Australian brand, entrenching discounting and undermining profitability.²¹ ... Coupled with inefficient and/or inappropriate vineyard and wine operations, oversupply is amplifying and exacerbating fundamental problems in the industry, notably our decreasing cost competitiveness.

¹⁷ *ibid.*, p. 8. The decrease in export sales since 2006 reflects increased competition in European and North American markets. In 2009, the main wine export markets were the United States and United Kingdom, with Canada and China also important destinations.

¹⁸ Australian Bureau of Statistics, *Apparent Consumption of Alcohol*, Australia, cat. no. 4307.0.55.001.

¹⁹ Australian Wine and Brandy Corporation, <www.wineaustralia.com>, [accessed on 20 February 2010].

²⁰ Joint statement by the Winemakers’ Federation of Australia, Wine Grape Growers Australia, Australian Wine and Brandy Corporation and Grape and Wine Research and Development Corporation, *Wine industry must confront the reality of oversupply*, November 2009.

²¹ In this regard, the statement noted that Australia is producing 20 to 40 million cases of wine a year more than it is selling, with the surplus exceeding 100 million cases.

Wine Equalisation Tax

1.8 The Wine Equalisation Tax (wine tax) is a value-based tax applying to wine consumed in Australia. It applies at a rate of 29 per cent to assessable dealings in wine (unless an exemption applies) which include wholesale sales, sales under quote,²² untaxed retail sales and applications to own use.²³ Generally, wine tax is included in the price paid by retailers (including bottle shops, hotels, restaurants and cafes) when they purchase the wine from a wholesaler or manufacturer, and therefore forms part of the retailer's cost base and is passed on in the retail price of the wine to the end consumer.

1.9 The wine tax was introduced on 1 July 2000 as part of *A New Tax System* that also introduced the Goods and Services Tax (GST). The wine tax aimed to maintain wine prices and revenue collection from wine sales at prevailing levels. Wine prices and taxation revenues would otherwise have fallen upon the abolition of the 41 per cent wholesale sales tax on wine and the introduction of the 10 per cent GST.²⁴ The wine tax, therefore, 'equalised' wine prices to prevailing levels, and avoided 'dramatic and dislocating price falls'.²⁵

1.10 Wine tax applies to the following alcoholic beverages:

- grape wine, including sparkling wine and fortified wine;
- grape wine products such as marsala and vermouth;
- other fruit wines and vegetable wines, including fortified fruit wines and vegetable wines;
- cider and perry; and
- mead and sake, including fortified mead.

1.11 If a beverage contains more than 1.15 per cent alcohol by volume but does not fall within any of the wine definitions contained in the wine tax legislation, it will be subject to excise duty if produced in Australia.

²² Quoting is a mechanism to defer wine tax on wine to a later assessable dealing or to give effect to exemption from wine tax for a particular supply of wine.

²³ Applications to own use refers to wine that is not sold but rather taken for own consumption or used for purposes such as cellar door tastings, various promotions and samplings, or given to staff or charity.

²⁴ Parliament of Australia, *Bills Digest No. 151 1998–99, A New Tax System (Wine Equalisation Tax) Bill 1991*, p. 2.

²⁵ Hansard, Senate—*Parliamentary Debate*, 31 March 1999, p. 3268.

Excise duty is typically considerably higher than the wine tax, particularly for low-value wines.²⁶

1.12 The wine tax is imposed within the framework of the *A New Tax System (Wine Equalisation Tax) Act 1999* (Wine Tax Act).²⁷ A number of amendments have been made to the Act since its inception on 1 July 2000, and these are set out in Appendix 2.

1.13 Figure 1.1 outlines key features of the wine tax.

Figure 1.1

Key features of the wine tax

Key features of the wine tax include that it:

- is paid to the Australian Taxation Office (Tax Office) or the Australian Customs and Border Protection Service (Customs) by wine manufacturers, wine wholesalers and wine importers;
- is normally included in the purchase price of wine when supplied to retailers such as bottleshops, hotels, restaurants and cafes. However, if a retailer on-sells (acts as a wine reseller) then wine tax also applies;
- is levied on wholesale transactions—and generally calculated on the last wholesale price;
- is assessed at the rate of 29 per cent;
- does not apply to exports of wine as these are GST-free supplies;
- incorporates a producer rebate scheme; and
- is reported on Business Activity Statements by entities registered for GST.

Source: ANAO analysis of Tax Office information.

1.14 Typically, those entities that are registered or required to be registered for GST are liable to pay the wine tax, and this is recorded and paid via the Business Activity Statement (BAS) at label 1C.²⁸ Entities that have a wine tax liability and be required to collect and remit wine tax to the Tax Office or Customs are wine producers, wine wholesalers and wine importers.

²⁶ For example, the retail price of a typical four-litre cask of wine would rise from around \$14 to \$31 if the wine tax was replaced by the excise duty applying to beer.

²⁷ Within this administrative framework, the wine tax is imposed by three separate Acts:

- *A New Tax System (Wine Equalisation Tax Imposition - Customs) Act 1999*;
- *A New Tax System (Wine Equalisation Tax Imposition - Excise) Act 1999*; and
- *A New Tax System (Wine Equalisation Tax Imposition - General) Act 1999*.

²⁸ An exception is where an importer pays the wine tax at the border to Customs. The importer is not necessarily required to be registered for GST.

Wine tax producer rebate scheme

1.15 A producer rebate scheme commenced on 1 October 2004 and entitles wine producers to a rebate of 29 per cent of the assessable dealing, which is typically the price for which the producer sells the wine, excluding wine tax and GST. It was introduced in recognition of the substantial financial hardship being faced by small rural and regional wineries, and aimed to support their viability and consequent capacity to generate employment and wealth in local communities. These arrangements replaced the previous Commonwealth rebate scheme for producers known as the cellar door rebate scheme. The producer rebate is claimed through the BAS at label 1D.

1.16 Only wine producers²⁹ can qualify for a rebate. All products subject to the wine tax are eligible for the rebate. The maximum rebate for each financial year from 1 July 2006 is \$500 000 per eligible producer.³⁰ Under the current scheme, the maximum assistance level effectively exempts approximately \$1.7 million of domestic wholesale wine sales from the wine tax each year per wine producer, compared to \$1 million under the previous rebate scheme. The rebate forms part of the assessable income of producers for income tax purposes.

Wine tax on imported wine

1.17 The volume of wine imported into Australia has increased markedly in recent years—accounting for 12.6 per cent of domestic wine sales in 2009 compared to 7.1 per cent two years earlier.³¹ Much of this growth has been from New Zealand, which provided 60 per cent of wine imports to Australia in 2009.

1.18 Wine tax is payable on imported wine at the time of importation, unless an exemption exists or the importer is entitled to defer the wine tax to a later stage in the distribution process by quoting their Australian Business Number (ABN).

²⁹ The Tax Office ruling WETR 2009/1 defines a producer as an entity that manufactures the wine, or supplies another entity with the grapes, other fruit, vegetables or honey from which the wine is manufactured. However, entities providing the raw materials are not entitled to the producer rebate unless they generate a taxable dealing in wine (or quotation by the purchaser), which generally requires manufacture of the raw material into wine.

³⁰ The maximum rebate for the 2004–05 financial year was \$217 500, and \$290 000 for 2005–06.

³¹ Winetitles, op. cit., p. 8.

Rebate for New Zealand wine producers

1.19 The producer rebate scheme also applies to wine produced in New Zealand that is subject to dealings in Australia. Under the scheme, New Zealand wine producers are entitled to a rebate of 29 per cent of the approved selling price of the wine.³² The scheme applies where wine tax is paid after 1 July 2005.

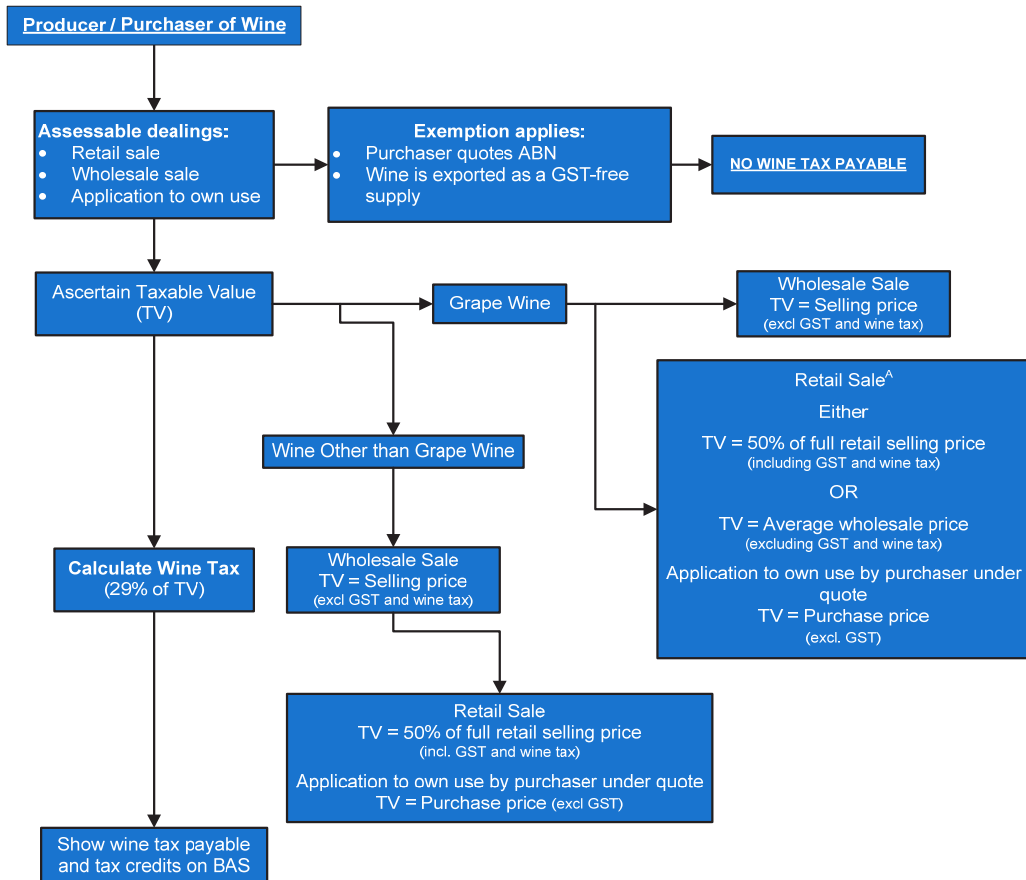
1.20 In addition to being an approved participant and exporting the wine to Australia, wine producers must have paid the wine tax before being eligible for the producer rebate. The maximum rebate for an approved New Zealand wine producer for each Australian financial year from 1 July 2006 is also \$500 000, having increased from \$290 000 for 2005–06.

1.21 As at 30 June 2010, 293 wine producers in New Zealand had registered for the scheme, from a population of some 674 wineries.

Process for calculating the wine tax

1.22 There is considerable complexity in calculating the wine tax. To calculate wine tax payable, the Wine Tax Act covers a range of situations involving factors such as the type of wine product, the point of sale (for example, wholesale or directly by producers), whether an exemption applies, and the appropriate taxable value (see Figure 1.2).

³² The approved selling price is the price for which the wine was sold by the New Zealand participant net of any expenses not related to the production of the wine in New Zealand.

Figure 1.2**Process for determining wine tax liability**

Note: (A) Retail sale refers to retail sales by the manufacturer, or a purchase under quote, and application to own use by the manufacturer in connection with a retail sale.

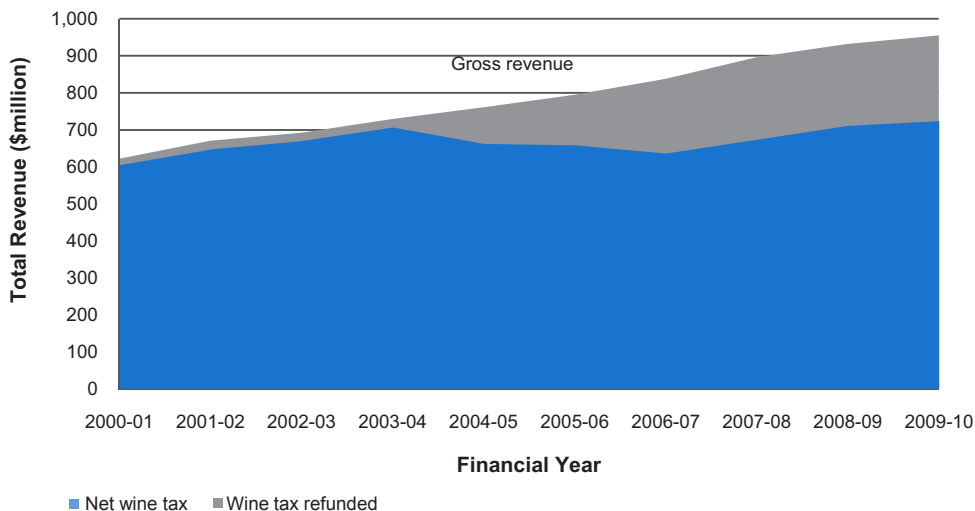
Source: Tax Office, *Wine Equalisation Tax Ruling, WETR 2009/1*, p. 30.

Wine tax collections

1.23 Net wine tax revenue to the Australian Government comprises the value of wine tax liabilities less wine tax credits and rebates. Since the introduction of the wine tax in 2000–01, the wine tax has raised almost \$6.7 billion in net revenue. As shown in Figure 1.3, gross wine tax revenue increased steadily each year from the inception of the scheme, although net annual revenue fell from the time of the introduction of the producer rebate in 2004 until the 2007–08 financial year.

Figure 1.3

Wine tax revenue since inception (2000–01) to 2009–10



Source: Tax Office wine tax database.

1.24 The increase in gross wine tax revenue stemmed from steady increases in the overall quantity and value of wine consumed domestically in recent years. The main reasons for the growth in the producer rebate were the increase in the maximum rebate that could be claimed, and an increase in the number of entities entering into arrangements to access the rebate.

1.25 The cost of the New Zealand producer rebate has also risen sharply each year since inception, from under \$6 million in 2006–07 to over \$19 million in 2009–10. This largely reflects the rise in New Zealand wine exported to Australia and the number of new participants in the scheme.

1.26 There is a high degree of concentration in the payment of the wine tax by Australian entities. Of around 4900 registered wine tax entities in July 2010, the 20 clients paying the largest amounts accounted for 91 per cent of net wine tax revenue in 2009–10.

Administration of the wine tax

1.27 The wine tax is predominantly administered by the Tax Office, which collects wine tax on assessable dealings in wine in Australia, including on most imports. Customs collects wine tax on some imports on behalf of the Tax Office.

Administration by the Tax Office

1.28 As Australia's principal revenue collection agency, the Tax Office has administrative responsibility for the wine tax, including for compliance issues. At a policy level, the Department of the Treasury (Treasury) is responsible for providing advice in relation to wine tax legislation.

1.29 Within the Tax Office, the wine tax is primarily administered by the Interpretative Assistance, Risk and Intelligence and Client Relationship Management teams in Adelaide, as part of the Indirect Tax Business Line, which operates under the Compliance and Operations sub-plans. In administering the wine tax, the Tax Office's intent is to optimise voluntary compliance and make payments under the law in a way that builds community confidence.

1.30 Administration of the wine tax is largely undertaken in the Tax Office's Adelaide office. Chapter 2 discusses Tax Office organisational arrangements for administering the wine tax.

Administration by Customs

1.31 Customs manages the security and integrity of Australia's borders. It works with other government and international agencies to detect and deter unlawful movement of goods and people across the border.

1.32 Customs collects wine tax on imported products at the border, including wine brought into Australia as part of personal effects and wine sent as gifts from overseas. Customs also helps with enquiries relating to the calculation of wine tax at importation.

1.33 Customs can collect wine tax from wholesalers and other entities importing wine in bulk. However, rather than pay wine tax at the border at the time of importation, these entities typically postpone payment until they have a taxable dealing in wine, and so deal with the Tax Office rather than Customs.

Audit approach

Audit objective and scope

1.34 The objective of the audit was to assess the effectiveness of the Tax Office's administration of the wine tax.

1.35 The ANAO identified four key areas for review and examined:

- governance arrangements relating to the administration of the wine tax;
- the provision of interpretative assistance and advice;
- compliance approaches, including risk-based activities to support compliance by Australian wine producers, wholesalers and importers; and
- administration of the rebate for New Zealand wine producers.

Audit methodology

1.36 As with other taxes, risk management is key to the effective administration of the wine tax. The ANAO examination therefore focused on how the Tax Office assesses and manages risks to the effective administration of the wine tax.

1.37 The ANAO conducted fieldwork in the Tax Office's Adelaide office between May and September 2010. This included a review of relevant wine tax documentation and interviews with staff from the Indirect Tax Business Line.

1.38 The ANAO also consulted with a range of stakeholders including: the Winemakers' Federation of Australia;³³ major Australian wine production and distribution companies;³⁴ and other government agencies including Customs, Treasury and New Zealand Inland Revenue.

1.39 The audit was conducted in accordance with auditing standards at a cost to the ANAO of approximately \$230 000.

³³ The Winemakers' Federation of Australia is the peak representative body for the nation's winemakers.

³⁴ The ANAO held discussions with representatives of 22 wine producers, wholesalers, retailers, tax agents and key industry associations. These entities included many larger companies, some smaller companies and entities that had recent involvement in Tax Office activities such as private rulings, risk reviews, audits and objections.

Acknowledgements

1.40 The ANAO appreciates the contribution of Tax Office staff (particularly from the Indirect Tax Business Line), representatives from relevant Australian Government organisations, and wine industry stakeholders who contributed to the audit.

Report structure

1.41 The structure of the audit report reflects the audit criteria outlined in paragraph 1.35. Accordingly, in respect of the administration of the wine tax, the chapters examine the extent to which the Tax Office had effective approaches for:

- governance (Chapter 2);
- interpretative assistance and advice (Chapter 3);
- compliance (Chapter 4); and
- New Zealand producers (Chapter 5).

2. Governance

This chapter examines governance arrangements underpinning the Tax Office's administration of the wine tax.

Introduction

2.1 Governance refers to the processes by which organisations are directed, controlled and held to account. It encompasses authority, accountability, stewardship, leadership, direction and control exercised in the organisation. Public sector governance is explained in the ANAO *Better Practice Guide—Public Sector Governance*.³⁵ The Tax Office has in place a documented governance framework which defines its organisational structure, roles and responsibilities.

2.2 To assess the effectiveness of the Tax Office's governance arrangements supporting the administration of the wine tax, the ANAO examined three key issues:

- organisational arrangements for administering the wine tax;
- the compliance risk planning framework; and
- performance monitoring and reporting.

Organisational arrangements

2.3 The Tax Office is a large organisation, with an annual budget of \$3.1 billion and average staffing level of 21 766 across 58 locations in Australia as at June 2010.³⁶

2.4 To assist in managing the Tax Office, the Commissioner has adopted a matrix management model. This model is organised around four sub-plans, which represent the highest level of strategic management and together establish overall organisational accountabilities.

2.5 High-level arrangements for administering the wine tax centre on the Compliance Sub-plan and the Indirect Tax Business Line. For governance and operating purposes, the Indirect Tax Business Line comprises the GST and

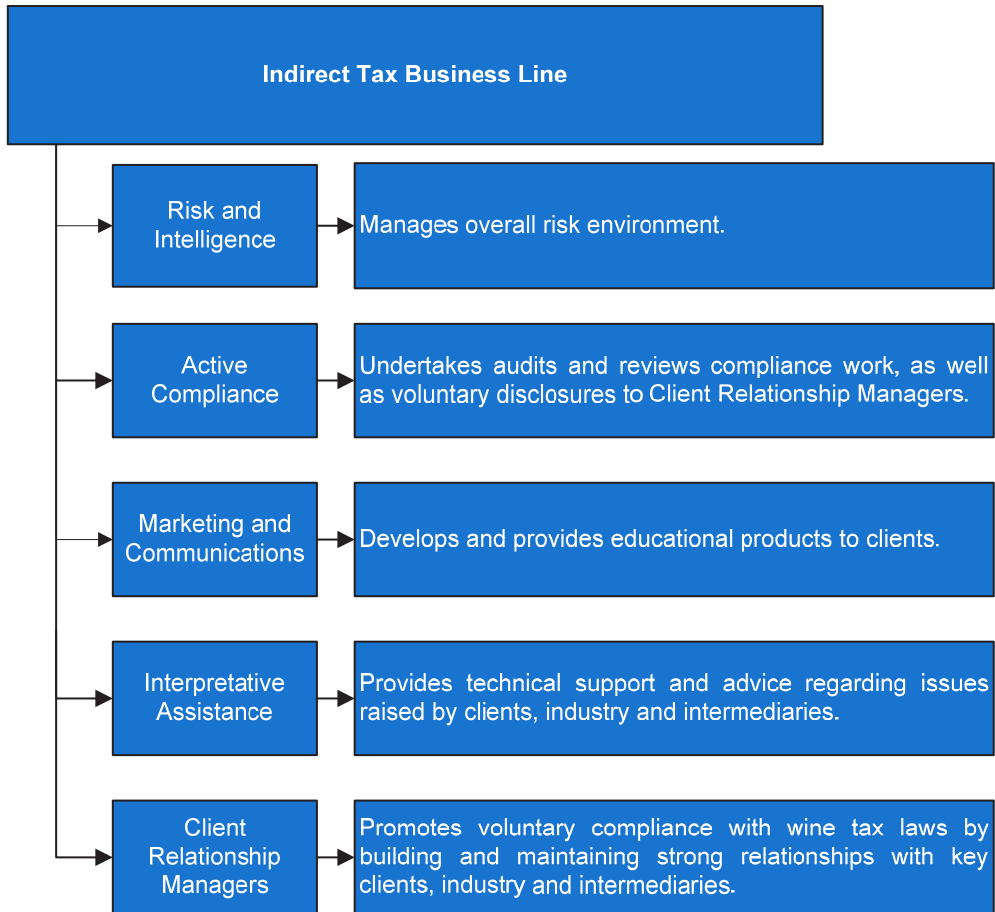
³⁵ ANAO *Better Practice Guide—Public Sector Governance*, Volume 1, p. 6.

³⁶ Tax Office, *2009–10 Commissioner of Taxation Annual Report*, p. iv.

Excise units. Figure 2.1 outlines the main functions or areas within the Indirect Tax Business Line involved in the administration of the wine tax.

Figure 2.1

Main areas involved in the administration of the wine tax



Note: Other areas with a generally lesser role in administering the wine tax include: Contribution to Policy; Service to Government; and Design and Build.

Source: Information provided by the Tax Office.

2.6 Five areas across the Indirect Tax Business Line have prime responsibility for the administration of alcohol excise arrangements and the wine tax.

2.7 This approach allows expertise in the various areas to be applied across the specific products subject to excise (such as alcohol and tobacco) as well as the wine tax. In adopting a functional approach rather than tax liability

arrangements,³⁷ the Tax Office has implemented mechanisms to administer the wine tax at a holistic level, including for planning and performance reporting.

2.8 The administration of the wine tax by the Tax Office is supported by the co-location of most key staff in Adelaide, the level of experience of most of these staff, and the extent to which staff have moved between positions within the excise units and understand the requirements of multiple positions. The use of client relationship managers is also an effective means of providing assistance to and helping ensure compliance by large clients, and is well-suited to the administration of the wine tax given the high degree of concentration of taxpayers.³⁸

2.9 On 1 July 2010, the Excise Business Line was combined with the GST Business Line to form the Indirect Tax Business Line. The rationale for the change was to integrate the two areas in order to streamline client service and reduce duplication of activities.

2.10 As discussed in Chapter 4, this restructure has provided an opportunity for the Tax Office to review and better harmonise compliance activities undertaken by the GST and alcohol areas.

Compliance risk planning framework

2.11 As an Australian Government agency, the Tax Office must comply with relevant statutory requirements and government guidelines relating to risk management.³⁹ Key risks to the Tax Office and to tax administration are captured in risk and priority statements that form the basis of corporate planning.⁴⁰

³⁷ A tax type administrative structure was in place prior to 2008.

³⁸ As discussed in Chapter 1, the 20 clients paying the largest amounts accounted for 91 per cent of gross wine tax revenue in 2009–10.

³⁹ See, for example, Comcover, *Risk Management*, Better Practice Guide [Internet]. Department of Finance and Deregulation, Canberra, 2008, available from <[http://www.finance.gov.au/comcover/docs/Better Practice Guide.pdf](http://www.finance.gov.au/comcover/docs/Better_Practice_Guide.pdf)> [accessed 5 October 2010].

⁴⁰ Australian Taxation Office, *Good governance and tax administration: Speech by Michael D'Ascenzo, Commissioner Australian Taxation Office to the Australian Risk Policy Institute, University of Canberra, 10 July 2008* [Internet]. Australian Taxation Office, Canberra, 2008, available from <<http://www.ato.gov.au/corporate/content.asp?doc=/content/00153731.htm>>, [accessed 5 October 2010].

2.12 Wine tax compliance risks are addressed at high levels in the annual Compliance Program, Indirect Tax Line Delivery Plans, and Alcohol Excise compliance plans.

2.13 Detailed planning for the wine tax is undertaken mainly through the Risk and Intelligence wine tax risk treatment plan, with a summary of risks and approaches provided to the March 2010 Excise Compliance Risk Forum. In this respect:

- the *WET Treatment Plan 2010–11* addresses specified wine tax risks, with generally clear treatment strategies, including case selection, timing and some anticipated outcomes of the treatment. However, documentation of planning was not as detailed as in previous years,⁴¹ the categorisation of sub-risks was not cohesive, and the documentation did not clearly explain risk treatments and their rationale; and
- the *Executive Summary of Wine Tax Risks* for the March 2010 Excise Compliance Risk Forum provided a useful overview of risk management approaches at a high level.

2.14 The Tax Office reduced its planning efforts and documentation for the wine tax in the past two years by only highlighting significant changes in the risk environment in the executive summaries rather than comprehensively rewriting the risk assessment each year. This approach was adopted because of the endemic nature of the risks associated with the wine tax and the need to focus on key risk areas. The Risk and Intelligence unit intends to conduct and document more comprehensive wine tax planning exercises every three to five years.

2.15 As a result of the recent formation of the Indirect Tax Business Line and the implementation of an Enterprise Risk Management Framework within the Tax Office, the Risk and Intelligence unit will review processes to align wine tax planning with the requirements of the new business line and the Enterprise Risk Management Framework.

2.16 While acknowledging the efficiencies gained from minimising the replication of substantial planning efforts each year, the ANAO considers that

⁴¹ Documentation was not as detailed as in previous years as it did not include detailed risk identification, description and assessment.

the current high risk rating for the wine tax and recent relative volatility in taxpayer compliance behaviour requires comprehensive planning approaches to be conducted on a regular basis.

2.17 As part of any review of planning activities, the ANAO suggests that the Tax Office considers options to improve the presentation of wine tax treatment plans and to re-categorise wine tax sub-risks so that they are clear, distinct and together comprehensively cover all wine tax risks in a logically consistent manner.

Performance monitoring and reporting

2.18 Performance monitoring underpins sound management and governance. Ongoing and regular monitoring and reporting of performance is integral to the management of programs. The timely collection, and regular analysis and reporting of relevant performance information, enables effective decision making about the use of resources and compliance achievements.

2.19 The ANAO examined internal and external reporting relevant to wine tax administration, including program budget management.

Internal performance monitoring and reporting

2.20 Wine tax issues are reported and monitored internally at several levels, the most important being through monthly heartbeat reports and revenue reports to line management and by weekly phone hook-ups between key staff.

2.21 Heartbeat reports provide performance information and outline key risks and mitigation strategies for the Indirect Tax Business Line. These are comprehensive documents, often comprising around 40 pages, with a dashboard risk rating⁴² across the key functions, descriptions of activities to treat risks within those functions, and detailed performance information including on meeting various service standards, active compliance results and resourcing requirements. Performance information is typically provided for the broader Indirect Tax function and not specifically for the wine tax.

⁴² The dashboard risk rating system has three categories—green, amber and red. A green rating means the function is on target to meet planning objectives and budgets. An amber rating reflects a decreasing performance trend requiring monitoring due to potential for significant budget variance or the existence of an issue that requires follow up. A red rating indicates a function is not meeting planning requirements or budgets or has encountered critical issues that require executive attention.

2.22 There is, however, considerable ongoing monitoring and reporting of performance for key elements of the wine tax. For example, detailed statistics are kept of the status and impact of active compliance activities, and there is also detailed monitoring of interpretative assistance and advice provided for the wine tax. This information is typically compiled by Risk and Intelligence teams and provided to relevant line executives within the Indirect Tax Business Line. The information is also used in various ways to inform agenda items at biannual Excise Compliance Risk forums.⁴³

Compliance Effectiveness Measures

2.23 The Tax Office has undertaken a project to compile compliance effectiveness measures for the wine tax, in order to determine whether the tax has been effectively administered. The Tax Office has a business intent of optimising voluntary compliance in relation to wine tax obligations in a way that builds confidence in the wider alcohol industry.

2.24 The project applied the existing Tax Office methodology for measuring compliance effectiveness. This methodology is in four phases: articulate risk; develop outcomes and strategies; design indicators; and determine the extent of effectiveness. The project was developed in 2008 and forms part of a program to inform the Compliance Sub-plan's executives of the results and outcomes of applying the effectiveness measures to its risk treatment strategies.

2.25 The wine tax compliance effectiveness measures were reported to the quarterly Compliance Executive meeting in March 2010, as a case study selected to highlight the impact of risk treatment strategies on taxpayer behaviour to mitigate key compliance risks.

2.26 The ANAO identified scope to improve the specification of some of the performance indicators, as they indicated deteriorating effectiveness when this is arguably not the case.⁴⁴

⁴³ Key elements of the Tax Office's governance framework are sub-plan monthly performance reports and business line monthly performance reports. However, these reports are not disaggregated down to the level of wine tax administration.

⁴⁴ For example, in response to information suggesting an escalation of non-compliant activity, the Tax Office has significantly increased active compliance activity and as a result has more risk cases and greater tax collection from these activities. The documentation for the compliance effectiveness measures had specified that a decrease in these two measures would be an indicator of success, on the basis that voluntary compliance has improved. However, increased tax collections from this activity may be a result of a change in taxpayer behaviour and be an outcome of greater resourcing by the Tax Office to address non-compliance.

2.27 While there needs to be an ongoing process to revise these measures, the approach has been useful and is likely to provide valuable information over time about the effectiveness of wine tax administration. One of the major challenges will be to complete the last phase of the project—assessing overall effectiveness. This involves openly acknowledging where administration may not have been fully effective.

2.28 Overall, the ANAO considers that internal monitoring and reporting of performance information on the wine tax is adequate, and could be further strengthened by using the compliance effectiveness measures, suitably refined, on an ongoing basis.

External reporting of performance

2.29 External reporting via annual reports is a key mechanism by which agencies are accountable through the Government to the Parliament for the efficiency, effectiveness and economy with which they manage the resources they administer.⁴⁵

2.30 Reporting in annual reports largely comprises the presentation of actual results against the specific performance standards for the outcomes and outputs set out in an agency's Portfolio Budget Statements. However, the wine tax has not been specifically identified in Portfolio Budget Statements for the Tax Office.

2.31 Nevertheless, recent Commissioner of Taxation annual reports have included a section on the wine tax. In this regard, the *2009–10 Commissioner of Taxation Annual Report* outlined major compliance and advisory activities.

2.32 To place reporting of the administration of the wine tax in context, and to provide information on key deliverables, it would be useful for the section on the wine tax in future annual reports to present the total value collected from the tax and the value of the producer rebate. This information has not been separately included in recent annual reports.

Cost of administering the wine tax

2.33 The Tax Office is accountable for the funding it receives and responsible for using those funds efficiently. The Indirect Tax Business Line

⁴⁵ ANAO *Better Practice in Annual Performance Reporting*, April 2004, p. v.

uses the ATO Unit Cost Analysis (ATOUCA) system to measure output costs both for planning and reporting purposes.

2.34 Consistent with its administrative structures, the Tax Office focuses budgeting and costing activities at the functional rather than tax-liability level. For example, it provides budgets and costs for areas such as Interpretative Assistance, and Risk and Intelligence, but not for the wine tax in isolation. For this reason, the Tax Office was not easily able to provide budgets or costing of the administration of the wine tax, categorised by major functions.

2.35 The ANAO considers that providing budgets and actual costing for the administration of the wine tax by major function would assist the Tax Office to better manage the economy of wine tax administration.

Compliance costs to industry

2.36 The costs of complying with legislative and administrative requirements are also important for the wine industry, particularly given the current difficult operating environment and need for concerted efforts to ensure financial viability. A common view of wine industry representatives contacted as part of the audit was that costs for general administration were reasonable in the context of existing GST processes. Many entities used wine industry-specific computer packages that included taxation modules, which proved cost effective.

2.37 However, comments from industry representatives included that it:

- is often more straightforward to calculate the half retail price method rather than average wholesale cost, so they use the half retail price method even if it results in a greater tax liability; and
- can be difficult to adequately account for wine tax payable on cellar door sales and applications for own use.

2.38 Overall, wine industry representatives raised low levels of concern about the cost of complying with the administration of the wine tax by the Tax Office.

3. Interpretative Assistance and Advice

This chapter examines activities undertaken by the Tax Office to promote greater certainty for wine tax payers by providing interpretative assistance and advice.

Introduction

3.1 Clear and unambiguous legislation assists both taxpayers and the Tax Office to satisfy taxation requirements. However, there are times when words in legislation are open to be interpreted in a number of ways. To help provide greater certainty in such instances, the Tax Office provides interpretative assistance and advice.

3.2 In relation to important matters with broad significance, the Tax Office's view of tax law is communicated through Public Rulings. To further reduce uncertainty, an individual taxpayer can seek a Private Ruling from the Tax Office in relation to an existing or proposed transaction. The Tax Office also provides technical information through other avenues such as material published on its Internet site (www.ato.gov.au), presentations to industry conferences and discussions with individual taxpayers.

3.3 Interpretative assistance and advice is the basis for explaining and clarifying the Tax Office's interpretation of the law and giving taxpayers more certainty about taxation implications of their business activities. It is one of the Tax Office's key methods of encouraging voluntary compliance.

3.4 For the administration of the wine tax, key mechanisms available to the Tax Office to provide interpretative assistance and advice include:

- Public Rulings⁴⁶ including determinations,⁴⁷ as well as ATO Interpretative Decisions (ATOIDs),⁴⁸

⁴⁶ A Public Ruling is a published statement that is intended to contain advice on the way the law applies in defined circumstances that are common to many taxpayers.

⁴⁷ A determination is a type of public ruling and so taxpayers can rely on the presented information to meet their relevant tax obligations.

⁴⁸ An ATOID is an edited and summarised decision on an interpretative matter that is indicative of how a provision of the law might be applied. ATOIDs do not provide advice to taxpayers and are not rulings and therefore the tax that would otherwise be payable under the law remains payable. ATOIDs represent a precedential Tax Office view that tax officers must apply in resolving interpretative issues or, if they consider the application of the precedent will result in an incorrect decision or unintended outcome, escalate the matter for review.

- Private Binding Rulings;⁴⁹ and
- other interpretative assistance and advice, including information published on the Tax Office website, other publications, and consultative arrangements such as forums and one-on-one contact with taxpayers.

3.5 This chapter assesses the effectiveness of the Tax Office in providing interpretative assistance and advice through these three mechanisms, after broadly outlining the satisfaction of wine industry participants with such information.

Satisfaction with interpretative assistance and advice

3.6 While there has been little disputation between the Tax Office and most taxpayers on most elements of the wine tax, a number of issues have arisen that have required the Tax Office to provide interpretative assistance and advice (see Figure 3.1).

3.7 The Tax Office has provided much of its recent interpretative assistance and advice in response to information indicating that entities have altered their normal commercial arrangements in order to minimise the amount of wine tax paid. Many of these arrangements have involved greater access to the producer rebate, and have arisen as substantive issues only in the past two or three years.

⁴⁹ The Private Binding Ruling system aims to reduce uncertainty in the law by providing protection to taxpayers who act consistently with Tax Office binding advice. A Private Binding Ruling is the Tax Office's written opinion of how it will apply tax laws to an applicant's completed or proposed transactions. In effect, it allows taxpayers to be notionally assessed on an existing or proposed transaction.

Figure 3.1

Main issues that have required the Tax Office to provide interpretative assistance and advice

Main issues
<ul style="list-style-type: none">• Indirect marketing: involved a retailer acting as the seller on behalf of a wholesaler to utilise alternative valuation methods for assessable wine dealings, and reduce the amount of wine tax payable.• Changes in contractual arrangements to access the rebate: involves growers who formerly supplied grapes to wineries entering into contracts for the wineries to manufacture on their behalf, enabling the growers to become eligible to claim the producer rebate.• Blending and further manufacture: an entity is a producer of rebatable wine if it blends two or more wines together to form a product that is commercially distinct.• Grape wine product manipulation: wine-based products subject to the wine tax were being manipulated to imitate spirits. The definition of grape wine was subsequently amended to subject such products to excise duty.• Other schemes to access the rebate—virtual producers, carousel manufacture and a Managed Investment Scheme: Virtual producers are interposed entities that purchase grapes from growers and have wine manufactured on contract without actually taking possession of the product. Carousel manufacture involves a sequence in which each step provides an opportunity to access the rebate. A Managed Investment Scheme was established to enable passive investors to own pooled grapes and so access the rebate.

Source: ANAO examination of Tax Office information.

3.8 Most large taxpayers contacted as part of the audit were satisfied with the information available about the wine tax, and generally were confident about applying the wine tax given their particular circumstances.⁵⁰ However, smaller and mid-size taxpayers typically advised that they would appreciate more detailed guidance on a range of aspects of the wine tax.

3.9 Wine tax liabilities can vary significantly as a result of differing interpretations of tax legislation. These variations can involve multi-million dollar adjustments over a number of years for some wine entities.

⁵⁰ As discussed in Chapter 1, the ANAO held discussions with 22 wine producers, wholesalers, retailers, tax agents and key industry associations. These taxpayers covered many of the larger companies and also included some smaller entities.

Public Rulings

3.10 Figure 3.2 outlines current public rulings, interpretative decisions and taxpayer alerts regarding the wine tax.

Figure 3.2

Wine tax public rulings, interpretative decisions and taxpayer alerts

Ruling	Subject
Public rulings^A	
WETR 2009/1	Operation of the wine tax system
WETR 2009/2	Operation of the producer rebate for other than New Zealand participants
WETR 2006/1	Operation of the producer rebate for producers of wine in New Zealand
WETD 2010/1	Determination specifying results for wine tax purposes for entities engaging in arrangements described in Taxpayer Alert TA 2009/6 (see below)
Interpretative decisions (ATOIDs)	
Current	15 current ATOIDs relating to aspects of the wine tax ^B
Withdrawn	5 relevant ATOIDs have been withdrawn, largely because they have been superseded by the current public rulings listed above
Taxpayer alerts	
TA 2009/6	Use of uncommercial indirect marketing arrangements to reduce wine tax
TA 2009/7	Uncommercial contract manufacturing arrangements to claim the wine tax producer rebate

Notes: (A) Three withdrawn rulings are WETR 2004/1W, WETR 2002/2W and WETR 2002/1W.

(B) These ATOIDs are available on the Tax Office website at <http://law.ato.gov.au/atolaw/>.

Source: ANAO examination of Tax Office interpretative assistance and advice for the wine tax.

3.11 As at July 2009, four public rulings (including one determination), 15 current interpretative decisions and two taxpayer alerts had been issued by the Tax Office. These rulings and other written advice covered all significant technical issues that are subject to contest between the Tax Office and certain taxpayers.

3.12 As noted in paragraph 3.8, larger entities were generally satisfied with the extent and nature of interpretative information provided by the Tax Office regarding the wine tax, while most of the smaller entities contacted during the audit advised that they would benefit from more detailed information about certain aspects of the wine tax. A small number of these entities had not sought to access existing available information.

3.13 The main aspects nominated as requiring further advice were:

- the treatment of non-product costs for the purposes of the wine tax and the producer rebate—particularly rebates, discounts, freight and delivery;
- criteria underpinning the definition of associated producers; and
- criteria for determining when title to wine has passed.

3.14 These issues raised by smaller entities often arise during legitimate tax planning deliberations, particularly contractual issues that potentially reduce the taxable value or increase an entitlement to the producer rebate. The general principles underpinning these issues are covered in the WET ruling 2009/1. The Tax Office advised it has not provided more detailed information as these types of issues typically require consideration on a case-by-case basis (for example by reviewing specific contracts against actions taken by parties).

3.15 Nevertheless, there is scope for the Tax Office to provide further clarity to smaller wine entities about interpretations of those elements of the wine tax that are posing particular difficulty. In particular, the Tax Office could seek input from smaller wine entities and their advisors to determine key areas requiring additional advice, to assist in developing future work programs.

3.16 One option would be to initiate wine tax seminars or workshops in key geographic areas. A number of wine entities indicated their interest in attending these events if they were offered. Such a program would build on recent initiatives of the Tax Office, including its involvement in the Winetech exhibition held in Adelaide in July 2010, and recent discussions with the South Australian Wine Producers Association regarding the wine tax, as well as ongoing liaison with the Winemakers' Federation of Australia.

3.17 Wine industry representatives raised strong concern about the technical interpretation reached in determination WETD 2010/1, relating to uncommercial indirect marketing arrangements to reduce wine tax liabilities. These representatives also noted that there was an extended period between the time the Tax Office became aware of the issue involving indirect marketing and releasing that determination.⁵¹ While recognising that the Tax Office

⁵¹ Similarly, at the time of audit fieldwork in September 2010, the Tax Office had not yet released a determination relating to Taxpayer Alert 2009/7 concerning uncommercial contract manufacturing arrangements issued on 1 April 2009.

undertook considerable work to establish a firm position, the ANAO considers that a three year period of uncertainty is unreasonable.

Private Binding Rulings

3.18 Private Binding Rulings are a key mechanism in Australia's self-assessment system to provide taxpayers with certainty of tax treatment concerning their specific circumstances.

3.19 The Tax Office has issued 197 private rulings on wine tax matters in the period since inception on 1 July 2000 to 30 June 2010. These rulings were sought by a full range of industry participants. The number of entities seeking private rulings is reasonably low compared to the number of entities registered for the wine tax (around 5000 in June 2010), and has significantly decreased in the past three years.

3.20 Analysis of the 24 private rulings completed in 2008–09 and 2009–10 found that those entities that sought private wine tax rulings have generally received a favourable response. In this regard:

- two-thirds of rulings were favourable to the taxpayer, with only around 20 per cent definitely not favourable;
- many rulings concerned product classification, particularly whether grape wine products were subject to the wine tax. These rulings were typically less complex, favoured the taxpayer and issued in a timely way; and
- many of the more complex rulings concerning associated producers or other business structures did not favour the taxpayer and were not issued in a timely way.

3.21 Partly reflecting the generally favourable outcomes, wine entities typically advised they were satisfied with private ruling processes, except for timeliness on some occasions.

3.22 With respect to timeliness, under the *Taxpayers Charter* the Tax Office has a service standard to complete 80 per cent of private rulings within 21 days of receiving all relevant information or by a negotiated due date.⁵² This

⁵² As of 1 July 2010, the standard was revised to issuing 80 per cent of private rulings within 28 days of receiving all relevant information or by a negotiated due date.

standard was achieved in 2007–08 for wine tax rulings, but not achieved in 2008–09 and 2009–10, as shown in Table 3.1.

Table 3.1

Number and timeliness of private wine tax rulings 2007-08 to 2009-10

	2007–08	2008–09	2009–10
Number of rulings	20	10	14
Average time taken to complete (days)	65	71	79
Per cent issued within 21 days of receiving all information	85%	70%	71%

Source: Information supplied by Tax Office.

3.23 The Tax Office confirmed that increasing complexity was the main cause of reduced timeliness of private wine tax rulings in 2008–09 and 2009–10.⁵³ In complex cases it was often necessary for case officers to escalate issues to the Centre of Expertise or Capital Gains Tax area for review.⁵⁴

3.24 For complex private rulings, a number of entities advised that it was often difficult to obtain accurate estimates from the Tax Office on the likely date the ruling would be issued. While Client Relationship Managers (CRMs) were helpful in keeping clients informed, clients perceived that the CRMs had little influence on staff from the Tax Counsel Network who advised on issues regarding the rulings. It would assist CRMs in their role if Tax Counsel Network staff could provide meaningful estimates of likely dates for completing their input to private rulings.

Other interpretative assistance and advice

3.25 Given the number of technical wine tax issues, it is important that there are avenues for assistance in addition to the rulings system, as interpretations of aspects of the wine tax can have a significant impact on investment decisions.

⁵³ In 2009–10, the 79 day average cycle time (time lapsed between receipt of the request and finalisation of the case) for wine tax private rulings was more than double the 36 days for all private rulings completed in the same period in the business service line.

⁵⁴ The case officer dealing with a wine tax private ruling is more likely to escalate an issue to the Centre of Expertise if there are no suitable precedents. Where the issue relates to the producer rebate, it is often necessary to identify the precise nature of any relationship between participating entities and often requires referral of the question of associated entities to a specialist technical area for an opinion.

3.26 Figure 3.3 outlines the main approaches adopted by the Tax Office to provide additional interpretative assistance and advice regarding the wine tax.

Figure 3.3

Other key mechanisms to provide interpretative assistance and advice

Element	Purpose	Wine industry views
Direct contact and engagement		
Client relationship managers (CRMs)	Provide ready assistance to and assurance about key clients. ^A	Support the role and practices of CRMs, considering them to aid voluntary compliance by being knowledgeable, reliable and prompt.
Alcohol Corporate Consultative Forum	Liaison with key alcohol industry representatives to mitigate wine tax and broader alcohol tax risks.	Tax Office has effective liaison activities and uses committees positively to implement change.
Phone, email and written advice	Advisory services mainly dedicated to smaller alcohol tax clients.	Useful services, generally accessible and the ability to communicate through email expedites processes.
General communication		
Targeted communication strategies	For specific new measures or arrangements, such as changed definition of grapewine products.	Tax Office adequately advises clients, although there was concern about the determination on indirect marketing.
Internet	Wine tax pages at <www.ato.gov.au/WET> were updated and refined in 2010.	The internet site is generally appropriately detailed and readily accessible.
Fact Sheets	13 facts sheets or forms on elements of the wine tax.	No major problems identified.

Note: (A) In 2009–10, 52 wine tax registered entities had client relationship managers. These entities were selected primarily according to the amount of wine tax paid.

Source: ANAO analysis of Tax Office information.

3.27 In response to the high overall risk rating for the wine tax, the Tax Office has recently increased the extent of communication activities, most notably issuing taxpayer alerts and a determination (as outlined in Figure 3.2).⁵⁵

3.28 Large wine tax clients typically have detailed knowledge of wine tax legislation, through either in-house or contracted resources, and have clear access to the Tax Office through CRMs, with many of these clients also members of the Alcohol Corporate Consultative Forum. These clients were typically satisfied with consultation arrangements with the Tax Office regarding the wine tax.

3.29 To support voluntary compliance with wine tax requirements, medium-sized and smaller clients typically rely on phone and email help services and general communication mechanisms. As an indication of the demand for these services, the Tax Office responded to 864 phone calls and 588 emails to the dedicated help lines relating to the wine tax in 2009–10. While the number of phone calls had declined strongly, for example from 1879 calls in 2006–07,⁵⁶ the total number of these requests remained relatively large—one request for around every three registered wine tax entities in 2010.

3.30 The incidence and extent of these requests highlights the importance of the Tax Office providing substantial information and advice about details of the wine tax, including potentially by commencing a program to conduct wine tax seminars or workshops, as discussed in paragraph 3.16.

3.31 The Tax Office closely monitors the number and nature of calls to the help line, and uses this information when developing education and compliance strategies. However, the Tax Office analyses emailed information requests in much less detail than telephone contact, despite email contact being an equally relevant intelligence source.

⁵⁵ In this regard, the Tax Office has implemented recommendations from reviews of wine tax compliance results for 2008–09 and July to December 2009 to adopt a client education approach to combating non-compliance by: mailing relevant information to identified producers; conducting an advertising campaign in industry media; discussing wine tax compliance issues at relevant Tax Office and industry forums (including with peak wine industry bodies); and reviewing web-based information on the producer rebate.

⁵⁶ The number of calls declined across the main topic areas, indicating the industry as a whole required less assistance. Possible reasons for this reduced need for assistance included minimal legislative changes in recent years, improved information provided on the Tax Office website and in industry publications, and the exit from the industry of many smaller entities that typically require more Tax Office assistance.

3.32 The ANAO suggests that the Tax Office considers requests for advice, regardless of the method of contact, to assist in developing education and compliance strategies.

3.33 Another avenue for improving information to clients is to provide all new wine tax registrants with a package of information explaining the key aspects of the tax, based on current rulings, fact sheets and the wine tax pages on the Tax Office web site. While this is currently not done in Australia, New Zealand Inland Revenue does provide a package of information for new registrants for the New Zealand wine tax producer rebate (see paragraph 5.8).

4. Compliance

This chapter examines how the Tax Office gains assurance that Australian taxpayers are complying with key requirements of the wine tax.

Introduction

4.1 Under the self-assessment regime in operation, the calculation and payment of wine tax is the responsibility of the entity conducting assessable dealings in wine. As well as providing interpretive assistance and advice to support voluntary compliance by taxpayers, the Indirect Tax Business Line undertakes a program of compliance activities to validate the accuracy of wine tax payments by selected taxpayers.

4.2 To optimise the level of compliance by wine tax taxpayers, it is important that the Tax Office's compliance planning framework is based on sound risk management principles and practices. Operationally, Tax Office staff require a good understanding of major wine tax entities and developments in the industry. Effective compliance also requires appropriate selection of cases to review, and that those reviews are undertaken to a high standard.

4.3 Chapter 2 assessed the key elements of the compliance framework, particularly compliance risk planning and performance monitoring. This chapter examines the effectiveness of the Tax Office's implementation of compliance approaches for the wine tax by reviewing four key areas:

- addressing the level and nature of wine tax compliance risks;
- managing the compliance program;
- conducting specific wine tax active compliance activities; and
- improving the legislative framework in response to identified shortcomings.

Level and nature of compliance risks

4.4 The Tax Office has rated the risk associated with the overall administration of the wine tax as high in recent times. In particular, the risk was rated high at biennial Excise Compliance Risk Forums conducted since March 2009. This is unusual, as the wine tax risk had previously been rated low, and other indirect taxes have low risk ratings.

4.5 High compliance risks regarding the wine tax have been raised in other forums. Most notably, in November 2008 the Winemakers' Federation of Australia (WFA) wrote to the Treasurer advising of several anecdotal reports of excessive claiming of the producer rebate.⁵⁷ A number of media articles, including in wine industry publications, also discussed the WFA's concerns regarding excessive claiming of the rebate.⁵⁸

4.6 The WFA subsequently contributed to Tax Office activities to address concerns about aspects of the rebate. The WFA's two main concerns related to producers' double dipping the rebate on blended wine, and grape growers changing their contractual arrangements with manufacturers to access the producer rebate.

4.7 The Tax Office had already identified these two and many other issues surrounding the wine tax and wine producer rebate that have the potential to impact on wine tax revenue. Some of these issues may be considered legitimate tax planning but have the potential to erode revenue contrary to the original intent. Where such issues arise, a key consideration is whether arrangements were established for the purposes of obtaining a tax advantage, rather than for legitimate commercial reasons.

4.8 The Tax Office raised the risk rating for the administration of the wine tax to high in response to changes in taxpayer compliance behaviour. This behaviour related to aggressive tax planning practices that:

- improperly provide entities with greater access to the rebate—particularly via blending and further manufacture, changes in contractual arrangements, and virtual producers; and
- improperly reduce the amount of wine tax paid—particularly indirect marketing and wholesaler discounts.

4.9 Figure 4.1 lists a number of issues which have the potential to reduce wine tax revenue and provides a brief summary of the Tax Office's compliance response.

⁵⁷ The WFA considered that the producer rebate was 'turbo charging' the wine oversupply problem.

⁵⁸ Widespread perceptions within an industry of general non-compliance can exacerbate compliance risks, as taxpayers may consider that competitors are getting away with doing the wrong thing, so they should do likewise themselves to remain viable. In such situations, it is important that the Tax Office acts decisively to quash false perceptions and better address tax avoidance where possible.

Figure 4.1

Tax Office compliance response to issues potentially impacting on wine tax revenue

Issue	Compliance response
Indirect marketing	Tax Office considering the application of penalties regarding the promotion of these arrangements.
Managed Investment Scheme	Sought voluntary disclosure from 17 clients through active compliance.
Associated producers	Conducted five specific reviews on clients in 2009–10, also examined the issue as part of GST pre-refund checking.
Carousel manufacture	One case referred to Serious Non-compliance and the other potentially audited.
Definition of grape wine product	Monitoring and testing products to provide assurance legislative changes are being adhered to.
Exports	Undertaking systematic review and may examine instances where there are issues with reporting of exports by wine producers.
Incorrect quoting	Data matching exercise in 2005 identified a number of entities that made inadvertent, relatively small mistakes in quoting. The Tax Office may follow-up.
Wholesaler discounts	Amended a number of BAS statements as a result of this issue and three progressed to the objection stage.
Blending	Cannot quantify the potential revenue impact of blending and any 'double dipping' of the producer rebate.
Virtual producers	This activity is difficult to quantify through Tax Office systems, so no compliance activity undertaken as yet.
Changes in contractual arrangements	Identified a number of entities that appear to have restructured their operations in order to gain access to the producer rebate that they otherwise would not have been entitled.

Source: ANAO analysis of Tax Office information.

4.10 While it is not possible to confidently quantify the impact of these activities, the WFA and other wine entities believe they are significant. In this regard, Tax Office analysis revealed that 165 entities with no producer rebate claims prior to 2006–07 each claimed over \$50 000 in 2007–08. Combined, their producer rebate claims totalled \$30 million.⁵⁹ The Tax Office was concerned that some of these newly registered entities were exploiting producer rebate provisions.

4.11 The Tax Office has increased its compliance activities in response to the overall heightened risk rating and to address many of these emerging risks.

⁵⁹ Internal Tax Office document, *Intelligence Scan, WET 1D Report*, February 2009, pp. 10–13.

This has resulted in substantial treatment of some risks, including indirect marketing, managed investment schemes and carousel manufacture. However, compliance strategies have only recently commenced or have been employed on relatively few instances for many other issues, and so have not yet sufficiently addressed risks related to blending and changed contractual arrangements, exports and wholesaler discounts. As discussed in paragraphs 4.52 to 4.61, some issues surrounding access to the rebate may need to be considered by Government following provision of advice by relevant agencies.

4.12 There is also scope for the Tax Office to more explicitly tailor the active compliance program to cover various specific risks (see paragraphs 4.31 to 4.35).

Profile of registered wine entities for compliance purposes

4.13 As noted in paragraph 1.26, the payment of the wine tax is highly concentrated, with 91 per cent of the net tax paid by 20 entities in 2009–10. Nearly all of these clients have Tax Office client relationship managers, who have responsibilities for supporting voluntary compliance and acting as a conduit to other parts of the Tax Office.

4.14 Many large clients have been subject to various compliance activity, with eight of the 20 largest wine tax payers subject to risk reviews or audits over the past five years.⁶⁰ These reviews have generally found the large companies to be compliant, although there are sometimes differences in interpretation of wine tax legislation. In this regard, a small number of compliance issues have arisen relating to larger wine tax clients, such as indirect marketing, which the Tax Office has addressed. While there have been only a few issues, the potential revenue impact is significant.

4.15 While the amount of net tax paid by the remaining taxpayers is relatively low, these entities receive the bulk of the producer rebate (\$229 million in 2009–10). The WFA has advocated that the Tax Office undertake compliance activities across the nearly 5000 small and medium-sized entities registered for the wine tax in order to maintain integrity of the tax system.

⁶⁰ Work on three of these eight clients has involved compliance activity conducted at the client's premises.

Managing wine tax compliance

4.16 Wine tax risks are identified and treated via a range of different administrative units within the Tax Office. However, the Excise Alcohol Risk and Intelligence Team has prime responsibility for managing alcohol excise and wine tax risks (see Figure 4.2). The two other main units involved in the management of risk and delivery of compliance activities are GST RIM (Refund Integrity Micro) and Excise Active Compliance.

Figure 4.2

Functional responsibilities for wine tax compliance

Key responsibilities by unit	Key activities
Excise Alcohol Risk and Intelligence	
Manage overall risk environment	Ensure sufficient strategic focus on the wine tax, understand overall risks, set priorities, formulate detailed treatment activities, monitor performance in mitigating risks, and liaise with other relevant areas within the Tax Office.
Mitigate specific wine tax risks	Conduct intelligence scans and other reviews.
Develop active compliance strategy	Determine quantity and possible subjects for the various active compliance activities.
Conduct post-refund integrity checks of wine tax amounts on the BAS	Conduct desk and field reviews.
GST Refund Integrity Micro	
Conduct pre-refund integrity checks of wine tax amounts on the BAS	Identify cases using risk rating engine, send results to Risk and Intelligence for case selection, call selected cases as part of risk reviews, refer for audit or take no further action.
Excise Active Compliance	
Undertake field audits for the wine tax	Conduct audit consistent with Tax Office procedures.

Source: ANAO analysis of Tax Office information.

4.17 Two significant elements of the compliance program for the wine tax are:

- pre-refund integrity checks, examining the accuracy of amounts on the BAS at labels 1C and 1D regarding the wine tax liability and wine tax credits (which may include producer rebate amounts); and
- post-refund integrity activities, mainly involving risk reviews and audits stemming both from RIM referrals and other sources such as

specific intelligence scans and analysis conducted by Risk and Intelligence.

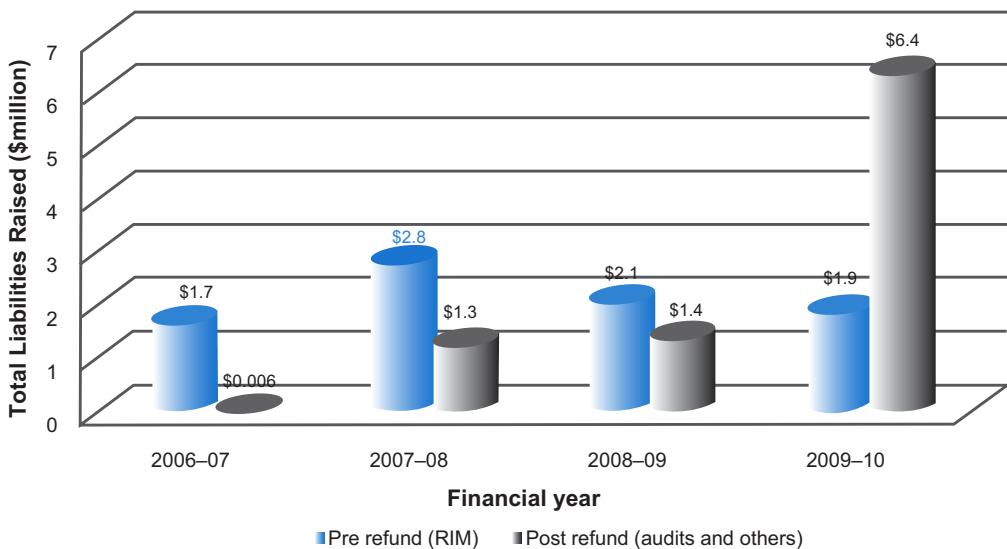
4.18 Historically, BAS pre-refund integrity checks have formed the basis of the compliance approach for the wine tax. These checks have both resulted in liabilities being raised prior to refunds being issued and identified cases for post-refund compliance activity.

4.19 While the overall value of tax liabilities raised by wine tax compliance activities has been relatively low, there is evidence that these activities have identified and appropriately addressed a number of taxpayer compliance risks.

4.20 Figure 4.3 shows that over the four years from 2006–07 and 2009–10, the Tax Office raised \$17.6 million in wine tax liabilities from wine tax compliance activities, which represented less than one per cent of the \$2.7 billion in net wine tax paid over the same period. The amount raised in 2009–10 represented a significant increase over the amounts raised in the three previous years.

Figure 4.3

Tax liabilities raised by wine tax compliance activities, 2006–07 to 2009–10



Source: Information provided by the Tax Office.

Pre-refund integrity checks

4.21 Pre-refund integrity checking includes using a software application to identify significant variations in wine tax paid or rebate claimed.⁶¹ The activity allows the identification of entities with considerably changed commercial circumstances.

4.22 Pre-refund integrity checking for the wine tax is limited to review of only two fields in the BAS. As a result of this basic approach, many entities are selected for review each year for only a moderate success rate in identifying potential compliance risks. For example, in 2009–10 1960 BAS records were referred to Risk and Intelligence for consideration, with 307 verified for inquiry by RIM, resulting in 105 adjustments.

4.23 In its existing form, the use of pre-refund integrity checking as the primary compliance approach is best suited to low-risk situations. As it has become evident that compliance risks for the wine tax are high, the Tax Office has strengthened other compliance approaches. In particular, the Risk and Intelligence team is using more sophisticated data analysis techniques to interrogate the wine tax database, for example to focus on transactions at key points in the commercial cycle, disaggregated by turnover of wine entities. Much of this work has commenced recently and there is scope for the Tax Office to further develop data analysis techniques to help identify entities that may not be complying with wine tax obligations.

4.24 This heightened risk environment also suggests there would be merit in the Tax Office reviewing the effectiveness of wine tax pre-refund integrity processes, including interactions with broader risk and intelligence activities. While the Tax Office regularly analyses the results of pre-refund testing it has not comprehensively reviewed the overall compliance environment since the risk rating for the wine tax was increased.

4.25 Elements of the pre-refund checking for the wine tax that warrant review include:

- formulas within automated compliance programs to determine whether current tests and settings are appropriate;

⁶¹ This computer program, described as a risk rating engine, compares the BAS data to a range of criteria to identify potential non-compliance at the time of lodgement. Where a BAS record does not meet the prescribed criteria, it is referred for further review. Payment may be delayed until the BAS has been reviewed.

- interactions between RIM staff and Risk and Intelligence staff, including the transfer of information resulting from BAS transactional analysis and practices for contacting taxpayers; and
- the potential to better automate some aspects of the process, particularly to support the referral and verification of entities selected by automated processes.⁶²

Post-refund compliance activity

4.26 Post-refund active compliance activities undertaken in respect of individual entities primarily involve risk reviews and audits. A risk review is usually the first step following case selection and is designed to assess whether tax risks arise from a taxpayer's self-assessment. An audit provides for an intensive examination of cases where there is a risk of material underpayment of taxation, to establish the correct liability and/or enforce adherence to obligations.

4.27 Information to identify risks associated with wine tax payers stem from RIM work and a range of other sources including: analysis of specific issues undertaken by Risk and Intelligence staff; knowledge forwarded by Client Relationship Managers, Interpretative Assistance staff and other alcohol excise staff; information from other areas in the Tax Office; referrals from other agencies such as Customs; and information received from wine industry contacts.

4.28 These sources may provide considerable information about wine tax compliance issues, sometimes linked to specific entities. The Tax Office has used this information when framing its active compliance program. However, a problem for the Tax Office in recent years has been that anecdotal stories of widespread non-compliance with wine tax requirements have not been supported by specific tip-offs or other identification of entities actually conducting inappropriate behaviour.

4.29 Nevertheless, the Tax Office has increased its active compliance workload to address the heightened risk environment for the wine tax. Table 4.1 shows that total wine tax compliance activities increased in 2009–10 compared to the previous two years, with a much larger increase in client

⁶² Much of the work to verify an entity involves simple matching and may be suited to further automation. For example, many cases involved Risk and Intelligence staff verifying the wine producer status of an entity.

interaction activities. A larger increase in compliance activities is planned for 2010–11.

Table 4.1

Types of active wine tax compliance activities, 2007–08 to 2010–11

Activity ^A	2007–08	2008–09	2009–10	2010–11
Cases	80	30	87	120
Cases with client interaction	7	7	30	50
Cases with liability impact	3	3	19	NA
Total tax liabilities raised (\$m)	\$1.3	\$1.4	\$6.4	NA

Note: (A) Years 2007–08 to 2009–10 refer to complete cases while 2010–11 refers to scheduled compliance activities.

Source: Information provided by the Tax Office.

Case selection for the active compliance program

4.30 While the Tax Office mitigates many of the risks to the wine tax through education and advice, it also targets specific risks by conducting active compliance activities.

4.31 The selection of cases for active compliance mainly involved analysis by Risk and Intelligence that focussed on:

- recommendations for further attention arising from BAS pre-refund checking;
- results of risk reviews, intelligence scans and other analysis; and
- checks of wine industry listings to identify possible associated producers, and follow-up of private rulings.

4.32 This approach assisted the Tax Office to qualitatively prioritise the active compliance program, giving emphasis to addressing more material risks that have potentially higher value of taxation revenue at risk, as well as covering most of the broad sub-risks specified in the wine tax risk treatment framework.

4.33 The Tax Office has recognised the scope to improve methods for selecting cases for the active compliance program. For example, the *2009–10 Wet Treatment Plan* identified the development of Operational Analytics models to support the application of more sophisticated analytical techniques. The Tax Office should also more explicitly align the analysis to the specific wine tax risks (as outlined in Figure 4.1). This would improve processes for

selecting entities to audit and increase the benefits achieved from the expanded active compliance program for the wine tax.

4.34 In planning active compliance activities, there is also scope for the alcohol area to liaise more closely with teams undertaking broader GST audits. In this regard, the alcohol area advised the ANAO in May 2010 that:

GST do undertake wine tax work from time to time as part of their audits, being issues that are generally only dealt with as part of a broader GST risk audit. GST may not necessarily always let us know when they do have cases with a WET component.

4.35 The ANAO identified two areas where the Tax Office could expand its intelligence gathering to support the formulation of wine tax compliance programs in future years. These areas are:

- international trade or movement of wine, including information of activities undertaken by Customs and other areas of the Tax Office relating to the import and export of wine as cargo and by passengers;⁶³ and
- taxpayer registration, particularly focussing on registration integrity.⁶⁴

Recommendation No.1

4.36 To improve the effectiveness of wine tax compliance activities in light of the heightened risk environment, the ANAO recommends that the Tax Office reviews:

- (a) pre-refund integrity checking of wine tax amounts reported on entities' Business Activity Statements; and
- (b) the annual active compliance program for the wine tax, including coverage of risks associated with international trade in wine.

⁶³ In early 2010, the Excise Risk Forum was presented with a paper in relation to risks associated with exports generally across the Excise Business Line. Subject to work priorities, the Tax Office planned to address wine tax export risks as well as risks associated with importing wine later in 2010–11.

⁶⁴ The Tax Office has conducted projects in 2007 and 2010 to check on the many entities that have registered for the wine tax but never recorded any positive values at labels 1C or 1D of the BAS. The aim was mainly to cleanse the dataset so that it contains only eligible entities.

Tax Office response

4.37 *Agreed.* We continually seek to improve our end-to-end management of wine tax administration and particularly our compliance processes to ensure they remain appropriate, efficient and effective. We will review current tests associated with pre-refund integrity checks for wine tax amounts reported on entities' Business Activity Statements, and also investigate the need for other tests. In addition to this and as part of our end-to-end management of the wine tax, we have already begun work on identifying other potential issues for inclusion in the annual compliance program. This includes cases around international wine trade issues, such as the examination of wine exports and further research into wine imports in the coming year.

Conducting specific compliance activities

4.38 The audit examined the conduct of wine tax active compliance activities, including the extent to which: relevant risks and issues are addressed; sufficient information is collected and analysed; and outcomes are achieved. The ANAO examined:

- 19 of the 20 risk reviews completed in 2009–10;
- 3 of the 10 audits completed in 2008–09 or 2009–10; and
- 3 of the 6 objections completed in 2009–10.

Risk reviews

4.39 All but one of the risk reviews examined were document-based, without the Tax Office contacting the entity under review. As a consequence, these internal reviews were typically reasonably brief, mainly utilising existing information from the BAS and other reviews.

4.40 Of the 19 risk reviews examined, eight contained recommendations to proceed to audit or more detailed field review. These risk reviews demonstrated sufficient analysis to explain the rationale for the recommendation. Further, sufficient documentation of reasons for the decision was available to enable relevant Tax Office staff to adequately consider whether each particular case justified inclusion in a future audit program.

4.41 Seven of the 11 risk reviews that recommended no further action only had limited record of the analysis undertaken and reasons for that decision. A number of these reviews were selected on the basis that the value of the wine tax credits exceeded the amount of wine tax paid. As this characteristic is fairly

common, involving over 1000 wine entities (mainly producers), it would suggest that the selection criteria is problematic.

4.42 The ANAO suggests that the Tax Office adequately documents analysis underpinning risk reviews that recommend no further action. As indicated in paragraphs 4.30 to 4.34, there is also benefit in the Tax Office reviewing case selection processes and practices.

Audits

4.43 Each of the three wine tax audits examined by the ANAO covered key wine tax risks. The audit focus areas covered wine tax amounts payable (including quoting for sales to wholesalers, cellar door sales and applications for own use), the producer rebate and exports.

4.44 To address these risks, the Tax Office collected considerable information from clients for analysis. The ANAO considered this testing was sufficient to enable the Tax Office to reach conclusions about particular risks. Nearly all industry participants contacted by the ANAO that had been involved in audits confirmed that the exercises were thorough and that the auditors had made appropriate effort to understand the relevant details. A smaller number of entities considered that the auditors had sought too much information.

4.45 The three audit reports examined by the ANAO contained clear explanation of the basis for key findings and decisions applied by the Tax Office. However, one report did not clearly map audit findings against each of the specified audit focus areas.

4.46 While the documentation for these audits adequately supported and explained conclusions and decisions, there was variation in the methodology employed and reporting presentation. In this regard, only one of the three audits examined clearly followed audit test procedures specified for the wine tax as part of guidance for auditors. The ANAO suggests that the Tax Office reviews the requirements of the specified test procedures, and revises audit practices or the guidance material as appropriate.⁶⁵ This would help ensure that audits are carried out on the basis of current policy in a consistent manner.

⁶⁵ At the time of audit fieldwork, the document that provides an overview of active compliance methods for conducting wine tax audits was out of date, as it had references to previous rulings and to policies that could not be found via hyperlinks.

4.47 The outcomes of the three audits were: the imposition of an additional \$22 000 in tax and \$42 000 in penalties in total from two entities; and a recommendation to audit related companies in the other audit.

4.48 Consistent with these findings, industry participants contacted by the ANAO that had been subject to audit generally considered the process to be fair, thorough, considered and expert. There were a few areas where participants identified scope for improvement, including: more emphasis on substance rather than form;⁶⁶ two instances where participants considered the auditors' professionalism was lacking (involving a lack of detailed understanding by an auditor in one instance and an overly aggressive attitude in the other); and the length of time taken to complete some audits.

Objections

4.49 Taxpayers have made very few objections to amended wine tax assessments. As shown in Table 4.2, there were 13 such objections in the five years to 2009–10. Nine of these reviews (69 per cent) were disallowed, while four were allowed in part. No objections were allowed in full.

Table 4.2

Outcome of wine tax objections, 2005–06 to 2009–10

Outcome	2005–06	2006–07	2007–08	2008–09	2009–10
Allowed in full	0	0	0	0	0
Allowed in part	0	0	2	1	1
Disallowed	0	2	1	1	5
Total	0	2	3	2	6

Source: Information provided by the Tax Office.

4.50 This low level of allowed objections suggests the Tax Office accurately amended wine tax assessments as part of its review or audit activities.

4.51 One entity subject to an unsuccessful objection advised that while the process was handled well, the letter advising of the outcome could have more clearly specified how the taxpayer could comply with the relevant wine tax requirements in the future. Another entity advised that it had considered

⁶⁶ This mainly referred to the Tax Office focussing very strongly on written documentation underpinning commercial interaction (such as wine distribution contracts) and not sufficiently considering evidence that indicated practices were employed that were very different to clauses in those contracts.

taking the unsuccessful objection to an appellant court but the potential benefits did not justify the cost.⁶⁷

Improving the legislative framework in response to identified shortcomings

4.52 It is sometimes appropriate to resolve wine tax technical issues through requesting legislative amendments rather than administrative arrangements. This requires discussions between the Tax Office, industry representatives, and relevant Australian Government agencies. The Department of the Treasury (Treasury) has responsibility for bringing taxation issues to the attention of the Government.⁶⁸

4.53 The Tax Office has worked with Treasury to implement a number of changes to the Wine Tax Act since its enactment (refer Appendix 2). However, there has been only one change since 1 July 2006.⁶⁹ The issues affecting compliance with the intent of the scheme that have been identified in recent years have not been addressed through legislative amendments.

4.54 While there have been extensive discussions between the Tax Office and Treasury,⁷⁰ the Tax Office has not strongly requested legislative changes in respect of all challenging compliance issues. This is largely because the Tax Office considered the issues were: manageable through administrative and compliance activities; relatively minor; or not possible to be sufficiently quantified to justify the costs of amending legislation.

4.55 The Tax Office has advocated legislative changes to Treasury to address two issues since 2006. These involved blending of wine and indirect marketing arrangements. The Tax Office has clearly explained these issues and relative priority to Treasury, highlighting the possible implications of the legislation not being amended in a timely way.

⁶⁷ The sole wine tax litigation case concerns the sale of wine between related entities. These arrangements bring forward the taxing point and hence result in a lower wine tax liability. The ANAO did not examine this litigation case as it is the only case relating to the wine tax and has not been completed.

⁶⁸ The Tax Office has a responsibility to advise the Government where existing laws have unintended consequences.

⁶⁹ This change was to modify the definition of grape wine product to prevent ready-to-drink style products falling under the Wine Tax Act instead of excise arrangements.

⁷⁰ There are biannual Tax Office Excise and Treasury Liaison meetings, informal contact between the Tax Office and Treasury over wine tax matters, and ongoing communication when specific issues arise.

4.56 In deciding whether to recommend to Government legislative actions on these two issues, Treasury considered it prudent to await the Government's response to the review of *Australia's Future Tax System* (Henry Review).⁷¹ On 2 May 2010, the Government stated it would not implement the report's recommendation to replace the wine tax with a volumetric tax⁷² 'in the middle of a wine glut and where there is an industry restructure underway'.⁷³

4.57 The Tax Office has continued to discuss wine tax administrative issues with Treasury. At a liaison meeting in August 2010, the Tax Office advised of potential new schemes being used to access the producer rebate and the prospect of associated litigation. While the Tax Office and Treasury explored possible legislative amendment options, it was recognised there are many competing legislative priorities across the Treasury portfolio.

4.58 As discussed in paragraphs 4.4 to 4.10, there is concern in the wine industry about inappropriate access to the producer rebate. These issues include blending and further manufacture, changes in contractual arrangements, and virtual producers. The nature of these practices create difficulties for the Tax Office in readily framing a compliance program to separate valid commercial operations from those that may constitute a tax avoidance scheme according to subsection 165-10(2) of the *A New Tax System (Goods and Services Tax) Act 1999*.

4.59 A number of industry representatives contacted during the course of the audit expressed concern about inappropriate access to the producer rebate. They generally considered the best option to address the issue would be to tighten the definition of a wine producer, to exclude practices such as virtual wine makers and multiple blending. While Treasury has previously considered recommending revising wine producer legislative provisions with regard to

⁷¹ The review was announced on 13 May 2008.

⁷² Australia's Future Tax System Review, December 2009, *Australia's future tax system, Report to the Treasurer, Part 1 Overview*. Recommendation 71 was that '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.'

⁷³ The Hon. Kevin Rudd MP, Prime Minister and The Hon. Wayne Swan, MP, Treasurer, Press Release 02 May 2010, *Stronger, Fairer, Simpler: A Tax Plan for our Future*, p. 4.

blending,⁷⁴ more comprehensive changes to the definition of a wine producer could address other practices that potentially provide inappropriate access to the rebate.

4.60 The ANAO also considers there would be benefit in the Department of Agriculture, Fisheries and Forestry (DAFF) participating in discussions on wine tax compliance issues, as it is the Australian Government agency with policy responsibility for the wine industry.⁷⁵ DAFF advised that it has not previously been invited to contribute to the consideration of such issues.

Recommendation No. 2

4.61 To resolve unintended outcomes regarding access to the wine tax producer rebate, the ANAO recommends that the Tax Office advises Treasury on options to clarify the definition of a wine producer for the purposes of the producer rebate in the *A New Tax System (Wine Equalisation Tax) Act 1999*.

Tax Office response

4.62 *Agreed.* The Tax Office will continue to provide Treasury with information regarding wine tax issues, including options for the mitigation of identified risks, such as amendment of the definition of 'producer' to prevent inappropriate access to the producer rebate. Ultimately, any legislative change will be a matter for government.

⁷⁴ In early August 2008, acting on Tax Office advice, the Treasury intended to recommend to the government a legislative solution to blending that defines the minimum percentage of own wine that must be included to receive the rebate and that the producer must hold a state producer licence. On 15 August 2008, Treasury advised it would not recommend a change but would seek greater monitoring from the Tax Office given the concern that blending may become more prevalent following disclosure in WETR 2009/2.

⁷⁵ DAFF has responsibility for domestic and international wine policy and regulatory functions for two wine statutory bodies.

5. Rebate for New Zealand Producers

This chapter examines how the Tax Office gains assurance that New Zealand wine producers are complying with key requirements of the producer rebate scheme.

Introduction

5.1 As discussed in Chapter 1, the producer rebate is available to producers of wine in New Zealand where that wine is subject to dealing in Australia and wine tax is paid.

5.2 The rebate scheme was introduced for New Zealand producers in response to criticisms that the wine rebate available to Australian wine makers would breach Australia's obligations under the *Australia and New Zealand Closer Economic Relations Trade Agreement of 1983*. The main issue was that the then existing policy differentiated on taxation between Australian producers and New Zealand producers.⁷⁶

5.3 To claim the rebate, a New Zealand producer must be registered as a New Zealand participant,⁷⁷ complete and submit a refund application form and include supporting documentation with the claim to show that the wine tax has been paid. This is a significantly different arrangement to the Australian producer rebate scheme, as Australian producers can claim the rebate without having to show evidence that the wine tax has been paid.

5.4 In administering the wine tax, the Tax Office works closely with New Zealand Inland Revenue (NZIR). The relevant NZIR team, on behalf of the Tax Office, provides an important role to review and advise in relation to the wine tax. The Tax Office provides assistance and technical advice to NZIR and pays the rebate directly to the New Zealand producers (see Figure 5.1).

⁷⁶ This would arguably breach article 7 (2) of the Closer Economic Relations agreement with Australia.

⁷⁷ To be registered as a New Zealand producer, New Zealand Inland Revenue conducts a number of checks to verify legitimacy according to information collected from the form *NZIR verification for approval as a New Zealand participant for a wine equalisation tax rebate*. These checks aim to determine whether the entity is a producer of rebatable wine in New Zealand and likely to export that wine to Australia.

Figure 5.1**Main roles and responsibilities of NZIR and the Tax Office in administering the wine tax**

New Zealand Inland Revenue	Australian Taxation Office
Processes applications for registration and claims for payment of the rebate.	Makes the decision on the application and rebate claim.
Recommends to Tax Office whether applications should be approved or rebate allowed.	Advises wine producers and NZIR of decisions.
Escalates complex issues to Tax Office.	Issues payments directly to wine producer.
	Considers complex issues and provides assistance and advice to NZIR.

Source: ANAO analysis of Tax Office information.

5.5 In assessing Tax Office assurance processes relating to the administration of the rebate for New Zealand wine producers, the ANAO examined:

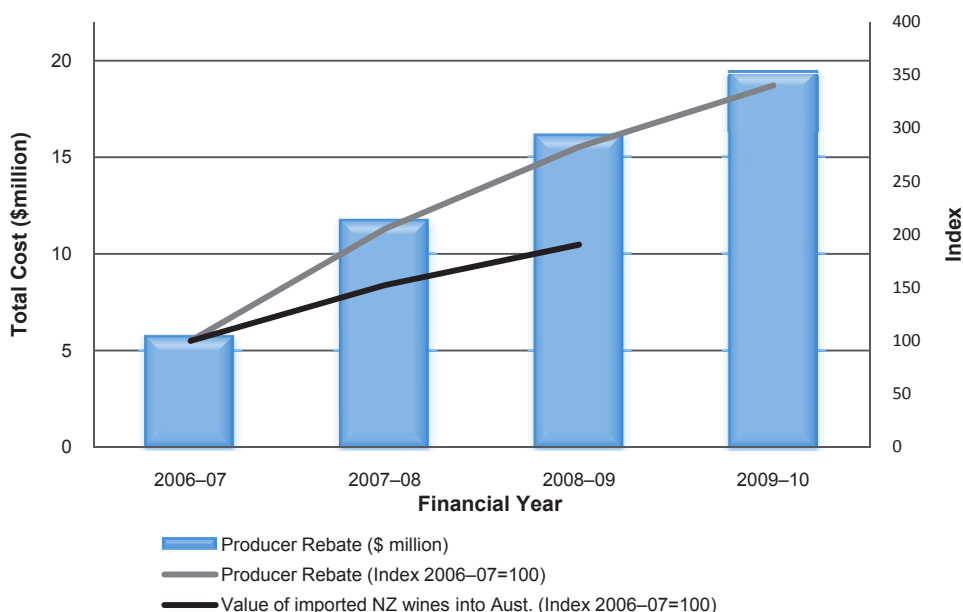
- the growth in the cost of the rebate since its introduction;
- the provision of interpretative assistance and advice; and
- compliance activities.

Growth in the cost of the rebate

5.6 The cost to revenue of extending the rebate to New Zealand wine producers has risen strongly in each year since its introduction, increasing from around \$5 million in 2006–07 to over \$19 million in 2009–10 (as shown in Figure 5.2). The rebate to New Zealand producers represented over nine per cent of the total producer rebate paid in 2009–10.

Figure 5.2

Cost of New Zealand producer rebate, 2006–07 to 2009–10



Source: Information provided by the Tax Office and ABS Catalogue 1329.0 *Australian Wine and Grape Industry, 2009*. The series for the value of New Zealand wine imported to Australia could not be updated for 2009–10 as ABS Catalogue 1329.0 had not been published for 2009–10.

5.7 While the increase in the cost of the rebate was largely due to the increased value of New Zealand wine exported to Australia,⁷⁸ there were also other important factors, as the growth in the cost of the rebate substantially exceeded the growth in the value of wine exports between 2006–07 and 2008–09 (as shown in Figure 5.2). Two further contributing factors were: changes in commercial practices with grape growers becoming wine producers, often by using contract winemakers, and so accessing the scheme; and late registrants and subsequent payment of the rebate for multiple prior years.

⁷⁸ For example, total export of New Zealand wines to Australia almost doubled in two years—from 18.7 megalitres in 2007 to 37.3 megalitres in 2009, many of which were Sauvignon Blanc and Pinot Noir varieties. In 2008–09, one-third of wines produced in New Zealand were exported to Australia.

Interpretative assistance and advice

5.8 NZIR emails an information pack to each New Zealand producer at the time of their approval for participation in the rebate scheme. The pack includes fact sheets, forms, legislation and rulings, and aims to provide sufficient information to support compliance by New Zealand participants.

5.9 New Zealand wine producers can also obtain further information by: visiting the NZIR and Australian Taxation Office websites;⁷⁹ phoning NZIR; or sending a fax, email or other written correspondence to the NZIR wine tax team. Apart from these avenues of information, no marketing is undertaken by NZIR to potential New Zealand rebate claimants.

5.10 NZIR advised that it typically received less than 10 calls per week concerning the New Zealand Producer Rebate, and has had no complaints. Overall, NZIR has no reason to believe that information about the scheme available to New Zealand wine producers is inadequate. NZIR is also satisfied with information products provided by the Tax Office, and the level of service from the Tax Office about technical wine tax issues.

5.11 For its part, the Tax Office is satisfied that New Zealand wine producers are adequately supported with general information and access to technical advice about the rebate scheme.

5.12 There appears some scope, however, to enhance the educational material that supports compliance with the key requirements of the rebate. In particular, given that there has been an increase in New Zealand grape growers using contract winemakers' facilities to enable them to register as wine producers and thus access the rebate, there is merit in raising awareness in New Zealand that the Tax Office has actively addressed similar issues in Australia (for example through Taxpayer Alert 2009/7, as outlined in Figure 3.2).

⁷⁹ Content regarding the wine tax on the NZIR website is linked to the wine tax pages on the Tax Office website.

Compliance activities

5.13 NZIR advised that each claim is checked at the time of the claim, which is after the end of the financial year (30 June). This check involves ascertaining the existence of all required documentation and the accuracy of resulting calculations.⁸⁰ In this way, all claims received are examined on a line-by-line basis and are signed-off by the NZIR wine tax team leader.⁸¹

5.14 The assessment of claims has been successful in detecting errors. For example, in the 2009 income year, over half of all claims made (53 per cent) required some correction or adjustment. The corrections made resulted in a reduction in producer payments totalling over \$300 000.

5.15 Common types of errors made by the New Zealand wine producers have included claiming on shipment rather than when the wine is sold in Australia, currency conversion calculation errors and arithmetic errors. Many of the errors are made by new registrants or by new staff working at more experienced registrants. NZIR resolves these errors by working with these entities to improve compliance, usually through advice provided via an approved email facility.

5.16 As the New Zealand wine producer rebate does not fall within the NZIR quality assurance processes, in 2008–09 NZIR requested that the Tax Office conduct a quality assurance review on 30 New Zealand wine tax clients.⁸² The Tax Office found that all claimants were correctly registered and all currency conversions were correct. It also found that all claims had been correctly checked by NZIR and all substantiation documents were obtained.

⁸⁰ The type of documentation depends on the type of dealing. However, the NZIR checking often covers: New Zealand sales invoices, New Zealand customs export entries, Australian customs import entries, wholesalers statements or Australian tax invoices (to substantiate the wine tax has been charged), and a worksheet showing how the rebate claim has been calculated.

⁸¹ NZIR also conducts audits on rebate recipients for NZ income tax purposes and have not yet encountered any instances where rebate has not been declared as income.

⁸² These 30 clients were randomly selected from the population of 139 different claimants (that made 209 claims in total). The quality assurance review examined registration details, currency conversion, calculations, and the existence of all required substantiation documentation.

5.17 NZIR checks those elements of rebate claim documentation provided within New Zealand, however the only check it conducts on information provided from Australia is the validity of the Australian Business Number of the Australian importer or wholesaler. No systematic checking has been conducted by the Tax Office or NZIR of the validity or accuracy of wholesaler statements, invoices or other documentation that provides evidence that wine tax has been paid, making New Zealand producer eligible for a rebate.

5.18 The Tax Office advised it will consider taking a random sample of claims to verify the validity of Australian information provided on claims of New Zealand rebate recipients, which demonstrates the wine tax was paid.

5.19 The ANAO considers that the integrity of Australian sourced documentation should be subjected to a risk assessment as it is an important criterion for determining rebate eligibility, and a number of Australian wine companies have advised of their concerns that this information may not always be valid. Any such analysis would most likely be better focussed on information provided by small or medium wine wholesalers or importers, rather than the larger companies with established accounting systems and processes.

Recommendation No. 3

5.20 To provide greater assurance about compliance with requirements for receiving the New Zealand wine producer rebate, the ANAO recommends that the Tax Office assesses compliance risks associated with documentation provided by relevant Australian entities to New Zealand wine producers claiming the rebate.

Tax Office response

5.21 *Agreed.* We work closely with NZIR to ensure integrity of the producer rebate for producers of wine in New Zealand. This includes measures which ensure a 100 per cent documentary check by NZIR of claims lodged by New Zealand producers and an additional quality check by the Tax Office. In future we will also undertake a review of a representative sample of documentation provided by relevant Australian entities to New Zealand producers claiming the rebate (for example, wholesaler statements), to ascertain the potential risk associated with this documentation, and determine ongoing activity based on those findings.

Associated producers

5.22 NZIR advised that it has not encountered any abuses in claiming the rebate, and overall considers that compliance is high. This high level of assurance stems from the design of the system, the level of checking and the experience of relevant NZIR staff.

5.23 Despite the concerns of some Australian wine entities, NZIR is also confident that there is a low risk of inappropriate access to the rebate by associated New Zealand producers. NZIR considers that if these practices were occurring they would identify them through background checks and dealings with claimants.

5.24 To attempt to identify any instances of associated producers claiming the rebate, NZIR conducts checks on directors and shareholders at the time an entity applies for registration. NZIR has created an extensive database to assist in identifying shared arrangements or other associations. As part of the registration process, and for each claim for the rebate, producers are required to declare they are not involved in any associated producer arrangements.

5.25 In addition, NZIR staff processing the rebate claims have typically worked in the area since inception, understand the rebate scheme's requirements and processes, and advise they have a sound knowledge of the New Zealand wine industry and its participants.

5.26 NZIR further advised it would action any specific information that Australian wine producers, or other entities, could provide about excessive claiming of the rebate by associated New Zealand wine producers.



Ian McPhee
Auditor General

Canberra ACT

14 December 2010

Appendices

Appendix 1: Tax Office Response to the Audit

Thank you for the opportunity to comment on the ANAO's proposed report on the *Administration of the wine equalisation tax*.

The Australian Taxation Office (ATO) welcomes the recommendations and findings of the report. We are encouraged that the ANAO has recognised our sound governance arrangements and administrative practices and our effective general administration of the wine tax. The report also reflects positively on our major and effective response to addressing the heightened risks of administering the wine tax via interpretative assistance and advice.

The ATO agrees with the three recommendations made in the report and provides the following comments.

Recommendation No 1

To improve the effectiveness of wine tax compliance activities in light of the heightened risk environment, the ANAO recommends that the Tax Office reviews:

- (a) *pre-refund integrity checking of wine tax amounts reported on entities' Business Activity Statements; and*
- (b) *the annual active compliance program for the wine tax, including coverage of risks associated with international trade in wine.*

Tax Office response: Agreed.

We continually seek to improve our end-to-end management of wine tax administration and particularly our compliance processes to ensure they remain appropriate, efficient and effective.

We will review current tests associated with pre-refund integrity checks for wine tax amounts reported on entities' Business Activity Statements, and also investigate the need for other tests.

In addition to this and as part of our end-to-end management of the wine tax, we have already begun work on identifying other potential issues for inclusion in the annual compliance program. This includes cases around international wine trade issues, such as the examination of wine exports and further research into wine imports in the coming year.

Recommendation No 2

To resolve unintended outcomes regarding access to the wine tax producer rebate, the ANAO recommends that the Tax Office advises Treasury on options to clarify the definition of a wine producer for the purposes of the producer rebate in the A New Tax System (Wine Equalisation Tax) Act 1999.

Tax Office response: Agreed.

The Tax Office will continue to provide Treasury with information regarding wine tax issues, including options for the mitigation of identified risks, such as amendment of the definition of 'producer' to prevent inappropriate access to the producer rebate. Ultimately, any legislative change will be a matter for government.

Recommendation No 3

To provide greater assurance about compliance with requirements for receiving the New Zealand wine producer rebate, the ANAO recommends that the Tax Office assesses compliance risks associated with documentation provided by relevant Australian entities to New Zealand wine producers claiming the rebate.

Tax Office response: Agreed.

We work closely with NZIR to ensure integrity of the producer rebate for producers of wine in New Zealand. This includes measures which ensure a 100 per cent documentary check by NZIR of claims lodged by New Zealand producers and an additional quality check by the Tax Office. In future we will also undertake a review of a representative sample of documentation provided by relevant Australian entities to New Zealand producers claiming the rebate (for example, wholesaler statements), to ascertain the potential risk associated with this documentation, and determine ongoing activity based on those findings.

Appendix 2: Summary of Wine Tax Changes

Change and date of effect	Description of change
Repackaging of wine by retailers, section 5-5 of Wine Tax Act, 31 August 2004.	<ul style="list-style-type: none"> Had the effect of making assessable the retail sale of any wine that was placed in containers after the last wholesale sale.
Addition of section 17-37 to claw back wine tax credits for exported wines if re-imported, 31 August 2004.	<ul style="list-style-type: none"> Claws back the wine tax credit if the wine is returned to Australia and is later sold in retail circumstances or there is a later application for own use.
Replacement of the cellar door rebate with the Commonwealth Producer Rebate Scheme, 1 October 2004.	<ul style="list-style-type: none"> The maximum rebate claimable under the cellar door rebate scheme was \$42 000 on a rebateable turnover of \$300 000. Under the Commonwealth Producer Rebate Scheme, producers were able to claim up to a maximum rebate of \$290 000 in the 2004–05 financial year.
Changes to regulations regarding the definition of mead, June 2005.	<ul style="list-style-type: none"> The definition was expanded to allow the addition of herbs, spices and fruit to mead. The original definition excluded many traditional types of meads thus subjecting them to the <i>Excise Act 1901</i>.
Producer Rebate Scheme offered to New Zealand wine producers, 1 July 2005.	<ul style="list-style-type: none"> The producer rebate scheme was offered to registered New Zealand wine producers, allowing them to claim up to a maximum \$290 000 rebate for wine produced in New Zealand and exported to Australia.
Increase in the Producer Rebate Scheme from \$290 000 to \$500 000, 1 July 2006.	<ul style="list-style-type: none"> Maximum amount of rebate claimable raised to \$500 000.
Definition of grape wine product changed, 8 September 2009.	<ul style="list-style-type: none"> Definition of grape wine product was changed to prevent ready-to-drink style products becoming subject to the wine tax instead of excise duty.

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