

A photograph of a lighthouse with a black base, a red middle section, and a white top section, situated on a stone pier extending into the ocean under a blue sky with scattered clouds.

# Viewpoint

Wine

*One implication for exporters is the difference in the exchange rate between the day the customer is invoiced and the day payment is received.*

## Minimising the financial risks of exporting

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### Challenge area

The Australian Wine and Brandy Corporation reported that exports of Australian wine had increased by 14% in the 2004/05 financial year compared to the financial year prior. Whilst Australian wine producers focus on entering new markets overseas, it is also critical they also ensure export transactions in their business will hold up under the scrutiny of the ATO and minimise the risks associated with exporting.

### New perspectives

Foreign currency conversion Australian income tax legislation requires exporters to convert transactions expressed in foreign currency (eg \$US), into Australian dollars for income tax purposes.

One implication for exporters is the difference in the exchange rate between the day the customer is invoiced and the day payment is received.

This difference will give rise to a foreign currency exchange gain or loss. In the case of a gain, this is included in assessable income; in the case of a loss, it becomes an allowable deduction for income tax purposes.

This is contrasted with invoices that are issued in Australian currency, as any changes in the exchange rate affect the purchaser, not the supplier.



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### WET and GST

In general terms, the export of wine is free from WET and GST, assuming exporters meet the relevant conditions under section 38-185 of the GST Act.

The Act defines a supplier to be exporting wine when the supplier enters into a contract with an international carrier or delivers the wine to a carrier engaged by a third party. The most common indicator of this is the appearance of the supplier's name on the transport document as the 'shipper' with the supplier paying for the cost of transportation (even if this is later recouped from the buyer).

The supply will be GST free where the wine is exported within 60 days after the earlier of any payment being received and the supplier issuing an invoice for payment. Generally the ATO will consider the wine has been exported when it has been provided to the international transport carrier within the 60 day period.

Where the exporter supplies the wine to an Australian entity which is not a ship or airline operator, the supply will generally be a taxable supply. However, this supply may be treated as GST-free when the following conditions are satisfied:

- the recipient is not registered for GST;
- the recipient exports the wine from Australia within 60 days;
- the wine has been entered before export within the meaning of s113 of The Customs Act;
- the wine has not been altered or used by the recipient except where it is necessary to prepare the wine for exporting. For example, the ATO considers packaging, wrapping, cleaning, disinfecting, dismantling or testing as 'necessary to prepare' the goods for export if it is not reasonable to export the wine without these activities occurring; and
- the supplier must have sufficient documentation to evidence that the wine has been exported.

### Source of product

If you are an Australian resident, income received from wine exported to a country that has a tax treaty with Australia will generally be taxed in Australia. If there is no tax treaty, the income will be taxed in the country in which the contract was entered into. For example, a contract made on a 'free on board' basis in Australia will usually be deemed to be entered into, and taxed, in Australia.

For information about which countries have a tax treaty with Australia speak to your BDO Kendalls adviser.



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### Derivation of income

Trading income is generally derived when the right to receive the income arises as a debt due and owing. In relation to the sale of wine, the income is generally derived when the wine is delivered. Where the wine is exported to an overseas agent, the income will be derived when the wine is eventually sold by the agent on behalf of the vendor to the purchaser.

### Ownership of inventory - consignment

Where wine on consignment is exported to an overseas agent for sale by the agent on behalf of the consignor, the goods remain trading stock of the consignor.

However, if the wine is delivered to the agent 'on approval' or 'on sale or return' and the consignment involves a sale of the wine to the consignee, the goods are included in trading stock of the consignee at the time of delivery.

### Ownership of inventory - retention of title

When there is a sale of wine on credit terms, ownership of the wine generally passes when the wine is delivered. However, a 'retention of title' ('ROT') clause prevents ownership of the wine passing to the customer until the wine has been paid for. This protects the supplier and means that the supplier can collect the wine in the event that the customer does not pay.

## The way forward

The issues that the supplier must be aware of when relying on a ROT clause are:

- the supplier must be able to identify the particular wine that was covered by an ROT clause;
- the supplier must act within the rights given to them under the clause. This will depend on how the clause is drafted in the related contract;
- the wine collected by the supplier must directly relate to the unpaid invoice. This can be a problem when the wine held by the customer relates to invoices that have been paid, and the goods relating to unpaid invoices have been on-sold;
- the clause may not be valid against an external administrator; and
- the wine will have to be in a collectable condition and not already used in the manufacture of other products (and therefore unable to be removed).



## Related links

[BDO Kendalls Wine](#)

## About the author

Tracey is a Partner in our taxation consulting division where she specialises in transfer pricing and research and development (R&D). Tracey's specialisation has been developed over 16 years within the tax industry including the Australian Taxation Office (ATO), commerce and over eight years with a 'Big Four' accounting firm. Tracey has significant expertise in assisting organisations, particularly in the manufacturing and agribusiness industries to maximise government concessions associated with their investments in innovation. BDO's partner-led approach to client engagements enables her to take a very 'hands on' role in the R&D Tax Concession claim process, providing clients with access to her technical knowledge and practical experience.

## For more information

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