

The Victorian Liquor Subsidy Guidelines

Guidelines for the payment of subsidies under section 177 of the *Liquor Control Reform Act 1998*

Introduction

The Victorian liquor subsidy scheme was introduced in Victoria to offset the impact of a series of Commonwealth tax changes on the Victorian wine industry. Since 1997, the Victorian Government has paid Victorian wine producers a subsidy on certain retail sales (cellar door and mail order sales) and 'applications to own use' of their own product. The Victorian Government has also paid a subsidy to wine makers or wholesalers for the sale of low alcohol wines.

The scheme provides a subsidy of:

- 15 per cent of the notional sale price of cellar door and mail order sales and applications to own use of wines made by Victorian wine producers, and
- 12 per cent of the last wholesale price of low alcohol wine sales made by wine producers or wholesalers in Victoria.

Subsidy payments are made under section 177(1) of the *Liquor Control Reform Act 1998* (LCRA 1998), which authorises the payment of:

amounts determined by the Treasurer to persons who hold, or have held, licences (whether granted under the law of Victoria or of another State or of a Territory) relating to the sale of liquor in respect of which taxes have been paid to the Commonwealth.

While the Treasurer has statutory responsibility for payments and the statutory power to require information needed to make these payments, the Commissioner for State Revenue is responsible for the administration of this scheme.

These guidelines set out the basis on which a subsidy will be paid and the obligations imposed on persons claiming the subsidy. They should be read in conjunction with the Commissioner's Determination under section 179(1) of the LCRA

1998 and the subsidy claim form which contains the Commissioner's requirements as to the records that must be kept.¹

Licensing and Tax Requirements

In effect, section 177(1) establishes two broad statutory requirements:

- the claimant must hold or have held a liquor licence ('the licensing requirement'); and
- the claimant must have paid 'Commonwealth taxes' ('the tax requirement').

The licensing requirement

The licensing requirement ensures that the SRO can be satisfied that the supply for which the subsidy is claimed was duly authorised under a current Victorian licence. In Victoria, sales or uses for which a subsidy may be claimed can occur under the following licences:

- a pre-retail licence, issued under section 12 of the *Liquor Control Reform Act 1998*;
- a wine and beer producer's licence, issued under section 13 of the *Liquor Control Reform Act 1998*;
- a limited licence, issued under section 14 of the *Liquor Control Reform Act 1998*.

Subsidised wholesale sales of low alcohol liquor may occur under a pre-retail licence or a limited licence. Subsidised sales of a wine producer's product may occur under a wine and beer producer's licence or a limited licence.

When claiming a subsidy in relation to particular sales or uses, the licensee must identify the liquor licence(s) under which supply was authorised. A claimant's initial application for a subsidy should be accompanied by a copy of all relevant licences under which eligible sales or uses are claimed.

¹ The claim form is available on the SRO website at sro.vic.gov.au

Guidelines for the payment of subsidies under section 177 of the *Liquor Control Reform Act 1998*

Tax requirements: WET / excise duty must have been paid and the producer rebate on WET must have been exhausted

As the Victorian scheme provides assistance once the relevant Commonwealth tax has been imposed, paid and, if applicable, rebated, the Victorian scheme uses the Commonwealth tax framework to establish the point at which a claim for the Victorian subsidy may first be made. For explanations of WET and excise duty, claimants are referred to the relevant WET and excise legislation Rulings.² For guidance on record-keeping requirements and the information required from claimants see the instructions detailed on the subsidy claim form.

The Victorian liquor subsidy is intended to offset the price impact of WET or excise duty, two mutually exclusive Commonwealth taxes imposed on the sale of certain wine products / alcoholic beverages respectively. WET is imposed on wine sold for consumption in Australia, while excise duty is charged on goods (including certain types of alcoholic beverages) that are manufactured in Australia.³

The subsidy is intended to offset the impact of Commonwealth taxes. Transactions that are WET- exempt, or on which WET is not charged, should therefore not be claimed.

The subsidy should not be claimed for a sale or use on which WET or excise duty has not been charged.

Since 1 October 2004, the Commonwealth has offered a rebate on WET to wine producers. A 'wine producer' (as defined under the WET legislation) is eligible for the Commonwealth producer rebate on eligible, 'rebatable' sales on which WET has been or could be charged. The Commonwealth rebates 29% of the wholesale price or, for retail sales and applications for the

producer's own use, 29% of the notional wholesale selling price.⁴ As at 1 January 2014, the amount of the producer rebate is capped at \$500,000 per annum, which equates to approximately \$1.7 million of rebatable sales.

In relation to transactions on which WET has been paid, the subsidy is only available once the Commonwealth producer rebate has been exhausted.

An entity must have exhausted the Commonwealth producer rebate before that entity makes a claim on the Victorian subsidy. The subsidy should not be claimed for a sale or use for which a Commonwealth rebate has already been claimed.

In some circumstances, a sale or use may be eligible for a subsidy in more than one State. However, only one claim may be made in relation to a particular sale or application for own use, irrespective of the jurisdiction in which it is made.

The subsidy should not be claimed for a sale or use for which a subsidy has already been paid in Victoria or another Australian state or territory.

Additional requirements

The recipient of a subsidy payment must also comply with invoicing and record-keeping requirements.

The invoicing requirement

The Victorian Government requires subsidy recipients to acknowledge the subsidy on its invoices. The subsidy claim form sets out the form that this acknowledgement should take.

Record-keeping obligations

Applicants are required to provide information required to determine claims for payment and to produce any document required for that purpose (section 178(1)). The information required for the determination of subsidy claims is set out in the

² Wine Equalisation Tax Rulings are accessible at <http://www.ato.gov.au>

³ Wine that has an alcohol content of over 1.15 per cent is subject to WET; similarly certain alcoholic beverages with an alcohol content of over 1.15 per cent, such as beer, spirits and some fortified wines, are subject excise duty.

⁴ WETR 2009/2 is accessible at <http://www.ato.vic.gov.au>

Guidelines for the payment of subsidies under section 177 of the *Liquor Control Reform Act 1998*

SRO's subsidy claim form. It is an offence under section 178(2) for an individual or body corporate to give information or produce any document that is false or misleading in a material particular.

The Commissioner is authorised under section 179 to determine 'the class of persons' who must make a record of sales and purchases of liquor. The Commissioner's Determination requires all subsidy recipients to make and keep records of sales and purchases. These records must be kept for 5 years, unless the Commissioner authorises the destruction of records prior to that time. It is an offence under section 179(3) of the LCRA 1998 for an individual or body corporate to fail to make or keep a record as required, or to include in it any information 'that is false or misleading in a material particular'.⁵

The Commissioner is responsible for setting the details and form that these records should take. These requirements are set out in the subsidy claim form.

Special circumstances

A person who does not satisfy all the requirements set out in these Guidelines but who nevertheless believes that they should receive a subsidy in respect of sales on which WET or excise has been paid may submit a claim to the Commissioner of State Revenue outlining:

- the basis on which the claim is made; and
- the circumstances giving rise to the claimant's failure to meet the requirements set out in these Guidelines.

⁵ The statutory maximum penalty for an offence under section 178(2) or 179(3) is 500 penalty units for a body corporate or 100 penalty units for an individual.

