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Ruling Compendium – FTR 2008/1

This is a compendium of responses to the issues raised by external parties to draft Addendum FTR 2008/1DA4 *Fuel tax: vehicle's travel on a public road that is incidental to the vehicle's main use and the road user charge*.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft Addendum.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1.	<i>Air conditioning for passenger comfort:</i> The proposition that fuel used in '...aiding passenger comfort through heating and air-conditioning systems' is fuel used from travel appears to be at odds with the Tribunal decision in <i>Linfox Pty Ltd v. Commissioner of Taxation</i> [2012] AATA 517. Fuel used to power air-conditioning in buses for the comfort of customers is not used to propel the vehicle. Air-conditioning in buses is merely incidental to travel. This is highlighted by the fact that a number of older council buses have been retrofitted with air conditioning to bring all vehicles to the same standard for customer comfort. Air-conditioning was not critical to propelling the vehicles. Fuel used to operate air conditioning systems in buses is for business purposes. It is optional in nature and is not essential to the running, operation or propulsion of a vehicle on a public road. It is used in the course of travelling, but is not for travelling.	The ATO agrees that fuel used in buses and coaches for passenger air-conditioning is not used 'for travelling' for the purposes of subsection 43-10(3) of the <i>Fuel Tax Act 2006</i>. The final addendum reflects this view.

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Issue No.	Issue raised	ATO Response/Action taken
2	<i>Paragraph 23B air conditioning – sleeper cab air conditioning</i> The ATO should amend FTR 2008/1DA4 so that proposed section 23B of FTR 2008/1 makes it clear that the fuel used to power a separate sleeper cab air conditioner is not subject to the road user charge.	Agree with comment. An example has been included in Example 9C in the Addendum.
3	<i>Carbon Charge – ATO view required</i> The ATO should amend FTR 2008/1DA4 or issue a separate ruling to cover the application of the carbon charge to the fuel used off-road in auxiliary equipment. In its ruling, the ATO should find that none of the fuel used by the heavy on-road transport industry, including fuel used off-road for incidental purposes, is subject to the carbon charge under the existing legislation.	Comment noted. The ATO is considering whether further guidance products dealing with the application of the carbon charge on fuel used in heavy vehicles are required.
4	<i>Apportionment – PTO equipment measurement</i> The ATO should amend the fuel tax credits guide and PS LA 2010/3 to make it clear that businesses can calculate the average hourly fuel consumption of their PTO equipment by using tests or estimates based on established engineering procedures.	Comment noted. We are considering whether amendments to PS LA 2010/3 are required. The ATO will consult with industry in the development of any amendments, and of any other appropriate publications, at which time examples of reasonable methodologies for determining the fuel consumption will be canvassed, and where appropriate, included in the appropriate publication.

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Issue No.	Issue raised	ATO Response/Action taken
5	<i>Apportionment – safe harbour percentages</i> The ATO should work with the trucking industry and industry associations to develop a schedule of standard percentages that businesses could use as a safe harbour to apportion the fuel used in their PTO equipment.	Comment noted. FTD 2010/1 expresses the Commissioner's view on methodologies for the determination of total fuel tax credits. At paragraphs 6 to 8 for FTD 2010/1 the Commissioner explains that taxpayers can use any apportionment method that is fair and reasonable in the circumstance. If more than one methodology is available the taxpayer may choose any method that is fair and reasonable in their circumstances. Refer also response at item 4.
6	<i>Apportionment – various other methods</i> The ATO should update the fuel tax credits guide and PS LA 2010/3 to include the following ways of measuring the hours of operation of equipment: hour meters, PTO meters, engine monitoring systems, GPS based vehicle tracking systems and business records such as job sheets, cargo manifests and driver work diaries. The guide and PS LA 2010/3 should continue to stress that the list is not exhaustive and that other appropriate ways of measuring operating hours may be used.	Comment noted. Refer to response at item 4.