

***PGBR 2012/1A1 - Addendum - Product Stewardship (Oil) Benefit: the meaning of the expression 'goods produced from used oil' and the terms 'filtered', 'de-watered', and 'de-mineralised' for the purposes of the Product stewardship for oil benefit scheme.***

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## Addendum

### Product Grants and Benefits Ruling

#### Product Stewardship (Oil) Benefit: the meaning of the expression 'goods produced from used oil' and the terms 'filtered', 'de-watered, and 'de-mineralised' for the purposes of the Product stewardship for oil benefit scheme

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Product Grants and Benefits Ruling PGBR 2012/1 to insert new paragraphs and examples that clarify the Commissioner's view of the meaning of the expression 'manufactured or produced' in relation to the recycling of used oils following the decision in *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99, and to reflect the increase in the rate of the category 8 benefit for oil consumed on or after 1 July 2014 to 8.5 cents per litre under the *Product Stewardship (Oil) Amendment Regulation 2014*.

#### **PGBR 2012/1 is amended as follows:**

##### **1. Paragraph 7**

Omit table and substitute:

| Item | Category   | Amount (cents/l)     |
|------|--|----------------------|
|      |  | Valid at 01 Jul 2014 |
| 1    | Re-refined base oil (for use as a lubricant or a hydraulic or transformer oil) that meets the criteria mentioned in Schedule 1 | 50                   |
| 2    | Other re-refined base oils   | 10                   |
| 3    | Diesel fuels that comply with the <i>Fuel Standard (Automotive Diesel) Determination 2001</i> , as in force from time to time  | 7                    |

**PGBR 2012/1**

| Item | Category  | Amount<br>(cents/l)<br><br>Valid at<br>01 Jul 2014 |
|------|---|--|
| 4    | Diesel extenders:<br>(a) that are filtered, de-watered and de-mineralised; and<br>(b) that, if combined with diesel fuels, would produce a combined fuel that complies with the Determination mentioned in item 3 | 5  |
| 5    | High grade industrial burning oils (filtered, de-watered and de-mineralised)  | 5  |
| 6    | Low grade industrial burning oils (filtered and de-watered)   | 3  |
| 7    | Industrial process oils and lubricants, including hydraulic and transformer oils (re-processed or filtered, but not re-refined)   | 0  |
| 8    | Gazetted oil consumed in Australia for a gazetted use   | 8.5*   |
| 9    | Recycled oil mentioned in item 5 or 6 that has been blended with a petroleum product that meets the criteria mentioned in Schedule 2  | 9.557  |

\* Rate increased from 5.449 to 8.5 cents/l for oil consumed on or after 1 July 2014.<sup>6A</sup>

**2. Paragraph 36**

(a) Omit the last sentence; substitute:

For example, 'High grade industrial burning oils (filtered, de-watered and de-mineralised)' is specified at item 5 in the PSO benefit table.

<sup>6A</sup> Items 3 and 4 of Schedule 1 to the *Product Stewardship (Oil) Amendment Regulation 2014*.

(b) After the paragraph insert:

36A. The Commissioner considers that a recycling process which consists only of filtering and de-watering used oil would not, by itself, result in something that is new or different having a distinctive character or use. Rather, in keeping with the findings of Deputy President Alpines in *Cooper Bros*,<sup>33A</sup> such a process would result in an end product which is 'not relevantly different from the used oil in either its physical characteristics or in its utility'.<sup>33B</sup> Accordingly, although a reference to low grade industrial burning oils remains in item 6 of the PSO benefit table, the Commissioner considers (*post-Cooper Bros*) that an entitlement to a benefit does not arise for these oils.<sup>33C</sup>

***Example 3: goods not produced from used oil (filtering and de-watering)***

36B. *Gianni is an oil recycler. Gianni collects used oil of varying type and quality from multiple sources.*

36C. *Upon arrival at his depot, Gianni drains any free water from the road tanker and then pumps the used oil through a fine filter mesh screen into a large storage tank to remove any solid or semi-solid contaminants.*

36D. *The filtered oil is then de-watered<sup>33D</sup> over time using gravity settling. The de-watering process is concluded following an inspection by Gianni that the water content has reduced to the extent that is commercially marketable. The oil is then tested to ensure, among other things, that the oil is compliant with local council and State environmental legislation and that it satisfies customer specifications when sold as 'low grade burner fuel'.*

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<sup>33A</sup> *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99.*

<sup>33B</sup> *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99 at paragraph 82.*

<sup>33C</sup> A low grade burning oil would not satisfy paragraph (a) of the definition of 'recycled oil' as it would not have been 'produced from used oil', nor would it satisfy paragraph (b) as it would not have been brought back to its original state as base oil (something which a filtering and de-watering process alone could not do). See also footnote 26 in this Ruling.

<sup>33D</sup> See paragraph 54 and paragraphs 115 to 126 of this Ruling for a full discussion of the meaning of 'de-watered'.

36E. *The low grade burner fuel is not a new and different product with a distinctive character or use. The burner fuel 'merely contains less water and other extrinsic impurities than the used oil'.<sup>33E</sup> The burner fuel does not inherently have a different utility to that out of which it was made,<sup>33F</sup> and is 'merely better able to be used for the same purpose'.<sup>33G</sup>*

36F. *Gianni has not produced a good for the purposes of the PSO scheme.*

36G. *The 'low grade burner fuel' is not 'goods produced from used oil' and it therefore does not meet the definition of 'recycled oil' in the PSO Act.<sup>33H</sup> As a consequence Gianni is ineligible for a benefit for the low grade burner fuel.*

36H. *This example can be contrasted with Example 6 below in which used oil is subjected to an additional step of 'demineralisation'. This additional step results in the removal of impurities that are more intrinsic in nature (than the water and other extrinsic impurities removed by filtering and de-watering alone).*

### 3. Paragraph 51

Omit:

in the production of recycled oil, namely high grade industrial burning oils and low grade industrial burning oils as prescribed in the PSO benefit table

Substitute:

involved in the recycling of oil

### 4. Paragraph 52

Omit:

Low grade industrial burning oils are recycled oil produced by filtering and de-watering used oil while high grade industrial burning oils

Substitute:

Low grade industrial burning oils (as prescribed in the PSO benefit table) involve filtering and de-watering used oil only while high grade industrial burning oils (as prescribed in that table)

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<sup>33E</sup> *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99 at paragraph 83.

<sup>33F</sup> *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99 at paragraph 79.

<sup>33G</sup> *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99 at paragraph 82.

<sup>33H</sup> In subsection 6(1).

**5. Paragraph 54**

After the paragraph insert:

***Example 5: goods not produced from used oil (filtering and de-watering)***

54A. *Di Waste Oils Pty Ltd (Di) is a waste management company that collects various used oils, coolants (glycol and water) and other hazardous liquids.*

54B. *These waste liquids are collected from several sites in a single journey. During collection, the waste liquids are pumped into a tanker through a metal screen. By detecting audible changes in pump speed caused by variations in the viscosity of liquid passing through it, the tanker operator switches from one segregated part of the tanker to another to separate the fluids according to the relative viscosity. This is done in order to optimise the separation of less viscous fluids which will be directly disposed of by Di as hazardous waste, from other higher viscosity hydrocarbon liquids.*

54C. *At Di's depot, the tanker's compartments containing the less viscous liquids are disposed of as hazardous waste. The higher viscosity liquids (comprising primarily used oils and hydraulic fluids) are pumped through a filter bag into a large fixed waste oil storage tank. The filter bag removes small particles of wear metal and other solid or semi-solid contaminants.*

54D. *The oil in the waste oil tank is then pumped through a heat exchange where it is heated to a suitable temperature (to reduce the viscosity of the oil which assists with separation) and passed through a centrifuge to remove any remaining solids and water suspended within the oil. The oil is then tested to ensure, among other things, that the oil is compliant with local council and State environmental legislation and that it meets customer specifications. The oil is then sold as 'low grade burner fuel'.*

54E. *Analogous to example 3 above, the low grade burner fuel is not a new and different product with a distinctive character or use. The burner fuel 'merely contains less water and other extrinsic impurities than the used oil'.<sup>33I</sup> The burner fuel does not inherently have a different utility to that out of which it was made,<sup>33J</sup> and is 'merely better able to be used for the same purpose'.<sup>33K</sup>*

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<sup>33I</sup> *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99 at paragraph 83.*

<sup>33J</sup> *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99 at paragraph 79.*

<sup>33K</sup> *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99 at paragraph 82.*

54F. *Di has not produced a good for the purposes of the PSO scheme.*

54G. *Di is not entitled to a benefit as the low grade burner oil does not meet the definition of 'recycled oil' (that is 'goods produced from used oil').*

## 6. Paragraph 63

Omit 'Example 5'; substitute 'Example 3'.

## 7. Paragraph 97

After the paragraph insert:

97A. Prior to the Administrative Appeal Tribunal's decision in *Cooper Bros*, the Commissioner was of the view a recycling process which consists of filtering and de-watering only could result in something new or different having a distinctive character or use. Taking into account the Tribunal's decision and reasoning, the Commissioner no longer considers this to be the case.<sup>50A</sup> It follows that the low grade industrial burner oils referred to in item 6 in the PSO benefit table could not be 'goods produced from used oil'. It further follows that these oils could not meet the definition of 'recycled oil' and that a benefit could not arise for their sale or consumption.<sup>50B</sup>

## 8. Paragraph 98

Omit the last sentence; substitute:

For example, 'High grade industrial burning oils (filtered, de-watered and de-mineralised)' is specified at item 5 in the PSO benefit table.

## 9. Paragraph 101

Omit:

not all filtering and de-watering processes may result in the production of recycled oil

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<sup>50A</sup> Such a process would result in an end product which is 'not relevantly different from the used oil in either its physical characteristics or in its utility' (*Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99 at paragraph 82).

<sup>50B</sup> Note that the low grade burning oil would not satisfy paragraph (b) of the definition of 'recycled oil' as it would not have been brought back to its original state as base oil. See also footnote 26 in this Ruling.

Substitute:

filtering and de-watering processes would not result in the production of recycled oil

**10. Paragraph 103**

Omit:

However, the extent to which used oil is filtered and de-watered by a waste oil collector to produce something new or different having a distinctive character or use from the used oil as collected is a question of fact and degree with each case decided on its merits.

**11. Paragraph 105**

Omit:

in the production of recycled oil, namely high grade industrial burning oils and low grade industrial burning oils as prescribed in the PSO benefit table

Substitute:

involved in the recycling of oil

**12. Paragraph 114**

Omit the paragraph.

**13. Paragraph 125**

Omit 'recycled oil being produced'; substitute 'the recycled oil'.

**14. Paragraph 136**

Omit:

to produce low grade industrial burning oils

Substitute:

for low grade industrial burning oils

**15. Case references**

Insert:

- Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99

This Addendum applies on and from 1 October 2014.

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**Commissioner of Taxation**

1 October 2014

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ATO references

NO: 1-5FK502Q

ISSN: 1149-1583

ATOlaw topic: Product Stewardship (Oil) Scheme