


***FTR 2006/2A2 - Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'mining operations' as defined in section 11 of the Energy Grants (Credit) Scheme Act 2003***

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## Addendum

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### Fuel Tax Ruling

Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'mining operations' as defined in section 11 of the *Energy Grants (Credit) Scheme Act 2003*

This Addendum amends Fuel Tax Ruling FTR 2006/2 to reflect:

- the amendments to the *Fuel Tax Act 2006* as a result of the *Tax Laws Amendment (2009 Measures No. 2) Act 2009*. That Act repealed Division 45 of the *Fuel Tax Act 2006*;
- minor changes as a result of the *Excise Tariff Amendment (Taxation of Alternative Fuels) Act 2011*. That Act amended the commencement date on which certain gaseous fuels will enter the fuel tax credit system; and
- the decision of the Full Federal Court in the *Commissioner of Taxation v. Ostwald Bros Civil Pty Ltd* [2008] FCAFC 99; (2008) 167 FCR 588; (2008) 70 ATR 893 in relation to certain activities undertaken in preparation of a site to enable mining for minerals to commence.

**FTR 2006/2 is amended as follows:**

**1. Paragraph 5**

Omit the second last dot point; substitute:

- during the period 1 July 2006 to 30 June 2009, if you claimed more than \$3 million each financial year in fuel tax credits you met the requirements of the Greenhouse Challenge Plus Programme or another programme determined, by legislative instrument, by the Environment Minister for the purposes of section 45-5 (as at 30 June 2009) of the FT Act,<sup>4A</sup> and

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<sup>4A</sup> For a full discussion on the Greenhouse Challenge Plus Programme and the entitlement to fuel tax credits, see paragraphs 15 to 15B of this Ruling.

## 2. Paragraph 15

Omit the paragraph; substitute:

15. During the period 1 July 2006 to 30 June 2009 your net fuel amounts for tax periods ending in a financial year were not to take into account more than \$3 million of fuel tax credits, unless you were a member of the Greenhouse Challenge Plus Programme (GCPP) or another programme determined by the Minister for the Environment, Heritage and the Arts.<sup>10</sup> If you became a member of the GCPP within four years of the end of the financial year that you were unable to take such fuel tax credits into account, you could claim the entitlements as a decreasing fuel tax adjustment in the tax period you became a member of the GCPP.<sup>10A</sup>

15A. Division 45 of the FT Act has been repealed from 1 July 2009. Consequently, you are no longer required to be a member of the GCPP in order to take into account more than \$3 million in fuel tax credits in your net fuel amount for tax periods ending in a financial year.

15B. In addition, if you were not a member of the GCPP on 30 June 2009 then you are deemed to have been a member of the GCPP on that date.<sup>10B</sup> This means that you can take into account fuel tax credits in excess of \$3 million in your net fuel amount for any financial year between 1 July 2006 and 30 June 2009.<sup>10C</sup> These credits are claimed as a decreasing fuel tax adjustment. The decreasing fuel tax adjustment is attributable to the tax period ending 30 June 2009. You will have four years from the end of that tax period to claim the entitlement.<sup>10D</sup>

## 3. Paragraph 38

Omit: '1 July 2011'; substitute: '1 December 2011'.

## 4. Footnote 21

Omit the footnote; substitute:

<sup>21</sup> Alternative fuels such as LPG, CNG and LNG begin to incur effective fuel tax from 1 December 2011.

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<sup>10</sup> Section 45-5 (repealed as of 1 July 2009).

<sup>10A</sup> Subsection 45-5(2) of the FT Act (as at 30 June 2009).

<sup>10B</sup> Subitems 16(4) and 16(5) of Part 3 of Schedule 7 to the *Tax Laws (2009 Measures No. 2) Act 2009*.

<sup>10C</sup> Subsection 65-5(5) of the FT Act (as at 30 June 2009).

<sup>10D</sup> Section 105-55 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953).

**5. Footnote 22**

Omit the footnote; substitute:

<sup>22</sup> Alternative fuels such as LPG, CNG and LNG.

**6. Paragraph 43**

Omit '1 July 2011'; substitute: '1 December 2011'.

**7. Paragraph 60**

After the paragraph insert:

*Example 5A: Activities excluded under paragraph 11(1)(a) - earthworks for the construction of a rail line and access road*

60A. *Prep the Earth Ltd (Prep) is a sub contractor to a mining company. Prep is engaged to carry out earthworks for the construction of a rail line and access road alongside the rail line.*

60B. *The rail line is to be used to transport coal from the mine site to a port for export. No beneficiation occurs at the port for export nor is the coal subjected to any further processing after it leaves the mine site.*

60C. *The construction of the rail line and access road are considered to be an integral part of the overall infrastructure of the mine development. The construction of the rail line and road are necessary in a commercial and marketing sense to enable mining for minerals to commence. However, they are not activities undertaken in the physical preparation of the mine site as provided for by paragraph 11(1)(a).*

60D. *Diesel fuel acquired by Prep for use in earthworks for the construction of the rail line and access road is not for a qualifying use for an off-road credit under the energy grants scheme. Nor is there an entitlement to a full fuel tax credit for such use.*

60E. *From 1 July 2008, Prep is entitled to a half credit for taxable fuel acquired for use in earthworks for the construction of a rail line and access road alongside the rail line.*

60F. *From 1 July 2012, Prep is entitled to a full fuel tax credit for taxable fuel acquired for use in earthworks for the construction of a rail line and access road alongside the rail line.*

## 8. Paragraph 163

Omit the paragraph; substitute:

163. During the period 1 July 2006 to 30 June 2009 your net fuel amounts for tax periods ending in a financial year were not to take into account more than \$3 million of fuel tax credits, unless you were a member of the Greenhouse Challenge Plus Programme (GCPP) or another programme determined by the Minister for the Environment, Heritage and the Arts.<sup>52</sup> If you became a member of the GCPP within four years of the end of the financial year that you were unable to take such fuel tax credits into account, you could claim the entitlements as a decreasing fuel tax adjustment in the tax period you became a member of the GCPP.<sup>52A</sup>

163A. Division 45 of the FT Act has been repealed from 1 July 2009. Consequently, you are no longer required to be a member of the GCPP in order to take into account more than \$3 million in fuel tax credits in your net fuel amount for tax periods ending in a financial year.

163B. In addition, if you were not a member of the GCPP on 30 June 2009 then you are deemed to have been a member of the GCPP on that date.<sup>52B</sup> This means that you can take into account fuel tax credits in excess of \$3 million in your net fuel amount for any financial year between 1 July 2006 and 30 June 2009.<sup>52C</sup> These credits are claimed as a decreasing fuel tax adjustment. The decreasing fuel tax adjustment is attributable to the tax period ending 30 June 2009. You will have four years from the end of that tax period to claim the entitlement.<sup>52D</sup>

## 9. Paragraph 184

Omit '1 July 2011'; substitute: '1 December 2011'.

## 10. Footnote 71

Omit the footnote; substitute:

<sup>71</sup> Alternative fuels such as LPG, CNG and LNG begin to incur effective fuel tax from 1 December 2011.

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<sup>52</sup> Section 45-5 (repealed as of 1 July 2009).

<sup>52A</sup> Subsection 45-5(2) of the FT Act (as at 30 June 2009).

<sup>52B</sup> Subitems 16(4) and 16(5) of Part 3 of Schedule 7 to the *Tax Laws (2009 Measures No. 2) Act 2009*.

<sup>52C</sup> Subsection 65-5(5) of the FT Act (as at 30 June 2009).

<sup>52D</sup> Section 105-55 of Schedule 1 to the TAA 1953.

**11. Footnote 72**

Omit the footnote; substitute:

<sup>72</sup> Alternative fuels such as LPG, CNG and LNG.

**12. Paragraph 233**

Omit the paragraph; substitute:

233. The phrase 'other activities undertaken in the preparation of a site to enable mining for minerals to commence' is not restricted in meaning to activities similar in nature to the removal of overburden. It is taken to mean any activity that is undertaken in preparing a site to enable mining for minerals to commence. It does not however include activities undertaken once the site has been prepared and the mine is in operation.

233A. Activities "in" the preparation of a site must refer to the actual physical work which is done as part of the preparation of the site to enable mining for minerals to commence. Paragraph 11(1)(a) does not extend to activities "in connection with" or "for the purpose of" such preparation.<sup>97A</sup>

**13. Table to paragraph 540**

(a) first row, fourth column

Omit '1 July 2011'; substitute: '1 December 2011'.

(b) last row, fourth column

Omit:

Biodiesel, ethanol, liquefied petroleum gas, liquefied natural gas and compressed natural gas – full credit of the effective fuel tax paid on the fuel<sup>212</sup>

Substitute:

Liquefied petroleum gas, liquefied natural gas and compressed natural gas – full credit of the effective fuel tax paid on the fuel<sup>212</sup>

**14. Table to paragraph 551**

(a) last row, third column

Omit:

From 1 July 2011 to 30 June 2012 transitional provisions apply to allow a fuel tax credit for acquiring

<sup>97A</sup> *Commissioner of Taxation v. Ostwald Bros Civil Pty Ltd* [2008] FCAFC 99; (2008) 167 FCR 588; (2008) 70 ATR 893.

<sup>212</sup> LPG, CNG and LNG begin to incur effective fuel tax from 1 December 2011.

or manufacture in, or importing into, Australia alternative fuel for off-road business use. From 1 July 2012 a fuel tax credit is available under section 41-5 of the FT Act.

Substitute:

From 1 December 2011 to 30 June 2012 transitional provisions apply to allow a fuel tax credit for acquiring or manufacture in, or importing into, Australia alternative fuel<sup>222</sup> for off-road business use. From 1 July 2012 a fuel tax credit is available under section 41-5 of the FT Act.

## 15. Detailed contents list

Insert:

*Example 5A: Activities excluded under paragraph 11(1)(a) - earthworks for the construction of a rail line and access road*

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## 16. Legislative References

Insert:

- FTA 2006 45-5(2)
- FTA 2006 65-10(2)
- TAA 1953 Sch 1 105-55
- Tax Laws Amendment (2009 Measures No. 2) Act 2009 Sch 7 item 3
- Tax Laws Amendment (2009 Measures No. 2) Act 2009 Sch 7 16(4)

## 17. Case References

Insert

- Commissioner of Taxation v. Ostwald Bros Civil Pty Ltd [2008] FCAFC 99; (2008) 167 FCR 588; (2008) 70 ATR 893

Paragraphs 10, 17, 18 and 25 of this Addendum apply on and from 1 July 2006.

Paragraphs 1, 2, 3, 4, 5, 11, 12, 13 and 24 of this Addendum apply on and from 1 July 2009.

Paragraphs 6, 7, 8, 9, 14, 15, 16, 19, 20, 21, 22 and 23 of this Addendum apply on and from 1 December 2011.

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<sup>222</sup> Alternative fuels such as LPG, CNG and LNG.

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**Commissioner of Taxation**

2 November 2011

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ATO references

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