FTR 2007/1 - Fuel tax: the meaning of 'acquire', 'manufacture' and 'import' in the expression 'taxable fuel that you acquire or manufacture in, or import into, Australia to the extent that you do so for use in carrying on your enterprise' in the Fuel Tax Act 2006

This document has changed over time. This is a consolidated version of the ruling which was published on *3 December 2008*

Fuel Taxation Ruling

Fuel tax: the meaning of 'acquire', 'manufacture' and 'import' in the expression 'taxable fuel that you acquire or manufacture in, or import into, Australia to the extent that you do so for use in carrying on your enterprise' in the *Fuel Tax Act 2006*

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A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

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What this Ruling is about

1. This Ruling explains the meaning of 'acquire', 'manufacture', and 'import' in the expression 'taxable fuel that you acquire or manufacture in, or import into, Australia to the extent you do so for use[1] in carrying on your enterprise' in the *Fuel Tax Act 2006* (FT Act).

[1] The term 'use' does not cover the use of a fuel to make another fuel that can be used as a fuel in an internal combustion engine. See paragraphs 2.35 and 2.36 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006.

2. The Ruling also explains:

- the context of the fuel tax credit system;[2]
- the meaning of 'taxable fuel';[3]
- the meaning of 'Australia';[4] and
- the attribution rules in Division 65 of the FT Act.

3. Unless otherwise stated, all legislative references in this Ruling are to the FT Act.

4. This Ruling does not deal with your entitlement to a fuel tax credit if you acquire or manufacture in, or import into, Australia certain liquefied and compressed gaseous fuels[5] to the extent that you do so for use in carrying on your enterprise. It is intended that these fuels will begin to incur fuel tax from 1 July 2011.

Definitions

5. In this Ruling, unless otherwise stated:

- a reference to:
  - 'Australia' is a reference to Australia as defined in section 110-5;
  - 'taxable fuel' is a reference to taxable fuel as defined in section 110-5;
  - 'for use in carrying on your enterprise' is a reference to 'the extent that you do so for use in carrying on your enterprise' for the purposes of the FT Act;
  - 'you' in relation to provisions of the FT Act applies to entities generally unless its application is expressly limited;[6]
  - the Transitional Act is a reference to the *Fuel Tax (Consequential and Transitional Provisions) Act 2006*;
  - the Excise Act is a reference to the *Excise Act 1901*;
  - the Excise Tariff Act is a reference to the *Excise Tariff Act 1921*;

[2] In this Ruling the scheme established under the FT Act is referred to as the fuel tax credit system. See Appendix 2 of this Ruling for a brief explanation of the fuel tax credit system.
[3] 'Taxable fuel' is defined in section 110-5 of the FT Act.
[4] 'Australia' is defined in section 110-5.
[5] Liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG).
[6] See the meaning of 'you' in section 110-5.

- a 'paragraph', 'item' or 'subitem' of the Excise Tariff is a reference to a 'paragraph', 'item' or 'subitem' of the Schedule to the Excise Tariff Act;
- 'GST' is a reference to the goods and services tax;
- the GST Act is a reference to the *A New Tax System (Goods and Services Tax) Act 1999*;
- the GST regulations is a reference to the A New Tax System (Goods and Services Tax) Regulations 1999;
- 'Customs' is a reference to the Australian Customs Service;
- the Customs Act is a reference to the *Customs Act 1901*;
- the Customs Tariff Act is a reference to the *Customs Tariff Act 1995*;
- a 'Chapter', 'heading' or 'subheading' of the Customs Tariff is a reference to a Chapter, heading or a subheading of Schedule 3 of the Customs Tariff Act;
- a customs duty rate of $0.38143 per litre is a reference to the rate of duty applicable to the fuel at the time of publication of this Ruling;

• it is assumed that:

- if you manufacture taxable fuel you are a licensed manufacturer[7] and the taxable fuel is manufactured at licensed premises in accordance with the conditions specified in your manufacturer's licence granted under Part IV of the Excise Act;[8]
- if you are entitled to a fuel tax credit you meet the requirements that entitle you to the credit and are not disentitled by the disentitlement rules[9] in the FT Act; and
- you are registered or required to be registered for the GST.

6. In this Ruling, a reference to you being entitled to a fuel tax credit if you acquire or manufacture in, or import into, Australia taxable fuel for use in carrying on an enterprise, assumes that the requirements of either item 10 or 11 of Schedule 3 of the Transitional Act are met.

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[7] See definition of 'licensed manufacturer' in section 4 of the Excise Act.
[8] Severe penalties exist under the Excise Act for manufacturing excisable goods without a manufacturer's licence.
[9] The disentitlement rules are set out in Subdivision 41-B.

Class of entities

7. This Ruling applies to the class of entities who acquire or manufacture in, or import into, Australia taxable fuel for use in carrying on an enterprise.

Ruling

Meaning of 'taxable fuel'

8. 'Taxable fuel' is fuel in respect of which duty is payable under the Excise Act and the Excise Tariff Act or the Customs Act and the Customs Tariff Act but does not include fuel covered by:

- item 15, 20 or 21 of the Excise Tariff; or
- any imported goods that would be classifiable to item 15 of the Excise Tariff, if the goods had been manufactured in Australia.[10]

9. Each of the petroleum and liquid hydrocarbon products classifiable to item 10 (subject to the exclusions contained therein) of the Excise Tariff and for which a rate of excise duty is specified in subitem 10.1 to 10.30 of the Excise Tariff is a taxable fuel for the purposes of the FT Act. Appendix 3 of this Ruling sets out the fuels that are classifiable to item 10 of the Excise Tariff and which are taxable fuels as defined in section 110-5.

10. Imported petroleum and liquid hydrocarbon products which, if produced or manufactured in Australia, would be liable to excise duty and for which an equivalent rate of customs duty ($0.38143 per litre) is specified in Chapter 22, 27, 29 or 38 of the Customs Tariff is a taxable fuel for the purposes of the FT Act. Appendix 3 of this Ruling sets out a detailed list of imported fuels that are classifiable to Chapter 22, 27, 29 or 38 of the Customs Tariff and are taxable fuels as defined in section 110-5.

Meaning of 'Australia'

11. You are entitled to a fuel tax credit only if you acquire in Australia, manufacture in Australia or import into Australia, taxable fuel, for use in carrying on your enterprise.

[10] However, you are not entitled to a fuel tax credit for taxable fuel that you acquire, manufacture or import for use in an aircraft if the fuel was entered for home consumption for that use – see section 41-30.

12. For the purposes of the FT Act, the term 'Australia'[11] does not include any external Territory, but includes certain installations (for example, an oil rig) that fall within the meaning of 'installation'[12] in the Customs Act and which are treated as being part of Australia under section 5C of the Customs Act.

13. Installations that are included within the meaning of Australia are:

- a resources installation that is attached to the Australian seabed;[13] and
- a sea installation[14] that is installed in an adjacent area or coastal area that is defined in the Customs Act.

14. You are entitled to a fuel tax credit for taxable fuel that you acquire or manufacture on, or import to, a resources installation or a sea installation that is regarded as being part of Australia and the taxable fuel is for use in carrying on your enterprise.

15. You are not entitled to a fuel tax credit for taxable fuel you acquire or manufacture in, or import into, Australia's external Territories for use in carrying on an enterprise.

Example 1: offshore gas platform deemed to be part of Australia

16. *Connie Oil Explorers Pty Ltd (Connie Oil) carries on an oil and gas exploration and production enterprise. Connie Oil operates an offshore gas platform, (Lucky 1) off the coast of Australia. Lucky 1 is attached to the Australian seabed.*

17. *Lucky 1 is a resources installation that is deemed to be part of Australia for the purposes of the FT Act.*

Meaning of 'acquire'

18. The term 'acquire' is not defined in the FT Act. It therefore takes its ordinary meaning.

19. In the context of the FT Act, the Commissioner considers that the term 'acquire' has the ordinary meaning of to 'get as one's own'.

[11] For the purposes of the FT Act, 'Australia' has the meaning given by section 195-1 of the GST Act.
[12] See section 4 of the Customs Act for the definition of 'installation'.
[13] Section 4 and subsection 5C(1) of the Customs Act.
[14] Section 4 and subsection 5C(1) of the Customs Act.

20. To 'get as one's own' requires property in or ownership of the relevant taxable fuel to pass from one entity to another entity, or alternatively, that ownership is conferred because the fuel has been obtained by an entity as its own.[15]

21. You acquire taxable fuel if:

- you purchase the fuel;
- the fuel is gifted to you; or
- you get the fuel as your own by any other means (other than manufacture or import). This necessarily means that you get ownership of, or proprietary rights in respect of, the fuel.

22. Whether you get ownership of, or proprietary interest in, fuel will depend on all the facts and circumstances of each case. It will be necessary to examine the surrounding circumstances, together with any relevant documentation, including any written agreement.

Right or licence to use taxable fuel

23. If you acquire a right or a licence to use another entity's fuel in your plant or equipment in performing work for that entity, you do not acquire taxable fuel for the purposes of the FT Act.[16] The mere grant of a right or licence to use the fuel does not result in you obtaining a proprietary interest in, or ownership of, the fuel.

Example 2: no acquisition of taxable fuel

24. *Leo Offshore Oil Ltd (Leo Offshore) operates an offshore oil platform (Naomi 1) which is attached to the Australian seabed. Leo Offshore charters a support vessel from Sound Marine Enterprises Pty Ltd (Sound Marine) to supply fuel and water to Naomi 1 and to remove waste from the platform.*

25. *Under the charter agreement Leo Offshore agrees to provide the support vessel with diesel fuel from its onshore supply base for use in the transportation of the fuel, water and waste to and from Naomi 1. Under the agreement, Sound Marine does not obtain any proprietary interest in the fuel.*

26. *Sound Marine does not acquire the fuel that Leo Offshore allows Sound Marine to use in the propulsion of the support vessel. For the purposes of the FT Act, this fuel is acquired by Leo Offshore for use in carrying on its enterprise.*

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[15] See *Campbells Hardware & Timber Pty Ltd v. Commissioner of Stamp Duties (Qld)* (1996) 32 ATR 472; 96 ATC 4348; [1996] QSC 60, *McDonald's Australia Holdings Ltd & Anor v. Commissioner of State Revenue (Qld)* (2004) 57 ATR 395; 2004 ATC 4970; [2004] QSC 357 and *John Mackintosh and Sons Ltd v. Baker's Bargain Stores (Seaford) Ltd* [1965] 3 All ER 412.

[16] *Re The Taxpayer v. Commissioner of Taxation* [2006] AATA 967. Note that the taxpayer has lodged an appeal to the Federal Court.

27. *Leo Offshore is entitled to a fuel tax credit for the taxable fuel they provide to Sound Marine for use in the propulsion of the support vessel provided all eligibility requirements are met. Sound Marine is not entitled to a fuel tax credit in respect of this fuel.*

Packaging of taxable fuel by a contractor

28. You are entitled to a fuel tax credit for taxable fuel that you acquire for packaging in containers of 20 litres or less[17] for the purpose of making a taxable supply of fuel for use other than in an internal combustion engine.[18]

29. However, you do not acquire taxable fuel if you enter into an arrangement with another entity to package their taxable fuel to enable them to make a taxable supply of the fuel for use other than in an internal combustion engine.

Example 3: no acquisition of taxable fuel for packaging

30. *Braden Enterprises Ltd (Braden) is a wholesaler of chemical products. Braden is contracted to supply a national hardware chain with mineral turpentine in containers of one litre bottles for retail sale. Braden acquires a quantity of mineral turpentine to repackage for the purpose of making a taxable supply of the fuel for use other than in an internal combustion engine.*

31. *Braden outsources the packaging of the mineral turpentine to Chemical Bottlers Ltd (Bottlers).*

32. *Braden provides Bottlers with a bulk quantity of mineral turpentine for packaging. Bottlers packages the mineral turpentine and returns it to Braden in one litre bottles.*

33. *Bottlers does not acquire taxable fuel being mineral turpentine, for the purposes of packaging it for Braden. The ownership of the fuel remains with Braden.*

34. *Bottlers is not entitled to a fuel tax credit for the fuel that it packages on behalf of Braden.*

35. *Braden is entitled to a fuel tax credit for the mineral turpentine it has acquired for packaging.*

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[17] See subregulation 41-10(2) of the Fuel Tax Regulations 2006.
[18] See subsection 41-10(2). The taxable fuel must be kerosene, mineral turpentine, white spirit or any other fuel prescribed by the regulations.

When do you acquire taxable fuel?

Acquisition of taxable fuel by purchase

36. If you purchase an ascertained or specific amount of taxable fuel in a deliverable state, you acquire it when it is intended that property in the fuel is to pass to you. This is ordinarily when the contract for the sale and purchase of the fuel is made.

37. If you enter into a contract for the sale and purchase of taxable fuel which, at the time of contract, is unascertained, you acquire the fuel when, in the absence of a contrary intention, the fuel in a deliverable state is unconditionally appropriated to the contract.

38. If you prepay for fuel to be delivered to you in the future, you acquire the fuel when the fuel is ascertained as belonging to you, for example, if it is held in a special storage tank by the supplier and all the fuel in the tank is set aside for delivery to you.

Example 4: pre-paid fuel – fuel acquired when ascertained

39. *Mighty Mining Corporation (Mighty Mining) has an agreement with Finer Fuels Company Ltd (Finer Fuels) for the purchase of one million litres of diesel fuel to be delivered as and when required over a six month period. Mighty Mining makes a pre-payment for all the fuel.*

40. *Under the arrangement, Mighty Mining informs Finer Fuels of its fuel requirement at the end of each month. When this is known, Finer Fuels takes the amount of fuel from its bulk storage facility and delivers it to Mighty Mining's fuel tank at the mine site.*

41. *Mighty Mining acquires a quantity of fuel once it is delivered to its fuel tank at the mine site. This is when the fuel for Mighty Mining is ascertained.*

Example 5: acquisition of fuel by purchase

42. *Tim is a sole proprietor and registered for GST. Tim carries on a foundry business.*

43. *Tim purchases heating oil for use as a burner fuel in his business. Tim sources the fuel from his local distributor who delivers it to Tim's storage tank at the foundry.*

44. *Tim acquires the heating oil when it is delivered to his storage tank as title (or proprietary interest) in the fuel passes on the delivery of the fuel.*

Acquisition of taxable fuel by way of gift or by other means (other than manufacture or import)

45. If fuel is gifted to you or you get fuel as your own by any other means (other than manufacture or import), you acquire it when it is delivered to you. This is when it is intended that property in the fuel passes to you.

Attribution rules for fuel tax credits for taxable fuel you acquire

46. A fuel tax credit for taxable fuel that you acquire in Australia for use in carrying on your enterprise is attributable to the same tax period that an input tax credit is attributable to for the creditable acquisition of the fuel, or would have been attributable to if the fuel had been a creditable acquisition under the GST Act.[19]

Example 6: attribution of the fuel tax credit for taxable fuel you acquire

47. *Mullins Fishing Enterprises Ltd (Mullins) operates a commercial fishing enterprise. Mullins is a monthly business activity statement (BAS) lodger who accounts for GST on an accruals basis.*

48. *On 15 January 2007, Mullins purchases 50,000 litres of diesel fuel for use in its fishing vessels. On 22 January 2007, Mullins receives an invoice (which is a tax invoice) for the purchase of the diesel fuel from its supplier.*

49. *Mullins attributes the input tax credit for the creditable acquisition of the diesel fuel to the tax period ending 31 January 2007 as this is the tax period in which Mullins holds a tax invoice for the creditable acquisition of the fuel.*

50. *Mullins attributes the fuel tax credit for the acquisition of the diesel fuel to the tax period ending 31 January 2007.*

Meaning of 'manufacture'

51. For the purposes of the FT Act, the term 'manufacture' is not a technical term which is capable of a precise definition of universal application to each and every process involved in the production or making of taxable fuel.

52. Whether or not taxable fuel is 'manufactured' will often be a question of fact and degree requiring an exercise of judgment in relation to different processes involved in the making of different taxable fuels.

[19] Subsection 65-5(1).

53. The meaning of the term 'manufacture' must be determined in the context of the expression 'taxable fuel that you … manufacture in … Australia'. In that context, as the manufacture must be of 'taxable fuel' as defined in section 110-5, in the Commissioner's view, 'manufacture' means the making of fuel that is included as excisable goods in item 10 of the Excise Tariff.

54. You manufacture taxable fuel for the purposes of the FT Act if you are taken to manufacture fuel for the purposes of the Excise Act.

55. For example, you manufacture taxable fuel if you undertake any processes by which you:

- produce stabilised crude petroleum oil and petroleum condensate for use as fuel in certain circumstances;[20]
- produce topped crude petroleum oil;
- refine stabilised or topped crude petroleum oil and petroleum condensate to produce different kinds of fuels;
- blend one or more products specified in paragraphs 10(a) to 10(f) of the Excise Tariff (with or without other substances) other than blends covered by subsection 77H(1) or (3) of the Excise Act;
- denature ethanol for use as a fuel in an internal combustion engine;
- produce certain liquid hydrocarbon products by recycling waste oil;
- produce biodiesel by chemically altering vegetable oils or animal fats (including recycled oils from these sources) to form mono-alkyl esters; or
- produce any other fuel that is a taxable fuel.

56. If you undertake more than one process by which you manufacture taxable fuel, each of those processes may, in their own right, constitute manufacture of taxable fuel.[21]

Example 7: manufacture of taxable fuel - refining of stabilised crude petroleum oil

57. *Kuhans Refining Enterprises Ltd (Kuhans) is an oil refiner. Kuhans is licensed under Part IV of the Excise Act to manufacture petroleum products.*

[20] See paragraphs 195 to 200 of this Ruling for a full explanation on the production of stabilised crude petroleum oil and petroleum condensate.
[21] The meaning of 'manufacture' in section 4 of the Excise Act includes all processes in the manufacture of excisable goods.

58. *Kuhans produces petrol, diesel, fuel oil and heating oil by refining stabilised crude petroleum oil it acquires as refinery feedstock.*

59. *By refining the stabilised crude petroleum oil to produce these fuels, Kuhans manufactures taxable fuel for the purposes of the FT Act.*

60. *However, Kuhans is entitled to a fuel tax credit only for taxable fuel that it manufactures for use in carrying on its enterprise.*[22] *Kuhans is not entitled to a fuel tax credit for stabilised crude petroleum oil it acquires for refinery feedstock as this is not a taxable fuel.*

Example 8: manufacture of taxable fuel – production of biodiesel

61. *Fatburner Enterprises Ltd (Fatburner) is a manufacturer of biodiesel. Fatburner is licensed under Part IV of the Excise Act to manufacture biodiesel.*

62. *Fatburner produces biodiesel by chemically altering vegetable oils or animal fats to form mono-alkyl esters. This process is normally known as transesterification.*

63. *In producing biodiesel by this process, Fatburner manufactures taxable fuel for the purposes of the FT Act.*

64. *However, Fatburner is entitled to a fuel tax credit only for taxable fuel that it manufactures for use in carrying on its enterprise.*

Example 9: manufacture of taxable fuel – a blend of diesel and biodiesel

65. *Connelly Fuel Enterprises Ltd (Connelly Fuel) is licensed under Part IV of the Excise Act to manufacture various fuel blends.*

66. *Connelly Fuel sources diesel and biodiesel from a licensed excise manufacturer. Excise duty has not been paid on the diesel and biodiesel. Connelly Fuel blends the diesel and biodiesel at its licensed premises.*

67. *The blending of diesel and biodiesel by Connelly Fuel is manufacture for the purposes of the FT Act. Connelly Fuel is entitled to a fuel tax credit only for taxable fuel that it manufactures for use in carrying on its enterprise.*[23]

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[22] Fuel for use (other than in an internal combustion engine) in the refining of stabilised crude petroleum oil and petroleum condensate is not a taxable fuel.

[23] The amount of the fuel tax credit is worked out under Division 43 of the FT Act. For that purpose the amount of effective fuel tax takes into account certain grants and subsidies. For example, the fuel tax amount is reduced by the cleaner fuels grant for biodiesel.

Example 10: not manufacture of taxable fuel – a blend of two duty paid fuels

68. *Carlene Fuel Enterprises Ltd (Carlene Fuel) is a fuel distributor. Carlene Fuel produces a blend of diesel and kerosene (known as 'winter mix') formulated for use in internal combustion engines in cold weather. Carlene Fuel is not licensed to manufacture under Part IV of the Excise Act.*

69. *Carlene Fuel uses only duty paid diesel and duty paid kerosene in the blend. The blending of the fuel is not manufacture of taxable fuel as the blend is excluded from excise manufacture by section 77H of the Excise Act as duty has been paid at the same rate on the diesel and kerosene.*

70. *The blending of duty paid diesel and duty paid kerosene is not manufacture of taxable fuel for the purposes of the FT Act.*

Attribution rules for fuel tax credits for taxable fuel you manufacture

71. A fuel tax credit for taxable fuel that you manufacture in Australia for use in carrying on your enterprise is attributable to the tax period[24] in which the fuel was entered for home consumption[25] (within the meaning of the Excise Act).

Example 11: attribution of the fuel tax credit for taxable fuel you manufacture

72. *Warren Oil Refiners Ltd (Warren Oil) is a licensed excise manufacturer of refined petroleum products being lubricants, greases and diesel fuel. Warren Oil is also a monthly BAS lodger.*

73. *Warren Oil only manufactures the diesel fuel for use in carrying on its enterprise, namely for use in its road tankers.*

74. *Warren Oil is required to enter for home consumption and pay excise duty on the diesel fuel for use in carrying on its enterprise. On 15 January 2007, Warren Oil enters for home consumption 2,000 litres of diesel fuel for use in its enterprise.*

75. *Warren Oil attributes the fuel tax credit to the tax period ending 31 January 2007. This is the tax period in which the diesel fuel is entered for home consumption.*

[24] See subsection 65-5(3).
[25] See sections 54, 58 and 61C of the Excise Act.

Meaning of 'import' into Australia

76. For the purposes of the FT Act, the Commissioner considers that taxable fuel is typically imported into Australia when the fuel is brought into an Australian port or airport with the intention of being unloaded in Australia.[26]

77. It is not necessary that fuel be entered for home consumption within the meaning of the Customs Act for it to be imported into Australia.

78. The term 'import' in the FT Act does not include an advance entry of goods.[27]

Example 12: taxable fuel imported into Australia

79. *Marando Oils Ltd's (Marando Oils) oil tanker, the M/T Crudze, arrives into the Port of Melbourne (the Port) with one million litres of diesel oil. Marando Oils intends to unload 750,000 litres of diesel oil at a petroleum refinery at the Port. The balance of the diesel oil is intended for a refinery in Auckland, New Zealand.*

80. *Marando Oils imports 750,000 litres of diesel oil into Australia. The diesel oil remaining on board the M/T Crudze is not imported into Australia as it is not intended to be unloaded in Australia.*

Example 13: advance entry for home consumption of taxable fuel

81. *Further to Example 12, prior to the M/T Crudze arriving into the Port, Marando Oils lodges an entry for home consumption in advance for the 750,000 litres of diesel oil it intends to unload at the Port.*

82. *Marando Oils does not 'import' the 750,000 litres of diesel oil when it lodges the entry for home consumption. The diesel oil is imported when the M/T Crudze arrives in the Port.*

Attribution rules for fuel tax credits for taxable fuel you import into Australia

83. Fuel tax credits for taxable fuel that you import into Australia for use in carrying on your enterprise are attributable to the same tax period that an input tax credit is attributable to for the creditable importation of the fuel, or would have been attributable to if the fuel had been a creditable importation under the GST Act.[28]

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[26] See paragraphs 270 to 277 of this Ruling for a full explanation on the meaning of 'import' into Australia.
[27] See paragraphs 278 to 285 of this Ruling for a full explanation of 'entering goods for home consumption'.
[28] Subsection 65-5(1).

Example 14: attribution of the fuel tax credit for taxable fuel you import

84. *V's Enterprises Ltd (V's) is a chemical manufacturer. V's imports mineral turpentine from Singapore for the purpose of packaging it into one litre containers for retail sale. V's is a monthly BAS lodger.*

85. *V's orders 10,000 litres of mineral turpentine from its overseas supplier and arranges for the turpentine to be shipped to Australia on the M/T Crudze No. 2.*

86. *The ship arrives at the Port of Adelaide on 8 January 2007. Upon the arrival of the ship, V's completes the Customs formalities for the entry for home consumption of the turpentine and pays on the same day the relevant customs duty and the GST on the taxable importation of the turpentine that it makes.*

87. *V's is entitled to an input tax credit for the creditable importation it makes. V's is also entitled to a fuel tax credit for mineral turpentine it imports for packaging into one litre containers for retail sale.*

88. *V's attributes its fuel tax credit for the mineral turpentine it imports into Australia to the same tax period that the input tax credit is attributable to for the creditable importation of the turpentine. This is the tax period ending 31 January 2007.*

Attribution of the fuel tax credit for taxable fuel entered for warehousing

89. If you import taxable fuel for use in carrying on your enterprise and you enter the fuel for warehousing, you attribute your fuel tax credit to the tax period in which the fuel is entered for home consumption ex-warehouse. This is the tax period in which you attribute your input tax credit for the creditable importation of the fuel.

Example 15: attribution of the fuel tax credit for taxable fuel entered for warehousing

90. *Drawing on the facts in Example 14, V's decides to enter the mineral turpentine for warehousing rather than for home consumption.*

91. *On 8 January 2007, V's completes the Customs formalities for the entry for warehousing of the mineral turpentine and stores the turpentine in its licensed customs warehouse.*

92. *On 2 February 2007, V's enters 10,000 litres of mineral turpentine for home consumption ex-warehouse and on the same day pays the relevant customs duty and the GST on the taxable importation of the turpentine.*

93. *V's is entitled to an input tax credit for the creditable importation it makes. V's is also entitled to a fuel tax credit for the mineral turpentine it imports into Australia.*

94. *V's attributes the fuel tax credit for the mineral turpentine it imports into Australia to the same tax period that the input tax credit is attributable to for the creditable importation of the turpentine. This is the tax period ending 28 February 2007.*

Attribution of the fuel tax credit for taxable fuel entered for warehousing and subsequently sold under bond[29]

95. If taxable fuel has been imported for warehousing by another entity and you purchase the fuel and enter it for home consumption, for the purposes of the FT Act, you do not import the fuel but acquire it. However, you attribute your fuel tax credit to the tax period to which you attribute the input tax credit for the creditable importation.

96. This is because for GST purposes you are treated as the importer of the fuel and you are entitled to an input tax credit on the basis that you have made a creditable importation of the fuel.

Example 16: attribution of the fuel tax credit for taxable fuel entered for warehousing and subsequently sold under bond and used in carrying on your enterprise

97. *Minas Fuels Enterprises Ltd (Minas) is an importer and distributor of diesel fuel. Minas has a licensed customs warehouse which allows it to store imported fuel without entering the fuel for home consumption.*

98. *Mega Truck Transport Enterprises Ltd (Mega Truck) is a transport contractor. Mega Truck contracts Minas to supply diesel fuel for use in carrying on its enterprise. The terms of contract specify that Mega Transport will purchase the fuel in 'bond' and enter the fuel for home consumption ex-warehouse to effect delivery of the fuel.*

99. *Mega Truck orders from Minas and enters for home consumption ex-warehouse 5,000 litres of the diesel fuel on 15 January 2007 and pays the relevant customs duty and GST.*

100. *For GST purposes, Minas is no longer the importer of the fuel as Mega Truck makes a taxable importation of the diesel fuel when it enters the fuel for home consumption ex-warehouse.*

101. *Mega Truck is entitled to an input tax credit for the creditable importation it makes. Mega Truck's fuel tax credit for the diesel fuel is attributable to the same tax period that the input tax credit is attributable to for the creditable importation of the fuel. This is the tax period ending 31 January 2007.*

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[29] The expression 'under bond' is used to describe imported goods that are subject to customs control and have not been delivered for home consumption.

Date of effect

102. This Ruling applies from 1 July 2006.

103. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 to 77 of Taxation Ruling TR 2006/10).

Commissioner of Taxation
12 September 2007

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

104. The meaning of the terms 'acquire', 'manufacture' and 'import' must be determined having regard to the text of the legislation, the context in which those terms appear and the policy of the law.

The approach to interpreting the meaning of 'acquire', 'manufacture' and 'import'

105. In Australia, the modern approach to the interpretation of statutes includes, in conjunction, consideration of the words of the provision, the context of those words within the Act and the policy of the law as gleaned from extrinsic material.

106. The High Court has considered the relevance of context both in a broad sense and in relation to the text of specific provisions within an act.

107. In *CIC Insurance Ltd v. Bankstown Football Club Ltd*[30] (*CIC Insurance*) in their joint judgment, Brennan CJ, Dawson, Toohey and Gummow JJ said:

> Moreover, the modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy. ... Further, inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent.[31]

108. The High Court's approach in *CIC Insurance* was referred to by the late Justice Hill in the GST case *HP Mercantile Pty Ltd v. Commissioner of Taxation*[32] (*HP Mercantile*). His Honour said:

> It is clear, both having regard to the modern principles of interpretation as enunciated by the High Court in cases such as *CIC Insurance Ltd v. Bankstown Football Club Ltd* (1997) 187 CLR 384 and s 15AA of the *Acts Interpretation Act 1901* (Cth) that the Court will prefer an interpretation of a statute which would give effect to the legislative purpose, as opposed to one that would not.

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[30] *CIC Insurance Ltd v. Bankstown Football Club Ltd* (1997) 187 CLR 384; (1997) 141 ALR 618; 71 ALJR 312.
[31] *CIC Insurance Ltd v. Bankstown Football Club Ltd* (1997) 187 CLR 384 at 408; (1997) 141 ALR 618 at 634-635; (1997) 71 ALJR 312 at 324.
[32] *HP Mercantile Pty Ltd v. Commissioner of Taxation* (2005) 219 ALR 591; (2005) 143 FCR 553; [2005] ATC 4571; (2005) 60 ATR 106.

> This requires the Court to identify that purpose, both by reference to the language of the statute itself and also any extrinsic material which the Court is authorised to take into account.[33]

109. Further, as has been noted by Kirby J in *The Queen v. Lavender*[34] it is important to take a consistent approach to issues of statutory interpretation and not 'pluck out considerations of 'context', 'purpose' and 'history' arbitrarily, so as to sustain the outcomes of interpretation… in some, but not other cases.'[35]

110. In interpreting the terms 'acquire', 'manufacture' and 'import' in the FT Act, close attention should be given to the text of the provisions. As the High Court noted in the judgment of Gleeson CJ, Gummow, Hayne and Heydon JJ in *Stevens v. Kabushiki Kaisha Sony Computer Entertainment:*[36]

> No particular theory or 'rule' of statutory interpretation, including that of 'purposive' construction, can obviate the need for close attention to the text and structure of [the relevant part of the legislation].[37]

111. Having regard to the above principles, the terms 'acquire', 'manufacture' and 'import' are to be interpreted in a manner that gives effect to the object and purpose of the FT Act.[38] This will require consideration of the text of the relevant provisions of the FT Act, the context of the words in those provisions and the policy intent of the FT Act.

Meaning of 'taxable fuel'

112. The term 'taxable fuel' is defined in section 110-5 as:

> ***taxable fuel*** means fuel in respect of which duty is payable under:
>
> (a) the *Excise Act 1901* and the *Excise Tariff Act 1921*; or
>
> (b) the *Customs Act 1901* and the *Customs Tariff Act 1995*;
>
> but does not include fuel covered by:
>
> (c) item 15, 20 or 21 of the Schedule to the *Excise Tariff Act 1921*; or

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[33] *HP Mercantile Pty Ltd v. Commissioner of Taxation* (2005) 219 ALR 591 at 602; (2005) 143 FCR 553 at 564; [2005] ATC 4571 at 4579; (2005) 60 ATR 106 at 116.
[34] *The Queen v. Lavender* (2005) 222 CLR 67; (2005) 218 ALR 521; (2005) 79 ALJR 1337; (2005) A Crim R 458.
[35] *The Queen v. Lavender* (2005) 222 CLR 67 at 89; (2005) 218 ALR 521 at 538; (2005) 79 ALJR 1337 at 1350; (2005) A Crim R 458 at 477.
[36] *Stevens v. Kabushiki Kaisha Sony Computer Entertainment* (2005) 224 CLR 193; (2005) 221 ALR 448; (2005) 79 ALJR 1850.
[37] *Stevens v. Kabushiki Kaisha Sony Computer Entertainment* (2005) 224 CLR 193 at 206; (2005) 221 ALR 448 at 455; (2005) 79 ALJR 1850 at 1856.
[38] See discussion of section 15AA of the *Acts Interpretation Act 1901* per Ryan J in *Marsh & Anor v. FC of T* (1985) 60 ALR 347 at 372; (1985) 16 ATR 577 at 599-600; 85 ATC 4345 at 4363. Refer also to Gibbs CJ in *Cooper Brookes (Wollongong) Pty Ltd v. FCT* (1981) 11 ATR 949 at 955; 81 ATC 4292 at 4295-4296.

(d) any imported goods that would be classified to item 15 of the Schedule to the *Excise Tariff Act 1921*, if the goods had been manufactured in Australia.

Note: item 15 of the Schedule to the *Excise Tariff Act 1921* deals with certain petroleum based oils and greases. Item 20 of that Schedule deals with certain stabilised crude petroleum oils. Item 21 of that Schedule deals with certain condensate.

Meaning of 'fuel'

113. The *Macquarie Dictionary*[39] defines the noun 'fuel' as:

> **1.** combustible matter used to maintain fire, as coal, wood, oil etc.
> **2.** material used to feed an engine, as petrol, diesel, …

114. This dictionary definition indicates that the ordinary meaning of 'fuel' refers to a broad range of substances. In relation to the Excise Tariff, 'fuel' includes a wide range of combustible liquids, for example, unleaded petrol and mineral turpentine.[40]

Fuel on which excise duty is payable

115. The Excise Act and the Excise Tariff Act provide the regulatory framework for excisable goods.[41] The Excise Act is the administration Act for excise and the Excise Tariff Act imposes duties of excise on specified commodities at specified rates. Both Acts are to be read as one.[42]

116. The duties of excise are imposed on all goods ***manufactured or produced*** in Australia and specified in the Schedule to the Excise Tariff Act.[43]

117. Goods listed in the Schedule to the Excise Tariff Act for which a rate of excise duty is specified are broadly categorised as:

- beer and other excisable beverages;
- spirits;
- tobacco and cigarettes;
- crude petroleum oil and petroleum condensate;
- petroleum based oils and lubricants; and
- refined and semi-refined petroleum products (for example, diesel).

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[39] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.
[40] Certain liquefied and compressed gaseous fuels (for example, LPG, LNG and CNG) are not included. It is intended that these fuels will begin to incur fuel tax from 1 July 2011.
[41] The term 'excisable goods' is defined in section 4 of the Excise Act and means goods in respect of which excise duty is imposed by the Parliament, and includes goods the subject of an Excise Tariff or Excise Tariff alteration proposed in the Parliament.
[42] See section 6 of the Excise Act and section 2 of the Excise Tariff Act.
[43] Section 5 of the Excise Tariff Act.

118. Item 10 of the Excise Tariff imposes duties of excise on certain kinds of crude petroleum oil, petroleum condensate and liquid fuels. Item 10 of the Excise Tariff specifies the following goods:

(a) petroleum condensate and stabilised crude petroleum oil for use otherwise than:

(i) in the recovery, production, pipeline transportation or refining of petroleum condensate or stabilised crude petroleum oil; and

(ii) as feedstock at a factory specified in a licence granted under Part IV of the Excise Act;

(b) topped crude petroleum oil;

(c) refined or semi-refined liquid products derived from petroleum, other than such products for use (other than in an internal combustion engine) in refining petroleum condensate or stabilised crude petroleum oil;

(d) liquid hydrocarbon products derived through a recycling, manufacturing or other process;

(e) denatured ethanol for use as fuel in an internal combustion engine;

(f) biodiesel;

(g) blends of one or more of the above goods (with or without other substances), other than blends covered by subsection 77H(1) or (3) of the Excise Act;

but not including the following:

(h) goods classifiable to item 15 of the Excise Tariff; and

(i) waxes, liquefied petroleum gas and bitumen.

119. Subitems 10.1 to 10.30 of the Excise Tariff set rates of duty for specific categories of fuel specified in paragraphs (a) to (g) of item 10. Subitems 10.1 to 10.30 include gasoline (petrol), diesel, heating oil, kerosene, mineral turpentine, biodiesel, blends of gasoline and ethanol and blends of diesel and biodiesel.

120. Item 15 deals with certain petroleum based oils (for example, lubricant oils), greases, and their synthetic equivalents. Goods can only be classified to item 15 if they are not for use as a fuel. Goods classified to item 15 are excluded from the definition of 'taxable fuel'.[44]

121. Items 20 and 21 deal with the production of certain stabilised crude petroleum oil and petroleum condensate that is subject to excise. Goods classified to items 20 and 21 are excluded from the definition of 'taxable fuel'. However, the fact that excise duty attaches to stabilised crude petroleum oil or condensate under item 20 or 21 does not prevent the same goods also being classified to item 10.

[44] See section 110-5 or paragraph 112 of this Ruling for the definition of 'taxable fuel'.

However, this is the case only if they are for use as a fuel otherwise than in the recovery, production, pipeline transportation or refining of stabilised crude petroleum oil or condensate.[45]

122. It follows that taxable fuel you manufacture or produce in Australia is fuel that is classifiable to item 10. Appendix 3 of this Ruling sets out the fuels that are classifiable to item 10 and which are taxable fuels as defined in section 110-5.

123. Subject to the exceptions contained in item 10, excise duty is payable on fuels that fall within the meaning of 'goods' specified in that item. As duty is payable on those fuels, they are taxable fuels for the purposes of the FT Act.

Fuel on which customs duty is payable

124. The Customs Act and the Customs Tariff Act deal with the administration and imposition of customs duty on goods imported into Australia.

125. The Customs Act is the administration act for customs and the Customs Tariff Act is the act for imposing duties of customs. Schedule 3 of the Customs Tariff Act details the tariff classifications and applicable rates of customs duty on imported goods into Australia.

126. The duties of customs specified in Schedule 3 to the Customs Tariff Act are imposed on all goods dutiable under the Schedule and imported into Australia.[46]

127. Schedule 3 to the Customs Tariff Act contains the list of tariff classifications and applicable rates of duties for goods. It is based on the worldwide system for the classification of traded goods commonly referred to as the Harmonized System. The system is a hierarchical, numerical classification system of headings and subheadings based on six digits that uniquely identify all traded goods and commodities.

128. Customs duty is payable on imported petroleum and liquid hydrocarbon products which, if produced or manufactured in Australia, would be liable to excise duty and for which an equivalent rate of customs duty ($0.38143 per litre) is specified in Chapter 22, 27, 29 or 38 of the Customs Tariff. See Appendix 3 of this Ruling for a full list of taxable fuel classifiable to Chapter 22, 27, 29 or 38 of the Customs Tariff.

129. As duty[47] is payable on those fuels, they are taxable fuels for the purposes of the FT Act.

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[45] Section 77K of the Excise Act.
[46] Section 15 of the Customs Tariff Act.
[47] Other than a duty that is expressed as a percentage of the value of the fuel for the purposes of section 9 of the Customs Tariff Act – see section 110-5 of the FT Act for the definition of 'fuel tax'.

Meaning of 'Australia'

130. The definition of 'Australia' in section 110-5 states:

> ***Australia*** has the meaning given by section 195-1 of the *GST Act.

131. The definition of 'Australia' in section 195-1 of the GST Act states:

> ***Australia*** does not include any external Territory. However, it includes an installation (within the meaning of the *Customs Act 1901*) that is deemed by section 5C of the *Customs Act 1901* to be part of Australia.

132. For the purposes of the FT Act, the term 'Australia' therefore does not include any external Territory but includes certain installations (for example, an oil rig) that fall within the meaning of 'installation'[48] in the Customs Act and which are treated as being part of Australia under section 5C of the Customs Act.

External Territories

133. You are not entitled to a fuel tax credit for taxable fuel you acquire or manufacture in, or import into, Australia's external Territories for use in carrying on an enterprise.

134. The term 'external Territory' is not defined in the GST Act. However, 'external Territory' is specifically defined in the *Acts Interpretation Act 1901*.

135. Paragraph 17(pd) of the *Acts Interpretation Act 1901* provides that in any Act, unless the contrary intention appears, 'external Territory' means a Territory, not being an internal Territory, for the government of which as a Territory provision is made by any Act.

136. The Commonwealth has enacted provisions for the government as a territory of the following territories located outside of the mainland of Australia:

- Australian Antarctic Territory;[49]
- Coral Seas Islands;[50]
- Norfolk Island;[51]
- Territory of Ashmore Reef and Cartier Island;[52]
- Territory of Christmas Island;[53]
- Territory of Cocos (Keeling) Islands;[54] and

[48] See section 4 of the Customs Act for the definition of 'installation'.
[49] The *Australian Antarctic Territory Act 1954* refers to the *Australian Antarctic Territory Acceptance Act 1933*.
[50] *Coral Seas Islands Act 1969*.
[51] *The Norfolk Island Act 1979* refers to the *Norfolk Island Act 1913*.
[52] *Ashmore and Cartier Islands Acceptance Act 1933*.
[53] *Christmas Island Act 1958*.
[54] *Cocos (Keeling) Island Act 1955*.

- Territory of Heard and McDonald Islands.[55]

137. As each Territory listed in paragraph 136 of this Ruling is a Territory that is not an internal Territory and provision for its government is made by a Commonwealth Act, each territory is an external Territory for the purposes of the definition of 'Australia' in the FT Act.

Installations that are within the meaning of Australia

138. An installation which is:

- a resources installation that is attached to the Australian seabed;[56] or
- a sea installation that is installed in an adjacent area or coastal area that is defined in the Customs Act,

is deemed to be part of Australia.[57]

139. You are entitled to a fuel tax credit for taxable fuel that you acquire, manufacture or import for use in carrying on your enterprise on a resources installation or a sea installation that is regarded as being part of Australia.

Meaning of 'acquire'

The ordinary meaning of 'acquire'

140. The term 'acquire' is not defined in the FT Act. Furthermore, no guidance is provided by the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 on the meaning of 'acquire'.

141. For the purposes of the FT Act, the term 'acquire' therefore takes its ordinary meaning, provided this does not lead to any absurdity or inconsistency with the context in which the term is used.

142. The Macquarie Dictionary defines 'acquire' to mean:

> **acquire**
>
> *verb (t)* (**acquired**, **acquiring**)
>
> **1.** to come into possession of; get as one's own:* *You must acquire property at once.* **2.** to gain for oneself through one's actions or efforts…[58]

143. The Commissioner takes the view that, for the purposes of the FT Act, the relevant meaning of acquire is to 'get as one's own' from someone else or through one's actions or efforts. 'Acquire' does not mean merely 'to come into possession of'.

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[55] *Heard Island and McDonald Islands Act 1953*.
[56] See section 4 and subsection 5C(1) of the Customs Act.
[57] See sections 4 and 5C of the Customs Act – certain installations to be part of Australia.
[58] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

144. The Commissioner considers that to 'get as one's **own**', implies getting ownership or proprietary rights in respect of the taxable fuel. This will mean either that property in the taxable fuel passes from one entity to another or that proprietary rights or ownership is conferred by the act of obtaining the taxable fuel by other means. Therefore, the Commissioner takes the view that an entity typically 'acquires' taxable fuel upon a change in ownership of, or a transfer of proprietary rights in, the fuel from one entity to another.

The relevance of GST concepts in determining whether an entity has acquired fuel for the purposes of the FT Act

144A. The specific reference to GST definitions for some terms used in the FT Act, similar attribution rules for fuel tax credits and the alignment in the manner in which a fuel tax credit is to be claimed on an activity statement has led to some suggestion that the GST treatment of a supply or composite supply is relevant in determining whether fuel has been acquired (or sold or otherwise disposed of) for the purposes of the FT Act.

144B. This approach does not follow the intention, as expressed in the Revised Explanatory Memorandum, which is merely to align, as far as possible, the accounting and reporting arrangements for the fuel tax credit system with GST arrangements.[58A] It effectively extends the application of GST concepts beyond the scope that is intended under the FT Act. That is, unless there is a specific reference to GST definitions and concepts to determine the meaning of a term for the purposes of the FT Act, the meaning must be decided according to the ordinary principles of statutory interpretation.

144C. In this regard, the treatment of supplies in the GST Act serves the specific purpose of determining liabilities and input tax credit entitlements under the GST Act and cannot be directly applied to determine whether an entity has acquired fuel under a transaction for the purposes of the FT Act. This is because the FT Act is only considering the transaction in relation to the fuel to determine whether an entity has acquired or disposed of the fuel for the purposes of section 41-5. There is no specific reference to GST terms and concepts in this context in the FT Act in determining whether an entity has acquired or disposed of fuel.

144D. Based on the meaning of acquire as essentially the transfer of property, in this context, in fuel, there can be a composite supply for the purposes of the GST Act, being a supply that includes fuel, and an acquisition of fuel for the purposes of the FT Act. The Commissioner considers that there is no anomaly in having both a composite supply for GST purposes and an acquisition of fuel for the purposes of the FT Act. For example, in relation to the sale of a vehicle that contains an amount of fuel, from a GST point of view, the

[58A] Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 – paragraph 2.9.

transaction may be treated as involving one supply, that is, the supply of the vehicle. There is no separate supply of the fuel in the vehicle. However, for the purposes of the FT Act the fuel has been disposed of by the vendor and acquired by the purchaser; as at the time of delivery of the vehicle, the fuel still exists and is capable of being used as fuel in the vehicle and property in the fuel has passed to the purchaser.

Ways in which you can 'acquire' taxable fuel

145. You acquire taxable fuel if:

- you purchase the fuel;
- the fuel is gifted to you; or
- you get the fuel as your own by any other means (other than manufacture or import). This necessarily means that you get ownership of, or proprietary rights in respect of, the fuel.

146. The decision of the Administrative Appeals Tribunal (AAT) in *Re The Taxpayer v. Commissioner of Taxation*[59] makes it clear that ownership of or property in fuel can be obtained by means other than purchase. That case dealt with a situation in which one entity (mining company) supplied fuel to another entity, a contractor (Contractor) for its use in carrying out work for the mining company but where there was no intention that property in the fuel would pass to the contractor. The AAT in its decision stated:

> … it is clear from s53(1) of the EGSCA that a person is only entitled to an off-road credit if they have in fact purchased the relevant diesel fuel, and that this is a separate and distinct issue to the question of whether a person may have acquired a proprietary interest in the diesel fuel.[60]

147. The Commissioner's view that the term 'acquire' has a narrower meaning of 'get as one's own' for the purposes of the FT Act is supported in part by the reference to 'manufacture' and 'import' in Subdivision 41-A. The word 'acquire' in its broadest meaning could be regarded as including coming into possession by all means, including manufacture and import. The fact that the terms 'manufacture' in, and 'import' into are used in addition to the term 'acquire' indicates a legislative intent to attribute a narrower meaning to 'acquire'.

148. The narrower meaning of the term 'acquire' in the context of different legislation has been adopted by the Courts.

149. The Supreme Court in *Campbells Hardware & Timber Pty Ltd v. Commissioner of Stamp Duties (Qld)*[61] considered the phrase

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[59] *Re The Taxpayer v. Commissioner of Taxation* [2006] AATA 967. The appeal against the decision of the AAT was dismissed by the Full Federal Court. See *Colby Corporation Pty Ltd v. Commissioner of Taxation* [2008] FCAFC 10.
[60] *Re The Taxpayer v. Commissioner of Taxation* [2006] AATA 967 at paragraph 4.4.
[61] *Campbells Hardware & Timber Pty Ltd v. Commissioner of Stamp Duties (Qld)* (1996) 32 ATR 472; 96 ATC 4348; [1996] QSC 60.

'agreed to be acquired from the owner' in the context of section 54A of the *Stamp Act 1894* (Qld) (Stamp Act). It was held, per Byrne J that:

> In this context, 'acquire and its derivatives import to get as one's own'. … Merely to take possession of goods is not to 'acquire them' as that word is used in s. 54A. The evident intent of s. 54A is to exact duty in respect of arrangements which, so far as trading stock is concerned, partake of the nature of a 'transfer of the property'...[62]

150. The meaning of the term 'acquire' in the context of section 54A of the Stamp Act was again considered by the Supreme Court of Queensland in *McDonald's Australia Holdings Ltd & Anor v. Commissioner of State Revenue (Qld)*[63] *(McDonald's Australia).* The court in this case considered the possibility of ascribing a wide meaning to the term 'acquire' in the context of the Act. It was held per Chesterman J that:

> The respondent points to authorities which establish that the word 'acquire' has a wide meaning and includes means of acquisition other than by transfer. The point may be good in the abstract but it must be kept in mind that s 54A is concerned with the acquisition of an existing business, and the assets of that business. No matter what shades of meaning 'acquire' may have the section is concerned with a particular type of acquisition: of an existing business owned by someone other than the acquirer. It is difficult to see how such a business can be acquired except by some means of transfer.[64]

151. In *McDonald's Australia*, it was held that the term 'acquire' ought to be interpreted in the context of the legislation in which it appears. As such, the term 'acquire' was given a narrower meaning and taken to mean a transfer of ownership or property in goods.

152. In *John Mackintosh and Sons Ltd v. Baker's Bargain Stores (Seaford) Ltd,*[65] the Court was required to consider the term 'acquire' in the context of the *Restrictive Trade Practices Act 1956* (UK). The Court held, per Browne J, that the word 'acquires' in the phrase 'person who acquires' goods in the *Restrictive Trade Practices Act 1956* (UK) means 'acquires title' to the goods, as opposed to simply having possession of them. In this case, it was decided that the liquidator never 'acquired' the goods, but only ever had possession of them.

153. The Commissioner considers that the reasoning in the above cases, which examine the context of the relevant provision in

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[62] *Campbells Hardware & Timber Pty Ltd v. Commissioner of Stamp Duties (Qld)* (1996) 32 ATR 472-474; 96 ATC 4348 at 4349-4350; [1996] QSC 60 at paragraph 5.
[63] *McDonald's Australia Holdings Ltd & Anor v. Commissioner of State Revenue (Qld)* (2004) 57 ATR 395; 2004 ATC 4970; [2004] QSC 357.
[64] *McDonald's Australia Holdings Ltd & Anor v. Commissioner of State Revenue (Qld)* (2004) 57 ATR 395 at 409; 2004 ATC 4970 at 4982; [2004] QSC 357 at paragraph 73.
[65] *John Mackintosh and Sons Ltd v. Baker's Bargain Stores (Seaford) Ltd* [1965] 3 All ER 412.

reaching a narrow meaning for 'acquire', is equally relevant to the meaning of that expression in the FT Act.

Right or licence to use taxable fuel

154. In adopting the meaning of 'acquire' as 'to get as one's own', the Commissioner takes the view that, for the purposes of the FT Act, if you acquire a right or licence to use the taxable fuel of another entity, in the absence of acquiring ownership of or a proprietary interest in the fuel, you will not be taken to have acquired the taxable fuel. The acquisition of a right or licence to use the fuel is not the same as the acquisition of the fuel.

155. This view conforms with the approach taken by the AAT in *Re Riviera Nautic Pty Ltd and Commissioner of Taxation*[66] (*Riviera Nautic*). In this case, Riviera Nautic carried on a business as a hirer of boats for pleasure cruises. The boats were provided with a full tank of fuel and other necessary provisions for the enjoyment of the customer. That is, the cost of hire included the cost of fuel and insurance. If a boat was returned with fuel, no refund or credit was given to the hirer.

156. It was held that although the hirer of the boat was entitled to use the fuel, property in the fuel never passed from *Riviera Nautic* to the hirer upon hiring the boat. The AAT, per Dwyer J, held that:

> There is no evidence of any price for the sale ever being agreed, and in fact the evidence is that Riviera Nautic never intends that property in the fuel will pass to its clients. I see nothing in Halsbury, paras 375-925, to which Mr Sest referred, which supports the contention that there is a sale of fuel by Riviera Nautic to its clients.
>
> … The cost of fuel is not a specific charge to a hirer, but is one of the overheads of running the business such as marketing, licence fees, staff wages, cost of boats, maintenance and insurance.
>
> I find that there is no sale of the diesel fuel by Riviera Nautic to its clients. Property in the fuel does not pass to the hirers. Rather it is a term of the hire that all the fuel required for marine transport during the period of the hire is provided by Riviera Nautic.[67]

157. The decision in *Riviera Nautic* was cited with approval in *Re The Taxpayer v. Commissioner of Taxation.*[68] In this case the Contractor performed exploration and grade control drilling activities for another entity that conducted mining operations (a mining company), under certain terms and conditions of a number of contracts between the parties.

158. Under the contracts, the Contractor supplied and used its own drilling equipment and the mining company provided the diesel fuel

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[66] *Re Riviera Nautic Pty Ltd and Commissioner of Taxation* [2002] AATA 657; (2002) 50 ATR 1106; (2002) 68 ALD 581.
[67] *Re Riviera Nautic Pty Ltd and Commissioner of Taxation* [2002] AATA 657 at paragraphs 69-71; (2002) 50 ATR 1106 at 1121-1122; (2002) 68 ALD 581 at 596-597.
[68] *Re The Taxpayer v. Commissioner of Taxation* [2006] AATA 967.

for use in the drilling equipment. Both parties agreed that the price for the work performed by the Contractor under the contracts was reduced to take account of the fuel supplied by the mining company.

159. The Contractor made various claims for energy grants for off-road credits under the *Energy Grants Credit (Scheme) Act 2003* (EGCSA) for the diesel fuel used in the drilling activities.

160. The Commissioner disallowed the Contractor's claims on the basis that in accordance with subsection 53(1) of the EGCSA, a person is only entitled to an off-road credit if they purchased the relevant diesel fuel.

161. On appeal, in affirming the Commissioner's decision, the AAT stated that:

> …a person is only entitled to an off-road credit if they have in fact purchased the relevant diesel fuel and that this is a separate and distinct issue to the question of whether a person may have acquired a proprietary interest in the fuel.[69]

162. The Contractor nevertheless asserted that ownership of the fuel passed to it by reason of delivery of the fuel into the fuel tanks of its equipment and that:

- it was entitled to keep any unused fuel;
- it was entitled to use the unused fuel for whatever purpose it deemed appropriate;
- the mining company did not attempt to recover the unused fuel; and
- this evidenced an intention that the Contractor acquired a proprietary interest in the fuel.

163. The AAT held that property in the fuel did not pass to the Contractor, finding that:

> Whether or not property in the Fuel passed depends on the intention of the parties. This is ascertained 'according to the terms in which they have contracted, set in the context of the circumstances in which their contract was formed' Per Fitzgerald P in *Woodlands Enterprises Pty Ltd v. Comptroller-General of Customs* (1996) Qd R 589 at page 592. …
>
> The absence of an express, separate charge for Fuel used coupled with the GST and EGCSA consequences for Robe if the Fuel was purchased and the fact that the volume of any leftover fuel was minimal, leads the Tribunal to conclude that there was no intention that property was to pass.
>
> In any event as already noted, the acquisition of a proprietary interest does not itself entitle the applicant to off-road credits and therefore a right to claim energy grants in respect of the Fuel, unless there is a purchase by the applicant of that Fuel.[70]

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[69] *Re The Taxpayer v. Commissioner of Taxation* [2006] AATA 967 at paragraph 4.4.
[70] *Re The Taxpayer v. Commissioner of Taxation* [2006] AATA 967 at paragraphs 11.4 -11.11.

163A. The Full Federal Court affirmed the AAT's decision in *Colby Corporation Pty Ltd v. Commissioner of Taxation* [2008] FCAFC 10. In the course of the decision, the Court discussed at paragraph 25, the elements necessary to establish that fuel had been 'purchased' for the purposes of section 53 of the EGCSA:

> By using 'purchase', s 53(1) distinguishes the acquisition of the off-road diesel fuel to which it applies from acquisition by, for instance, gift or theft. The requirement for 'money or its equivalent' is one necessary element of a purchase. The other stems from the concept of acquisition. It is understood, and the dictionary meaning of 'acquire' supports this, that it is 'property' which is acquired by purchase. In the circumstances, therefore, to establish that it 'purchased' the fuel, the applicant had to show:
>
> (a) pursuant to the mutual intention of the parties expressed or implied in the contracts it acquired property in the fuel (the 'intention requirement'); and
>
> (b) that it did so by the payment of money or its equivalent or, put another way, that it gave consideration for the fuel (the 'payment requirement').

163B. The Full Federal Court in *Colby Corporation Pty Ltd v. Commissioner of Taxation* also rejected the applicant's submission that the right to consume must entail a proprietary interest in the fuel. The Court stated at paragraph 51 that:

> There is no legal reason why a person may not permit another to use, even to the point of destruction or consumption, that person's property.

164. Although in *Re The Taxpayer v. Commissioner of Taxation*[71] the issue for determination was whether the Contractor had 'purchased' the relevant fuel for a qualifying use, the comments made by the Tribunal in relation to whether or not proprietary interest in the fuel passed to the contractor are relevant in determining the meaning of 'acquire' in the FT Act. This is because in the context of the FT Act, the Commissioner considers that the expression 'taxable fuel that you acquire' requires an acquisition of proprietary interest in the fuel.

165. The acquisition of a right to use or a licence to use another entity's taxable fuel to enable you to perform work for them, is not within the meaning of the expression 'taxable fuel that you acquire' as that term is used in the FT Act. You do not get fuel 'as your own' when you merely acquire a right or a licence to use the fuel. In this case what is acquired is a licence to use the taxable fuel but not the fuel itself.

Taxable fuel provided for use by contractors and subcontractors

166. Where a contractor (or a subcontractor) carries out an activity for an entity, it is often agreed between the parties that the contractor will be able to replenish their plant or equipment with fuel from the

[71] *Re The Taxpayer v. Commissioner of Taxation* [2006] AATA 967.

entity's fuel supply, both throughout the activity and upon its completion. This is commonly referred to as a full on/full off arrangement[72]. These kinds of arrangements are particularly common in agriculture and mining.

167. In circumstances where an entity, in the course of carrying on an enterprise, engages the services of a contractor to carry out an eligible activity, and the entity provides taxable fuel for use by the contractor in carrying out that activity, the entity's entitlement to a fuel tax credit is not affected by the use of the fuel by the contractor.[73] The Commissioner considers that the contractor does not acquire the fuel in these circumstances, and, as such, the contractor is not entitled to a fuel tax credit in respect of this fuel.

168. However, under a full on/full off arrangement, if a contractor has acquired the taxable fuel they bring with them in their plant or equipment onto the property of the party for whom they are carrying out work the contractor will be entitled to a fuel tax credit for this fuel provided all other eligibility requirements are met.

When does ownership of or property in taxable fuel pass when you purchase taxable fuel?

Where fuel is delivered prior to payment

169. If you purchase taxable fuel, you acquire the fuel when it is intended that property in the fuel is to pass to you. This is ordinarily when the contract for the sale and purchase of fuel is made. In other cases property in the fuel is intended to pass when the fuel has been physically delivered to your tank, regardless of whether payment has actually been made. This is because, typically, the amount of fuel that you purchase is ascertained when it is delivered into your tank (whether storage, vehicle or equipment tank).

Pre-paid fuel

170. If you enter into a contract for the sale and purchase of taxable fuel which, at the time of contract, is unascertained, you acquire the fuel when, in the absence of a contrary intention, the fuel in a deliverable state is unconditionally appropriated to the contract. This is when the property in the fuel passes from the supplier to you.

171. In some cases, quantities of taxable fuel may be paid for, but only delivered as needed. The Commissioner takes the view that pre-paid taxable fuel is acquired when the fuel has been ascertained. This is usually when the taxable fuel is delivered, collected or stored

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[72] Full on/full off arrangements are also explained in paragraphs 207-208 of FTR 2006/1 Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'agriculture' as defined in section 22 of the *Energy Grants (Credits) Scheme Act 2003*.

[73] See *Re Riviera Nautic Pty Ltd and Commissioner of Taxation* [2002] AATA 657; (2002) 50 ATR 1106; (2002) 68 ALD 581 for a discussion on 'use'.

separately by the supplier in such a manner that it can be clearly identified as belonging to the acquirer.

Attribution rules for fuel tax credits for taxable fuel you acquire

172. The tax period to which your fuel tax credit for taxable fuel you acquire is attributable depends on whether you account for GST on a cash basis or an accrual basis.

173. If you account for GST on a cash basis, you attribute fuel tax credits for taxable fuel that you acquire for use in carrying on your enterprise to the tax period in which you pay for the fuel, but only to the extent that you provide consideration in that tax period. This is because the input tax credit for a creditable acquisition of the taxable fuel you make is attributable to the tax period in which you provide consideration for that acquisition.[74]

174. If you account for GST on an accrual basis, you attribute fuel tax credits for taxable fuel that you acquire for use in carrying on your enterprise to the tax period in which:

- you provide any consideration for the acquisition; or
- an invoice for the acquisition is issued,

whichever is the earlier. This is because your input tax credit for the creditable acquisition of the taxable fuel is attributable on this basis.

175. If you do not hold a valid tax invoice when you lodge a return (business activity statement) for a tax period mentioned in paragraphs 173 and 174 of this Ruling, the fuel tax credit for a creditable acquisition of the taxable fuel ceases to be attributable to that period. Instead, the fuel tax credit becomes attributable to the first tax period for which you give the Commissioner a return at a time when you hold the tax invoice for that creditable acquisition. This is because you can only attribute an input tax credit for the creditable acquisition of the fuel to the tax period in which you hold the tax invoice for that creditable acquisition.

Meaning of 'manufacture'

176. The term 'manufacture' is not defined in the FT Act. It is therefore relevant to examine the ordinary meaning of the term and determine its appropriateness for the purposes of the FT Act. The *Macquarie Dictionary*[75] defines the term 'manufacture' as:

> **1.** the making of goods or wares by manual labour or by machinery, especially on a large scale. **2.** the making of anything. **3.** the thing or material manufactured. – verb …**5.** to make in any manner. **6.** to work up (material) into form for use. …

[74] See subsection 65-5(1). For the relevant attribution rules for input tax credits see subsection 29-10(2) of the GST Act.
[75] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

177. However, in the context of the FT Act, the term 'manufacture' is not a technical term which is capable of a precise definition of universal application to each and every process involved in the production or making of taxable fuel. Whether or not taxable fuel is 'manufactured' will often be a question of fact and degree, requiring an exercise of judgment in relation to different processes involved in the making of different taxable fuels.

178. In *Federal Commissioner of Taxation v. Jax Tyres Pty Ltd*[76] (*Jax Tyres*) Shepherd J stated:

> The test to be applied in determining whether or not an article is manufactured is that formulated by Darling J in *McNicol v. Pinch* [1906] 2 KB 352 where his Lordship said (at 361): 'The essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made.' That test has been adopted by the High Court; see *Federal Commissioner of Taxation v. Jack Zinader Pty Ltd* (1949) 78 CLR 336 per Dixon J (as he was) at 343 …
>
> The application of these tests may sometimes be a difficult exercise. The question is one of fact and degree. An exercise in judgment is involved.[77]

179. In *M.P. Metals Pty Ltd v. Federal Commissioner of Taxation*[78] in the context of a case dealing with sales tax legislation, Windeyer J stated:

> It is no doubt true that all manufacturing involves the making of a new thing. But it is not true that every making of a new thing is, in the relevant sense, manufacturing. And what is meant by a new thing? In *Federal Commissioner of Taxation v. Jack Zinader Pty. Ltd.* (1949) 78 CLR 336, at p.343 (a case under the *Sales Tax Acts*) Dixon J. quoted a statement by Darling J. in *McNicol v. Pinch* [1906] 2 K.B. 352, at p. 361 that 'the essence of making or manufacturing is that what is made shall be a different thing from that out of which it is made'. That is indisputable. But what is a different thing? Various paraphrases were offered to me, such as 'substantially different thing', not merely an 'altered thing'; 'a new entity'; 'a distinct commodity'. But these are all pregnant with ambiguity. Identity and difference, as concepts, must always be related to some quality of the thing or things in respect of which identity or difference is to be determined. It may be colour, shape, chemical composition or any other quality. To speak of 'substantial differences', as distinct from small differences, means little or nothing, unless some quality of the thing is postulated as its essential. And whether a thing is so different a thing from the thing or things out of which it is made as to be properly described as a new commodity may depend not only

[76] *Federal Commissioner of Taxation v. Jax Tyres Pty Ltd* (1984) 58 ALR 138; (1984) 5 FCR 257; (1984) 16 ATR 97; 85 ATC 4001.
[77] *Federal Commissioner of Taxation v. Jax Tyres Pty Ltd* (1984) 58 ALR 138 at 147; 5 FCR 257 at 266-267; (1984) 16 ATR 97 at 106; 85 ATC 4001 at 4008-4009.
[78] *M.P. Metals Pty Ltd v. Federal Commissioner of Taxation* [1967-1968] 117 CLR 631; (1968) 40 ALJR 538; (1968) 14 ATD 407.

> upon physical characteristics but also on differences in its utility for some purpose.[79]

180. In *Commissioner of Taxation v. Softex Industries Pty Ltd*[80] *(Softex),* the Full Federal Court (Ryan and Hely JJ with Dowsett J agreeing) held that:

> We agree with the primary judge that whether a particular factual situation comes within par (b) of the definition does not depend upon whether the original parts remain identifiable at the end of the process, but on whether the parts have been combined so as to form an article that did not previously exist, which is commercially distinct from the original parts. For the purpose of determining whether there has been a 'combining' of components, it is not critical whether the physical identity of the parts or ingredients is retained, or lost by fusion or some other process. … In coming to a different conclusion in this respect AAT misdirected itself as to the scope of par (b) of the definition and thereby fell into legal error.[81]

181. Ryan and Hely JJ in *Softex* cited the decision in *Re Searls Ltd*[82] (*Searls*) in which the term 'manufacture' was defined as including bringing a new saleable entity into existence by skill applied to constituent elements. Harvey CJ in Equity said:

> In my opinion the fact that a new saleable entity is brought into existence by means of skill applied to the component elements of that new entity goes a long way to establish that the result is a manufactured article and if to that new entity people would in every day language apply the words 'made' or 'manufactured' and that entity is purchased for its own sake by reason of the skill which has been exhibited in putting the component parts into combination, I think it is proper to call the completed article a manufactured article.[83]

182. A process that involves the provision of knowledge, the application of skill, experience, services or labour which results in the conversion of materials into a saleable commodity may fall within the definition of 'manufacture'. The commodity must be different from the inputs which went into making it. The conversion may result in a change in physical and/or chemical properties of goods, for example, in colour, shape, density, viscosity, distillation temperature, composition, texture, aroma or taste.

183. The following are examples of processes that have been held by the Courts to be manufacture:

- the application of skills by a florist in making wreaths, bouquets and posies (*Searls*);

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[79] *M.P. Metals Pty Ltd v. Federal Commissioner of Taxation* [1967-1968] 117 CLR 631 at 638; (1968) 40 ALJR 538 at 541; (1968) 14 ATD 407 at 411. The decision of Windeyer J was affirmed by the Full High Court.
[80] *Commissioner of Taxation v. Softex Industries Pty Ltd* (2001) 107 FCR 111; (2001) 191 ALR 724; (2001) 46 ATR 512; 2001 ATC 4184; [2001] FCA 397.
[81] *Commissioner of Taxation v. Softex Industries Pty Ltd* (2001) 107 FCR 111 at 119-120; (2001) 191 ALR 724 at 731-732; (2001) 46 ATR 512 at 519; 2001 ATC 4184 at 4191; [2001] FCA 397 at paragraph 33.
[82] *Re Searls Ltd* (1933) 33 SR (NSW) 7.
[83] *Re Searls Ltd* (1933) 33 SR (NSW) 7 at 11.

- the duplication process performed by an entity by which blank tapes were converted into video cassettes (*WEA Records Pty Ltd v. Federal Commissioner of Taxation*);[84]
- the application of skill by a furrier in the remodelling of second hand fur garments to make different garments (*Federal Commissioner of Taxation v. Jack Zinader Pty Ltd*);[85] and
- the process of providing knowledge, skill, experience and organising services as well as labour by a boat builder which resulted in materials being converted into a yacht hull and deck (*Dawson (t/a Goodvibes Yachts) v. Deputy Commissioner of Taxation*).[86]

184. The ordinary meaning of the term 'manufacture' must be examined in the context of the FT Act, and in particular in the context of the expression 'taxable fuel that you … manufacture in … Australia' in section 41-5.

185. In this context, the manufacture must be of taxable fuel, that is, fuel on which excise duty is payable under the Excise Act (except for fuel covered by items 15, 20 and 21 of the Excise Tariff). Under the Excise Act, duty is payable on excisable goods.[87] Under the Excise Tariff Act, excisable goods are all goods dutiable under the Schedule to the Excise Tariff, being goods that are manufactured or produced in Australia.

186. To manufacture excisable goods (including taxable fuel), the Excise Act requires you to be a licensed manufacturer[88] and that the goods be manufactured at licensed premises in accordance with the conditions specified on your manufacturer's licence[89] granted under Part IV of the Excise Act.[90]

[84] *WEA Records Pty. Ltd. v. Federal Commissioner of Taxation* (1990) 96 ALR 365; (1990) 21 ATR 799; 90 ATC 4779.
[85] *Federal Commissioner of Taxation v. Jack Zinader Pty. Ltd.* (1949) 78 CLR 336; [1949] ALR 912; (1949) 23 ALJ 447; (1949) 9 ATD 46.
[86] *Dawson (t/a Goodvibes Yachts) v. Deputy Commissioner of Taxation* (1984) 56 ALR 367; (1984) 71 FLR 364; 84 ATC 4752.
[87] The term 'excisable goods' is defined in section 4 of the Excise Act and means goods in respect of which excise duty is imposed by the Parliament, and includes goods the subject of an Excise Tariff or Excise Tariff alteration proposed in the Parliament.
[88] The term 'licensed manufacturer' is defined in section 4 of the Excise Act to be 'a person or partnership who holds a manufacture licence'.
[89] See Division 1 of Part III of the Excise Act.
[90] See definition of 'manufacturer licence' in section 4 of the Excise Act.

187. It follows that the 'manufacture' of taxable fuel for the purposes of the FT Act must also constitute 'manufacture' as defined in the Excise Act. Section 4 of the Excise Act defines 'manufacture' as:

> ***Manufacture*** includes all processes in the manufacture of excisable goods and, in relation to beer, includes the provision to the public at particular premises of commercial facilities and equipment for use in the production of beer at those premises.

188. The definition of 'manufacture' in the Excise Act includes **all** processes (for example, operations or actions) in the manufacture of taxable fuel. As the definition is an inclusive one, that definition still requires consideration of the ordinary meaning of the term 'manufacture'.[91]

189. If you undertake more than one process by which you manufacture taxable fuel, each of those processes may, in their own right constitute manufacture of taxable fuel.[92]

190. The Commissioner takes the view that you manufacture taxable fuel if you undertake any processes by which you:

- produce stabilised crude petroleum oil or petroleum condensate for use as fuel in certain circumstances;[93]
- produce topped crude petroleum oil;
- refine stabilised or topped crude petroleum oil or petroleum condensate to produce different kinds of fuels;
- blend one or more products specified in paragraphs 10(a) to 10(f) of the Excise Tariff (with or without other substances) other than blends covered by subsection 77H(1) or (3) of the Excise Act. However, the blending must produce fuel that is different in composition (for example physically or chemically) from its constituent parts;
- denature ethanol for use as a fuel in an internal combustion engine;
- produce certain liquid hydrocarbon products by recycling waste oil;
- produce biodiesel by chemically altering vegetable oils or animal fats (including recycled oils from these sources) to form mono-alkyl esters; or
- produce any other fuel that is a taxable fuel.

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[91] The ordinary meaning of 'manufacture' is set out in paragraph 176 of this Ruling.
[92] The meaning of 'manufacture' in section 4 of the Excise Act includes all processes in the manufacture of excisable goods.
[93] See paragraphs 195 to 200 of this Ruling for a full explanation on the production of stabilised crude petroleum oil and petroleum condensate.

191. In determining whether a process is manufacture for the purposes of the FT Act, the Commissioner may have regard to a process which involves the application of skill, knowledge, experience, services or labour by which a taxable fuel is produced.

192. The Commissioner considers the list of goods classifiable to item 10 of the Excise Tariff are produced by processes that constitute manufacture of taxable fuel.

193. In addition, specific provisions in the Excise Act include certain processes as being within the meaning of 'manufacture' for the purposes of that Act. For example, in relation to fuel, section 77G of the Excise Act provides that blending to produce goods covered by paragraph 10(g) of the Excise Tariff is taken to constitute manufacture for excise purposes.

194. You are entitled to a fuel tax credit for taxable fuel you manufacture for use[94] in carrying on your enterprise. However, you are not entitled to a fuel tax credit for taxable fuel that you manufacture and sell to another entity, distributor or a retail outlet.[95]

Production of petroleum condensate

195. Petroleum condensate is a mixture of light liquid hydrocarbons that is separated from natural gas when it is cooled after being extracted from a well.[96]

196. The Commissioner takes the view that the process of separating petroleum condensate from natural gas for use otherwise than:

- as petroleum feedstock at a factory specified in a licence granted under Part IV of the Excise Act;
- in the recovery of crude oil;
- in the transportation of crude oil by pipeline from the place of extraction to a refinery; or
- in the refining of petroleum condensate or stabilised crude petroleum oil (other than where used as a fuel in an internal combustion engine),

is manufacture for the purposes of the FT Act.

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[94] The term 'use' does not cover the use of a fuel to make another fuel that can be used as a fuel in an internal combustion engine. See paragraphs 2.35 and 2.36 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006.

[95] See paragraph 2.34 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006 – sale of fuel is not a use of the fuel.

[96] See paragraph 1.51 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006; Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

197. Petroleum condensate for use as a fuel[97] is classifiable to subitem 10.1 of the Excise Tariff.

Stabilisation of crude petroleum oil

198. Stabilised crude petroleum oil is produced when crude oil from a well is taken to the surface and cooled and treated to achieve a state in which it can be further dealt with, and in particular, safely transported.[98]

199. The Commissioner considers that the process of stabilising crude petroleum oil for use otherwise than:

- as petroleum feedstock at a factory specified in a licence granted under Part IV of the Excise Act;
- in the recovery of crude oil;
- in the transportation of crude oil by pipeline from the place of extraction to a refinery; or
- in the refining of petroleum condensate or stabilised crude petroleum oil (other than where used as a fuel in an internal combustion engine),

is manufacture for the purposes of the FT Act.

200. Stabilised crude petroleum oil for use as a fuel[99] is classifiable to subitem 10.2 of the Excise Tariff.

Production of topped crude petroleum oil

201. Topped crude petroleum oil is produced when the more valuable and volatile light fractions (for example, naphtha) are removed from crude oil.[100] Topped crude petroleum oil is the residual fraction remaining after the removal of volatile light ends by an atmospheric distillation unit. Topped crude petroleum oil can be used as a substitute for fuel oil and other heavy fuels.

202. The Commissioner takes the view that the process to remove volatile light fractions from crude oil to produce topped crude petroleum oil is manufacture for the purposes of the FT Act.

203. Topped crude petroleum oil is a taxable fuel, as excise duty is payable. Topped crude petroleum oil for use as a fuel is classifiable to subitem 10.3 of the Excise Tariff.

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[97] For use other than in the extraction of crude oil or the transportation of crude oil by pipeline from the place of extraction to a refinery or as refinery feedstock.

[98] See paragraph 1.54 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006; Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

[99] For use other than in the extraction of crude oil or the transportation of crude oil by pipeline from the place of extraction to a refinery or as refinery feedstock.

[100] See paragraph 1.58 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006; Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

Refining of stabilised crude petroleum oil, topped crude petroleum oil or petroleum condensate

204. The term refining is not defined in the Excise Act or the Excise Tariff Act and therefore takes its ordinary meaning. The *Macquarie Dictionary*[101] defines 'refine' as:

> **1.** to bring to a fine or a pure state; free from impurities: *to refine metal, sugar, petroleum, etc.* …**3.** to bring by purifying, as to a finer state or form. …

205. A typical petroleum refinery process involves separation (by distillation), conversion (by use of catalytic cracking) and purification (hydrotreating).

206. Refining is the separation (distillation) of crude oil into the various hydrocarbon fractions. The fractions are further treated to convert them into more useful saleable products by various methods (use of catalytic cracking and hydrotreating).

207. Stabilised crude petroleum oil, topped crude petroleum oil and petroleum condensate are refined to produce a number of petroleum products such as:

- petroleum gases (for example, liquefied petroleum gas);
- aviation gasoline;[102]
- gasoline (petrol);
- kerosene and aviation kerosene;[103]
- heating oil;
- diesel;
- lubricants and waxes;[104]
- fuel oil;
- benzene;
- toluene;
- xylene;
- mineral turpentine; and
- white spirit.

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[101] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

[102] You are not entitled to a fuel tax credit for taxable fuel that you acquire or manufacture in, or import for use in an aircraft if the fuel was entered for home consumption for that use – see section 41-30.

[103] You are not entitled to a fuel tax credit for taxable that you acquire or manufacture in, or import for use in an aircraft if the fuel was entered for home consumption for that use – see section 41-30.

[104] Lubricants and waxes are not taxable fuels – see definition of taxable fuel in section 110-5.

208. The Commissioner takes the view that the refining of stabilised crude petroleum oil or petroleum condensate is manufacture for the purposes of the FT Act.

209. Fuel classifiable to item 10 of the Excise Tariff produced from the refining of stabilised crude petroleum oil or petroleum condensate is taxable fuel as excise duty is payable on this fuel.

The production of liquid hydrocarbon products

210. Paragraph 10(d) of the Excise Tariff covers liquid hydrocarbon products derived through a recycling, manufacturing or other process (for example, diesel fuel manufactured from waste plastic).

211. Liquid hydrocarbons are usually manufactured or produced through the refining of crude petroleum oils. However, liquid hydrocarbons can be manufactured through recycling or other processes.

Recycling

212. The term 'recycling' is not defined in the Excise Act or Excise Tariff Act and therefore takes on its ordinary meaning. The *Macquarie Dictionary*[105] defines 'recycle' as:

> **1.** to treat (waste, empty bottles, old tins etc) so that new products can be manufactured from them. **2.** to prepare (something) for a second use, often with some adaptation or reconstruction.

213. Recycling includes filtering, de-watering, separation of contaminants by settlement, centrifuge and refining to treat waste or contaminated oils or fuels.

214. The Commissioner takes the view that the following do not constitute manufacture for the purposes of the FT Act:

- filtering to screen out solid objects such as nuts, washers and bolts from waste oil or fuel as it is pumped into a truck's collection tank;
- the removal of water (de-watering) due to settling in a truck's collection tank as part of the collection of waste oil; or
- de-watering due to settling of waste oil in a tank or other receptacle at workshops, industrial premises or other places where it has been accumulated before being pumped into a truck's collection tank.

[105] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

215. These initial processes as part of the collection of waste oil for recycling purposes are not taken to be manufacture for the purposes of the Excise Act or the FT Act. These processes are not for the purposes of producing something that is different in composition from its constituent parts.

216. The Commissioner considers that production of liquid hydrocarbon products through recycling other than a process of filtering or de-watering described in paragraph 214 of this Ruling is manufacture for the purposes of the FT Act.

217. Liquid hydrocarbons produced from recycling that are classifiable to item 10 of the Excise Tariff are taxable fuels as excise duty is payable. For example, diesel produced from a recycling process is classifiable to subitem 10.10 of the Excise Tariff.

218. Liquid hydrocarbons produced from the recycling of waste oil that cannot be classifiable to a specific sub-item within the excise tariff are classifiable to subitem 10.28 of the Excise Tariff, for example, a burner fuel produced through a recycling process.

Benzene, toluene or xylene

219. Benzene, toluene and xylene are aromatic compounds. Aromatic compounds have a particular chemical structure (known as a benzene ring) and were originally so named because of a characteristic sickly sweet odour.[106] Aromatics are widely used in petrol and the production of paints, plastics and solvents.

220. The Commissioner considers that the production of liquid aromatic hydrocarbons consisting principally of benzene, toluene or xylene or mixtures of them (other than goods covered by section 77J of the Excise Act)[107] by any process is manufacture for the purposes of the FT Act.

221. Benzene, toluene and xylene or mixtures of these hydrocarbons are taxable fuels as excise duty is payable. Liquid aromatic hydrocarbons consisting principally of benzene, toluene or xylene or mixtures of them (other than goods covered by section 77J of the Excise Act)[108] are classifiable to subitem 10.25 of the Excise Tariff.

[106] Paragraph 1.105 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006; Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006.
[107] See paragraphs 230 to 231 of this Ruling for a discussion on goods covered by section 77J of the Excise Act.
[108] See paragraphs 230 to 231 of this Ruling for a discussion on goods covered by section 77J of the Excise Act.

Mineral turpentine

222. Turpentine is a solvent originally prepared from natural extracts of pine and other coniferous trees. Mineral turpentine is a substitute product made from petroleum sources.[109]

223. The Commissioner takes the view that the production of mineral turpentine being a liquid hydrocarbon by any process is manufacture for the purposes of the FT Act.

224. Mineral turpentine is a taxable fuel as excise duty is payable. Mineral turpentine (other than goods covered by section 77J of the Excise Act) is classifiable to subitem 10.26 of the Excise Tariff.

White spirit

225. White spirit is a mixture of hydrocarbons in the boiling range between 150 and 200 degrees Celsius and is commonly used as a solvent for paints and varnishes.[110]

226. The Commissioner considers that the production of white spirit by any process is manufacture for the purposes of the FT Act.

227. White spirit is a taxable fuel as excise duty is payable. White spirit (other than goods covered by section 77J of the Excise Act) is classifiable to subitem 10.27 of the Excise Tariff.

Petroleum products (other than blends) not elsewhere included

228. Products of petroleum refining (other than goods covered by section 77J of the Excise Act)[111] that are not specified elsewhere in the Excise Tariff are classifiable to subitem 10.28 of the Excise Tariff.[112]

229. The Commissioner takes the view that the manufacture of petroleum products (other than blends) not elsewhere included in the Excise Tariff (other than goods covered by section 77J) by any process is manufacture for the purposes of the FT Act.

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[109] Paragraph 1.106 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006; Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

[110] Paragraph 1.107 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006; Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

[111] See paragraphs 230 to 231 of this Ruling for a discussion on goods covered by section 77J of the Excise Act.

[112] Paragraph 1.112 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006; Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

Goods covered by section 77J

230. Section 77J of the Excise Act excludes from subitems 10.25, 10.26, 10.27, 10.28 or 10.30 of the Excise Tariff certain goods which are manufactured or produced by a recycling process. The exclusion removes the need for a recycler to pay excise duty on a recycled fuel on which the recycler would also be entitled to a fuel tax credit if the recycled fuel was for use or used in carrying on the recycler's enterprise.[113]

231. The exclusion applies where:

- the fuel was previously delivered for home consumption under subitem 10.25 (aromatic liquid hydrocarbons), subitem 10.26 (mineral turpentine), subitem 10.27 (white spirit), subitem 10.28 (petroleum products, other than blends, not elsewhere included in another subitem of item 10), or subitem 10.30 (blends not elsewhere included in another subitem of item 10);
- the fuel was used as a solvent;
- the person who used the fuel as a solvent recycles it for the person's own reuse as a solvent; and
- the recycled fuel is the same type of product as originally delivered for home consumption.

Production of biodiesel

232. Biodiesel is typically made from used animal fats, vegetable oils or recycled oils from these sources. These oils and fats are subject to a process, commonly called transesterification, in which a chemical reaction is brought on by the introduction of an agent (such as methanol or ethanol) to produce mono-alkyl esters.

233. 'Biodiesel' is defined in subsection 3(1) of the Excise Tariff Act as:

> biodiesel means fuel manufactured by chemically altering vegetable oils or animal fats (including recycled oils from these sources) to form mono-alkyl esters.

234. The Commissioner considers that the production of biodiesel (by chemically altering vegetable oils or animals fats to produce mono-alkyl esters) is manufacture for the purposes of the FT Act.

235. Biodiesel is a taxable fuel, as excise duty is payable. Biodiesel is classifiable to subitem 10.21 of the Excise Tariff.

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[113] Paragraph 2.24 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006; Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

Denatured ethanol for use as fuel in an internal combustion engine

236. Fuel ethanol is ethanol[114] which has been denatured, that is chemically treated to make it unfit for human consumption, usually by the addition of a small amount of petrol[115] and a corrosion inhibitor, for use as fuel in an internal combustion engine.[116] Currently, the minimum concentration of petrol in ethanol is not specified,[117] however fuel ethanol may be subject to a fuel quality standard made under the *Fuel Quality Standards Act 2000*.

237. Ethanol can be used as fuel in an internal combustion engine. However, only specially modified internal combustion engines are able to be powered by unblended fuel ethanol. Non-modified engines are only able to run on blends of petrol or diesel with ethanol.

238. The Commissioner considers the manufacture of denatured ethanol (fuel ethanol) for use as fuel in an internal combustion engine is manufacture for the purposes of the FT Act.

239. Denatured ethanol for use as fuel in an internal combustion engine is classifiable to subitem 10.20 of the Excise Tariff and is a taxable fuel as excise duty is payable.

Blending of fuel

240. Although the term 'blend' is not defined in the Excise Act or the Excise Tariff Act, section 77G of the Excise Act provides that for the purposes of that Act and for greater certainty, fuel blending to produce goods covered by paragraph 10(g) of the Excise Tariff is taken to constitute the manufacture of those goods.

241. Paragraph 10(g) of the Excise Tariff covers blends of one or more of the products specified at paragraphs 10(a) to 10(f) (with or without other substances) other than blends covered by subsection 77H(1) or (3) of the Excise Act.[118]

242. Subsection 77H(1) of the Excise Act excludes a blend of one or more products of paragraphs 10(a) to 10(f) of the Excise Tariff (with or without other substances) and either:

- excise duty or a duty of customs has been paid at the same rate on all products and other substances (if any); or

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[114] Ethanol is ethyl alcohol being a distillate made from plant sources high in sugar and/or starch (for example, grape, cane sugar or cereals).
[115] Usually by the addition of 1-5% petrol.
[116] Internal combustion engines commonly include spark ignition engines, diesel engines and gas turbines.
[117] *Excise (Denatured spirits) Determination 2006 (No. 2*) only sets out the formula for denatured spirits (that is, **not** for use as fuel in an internal combustion engine) for the purposes of subitem 3.8 of the Excise Tariff.
[118] Item 10 of the Excise Tariff does not include goods classifiable to item 15 and waxes, liquefied petroleum gas and bitumen. See paragraphs 10(h) and 10(i) of the Excise Tariff.

- the goods have been covered by a determination in force under section 95-5.[119]

243. However, subsection 77H(1) of the Excise Act does not apply if any of the constituents on which excise duty or a duty of customs has been paid are:

- denatured ethanol;
- biodiesel; or
- taxable fuel for which an entity has been entitled to a fuel tax credit.[120]

244. Furthermore, subsection 77H(3) of the Excise Act excludes blends otherwise covered by paragraph 10(g) of the Excise Tariff, if circumstances specified in a legislative instrument[121] exist. An example of a blend covered by legislative instrument is where a person blends duty-paid oil with duty-paid petrol for use (as two stroke petrol) in their lawn mower (commercial manufacture is not excluded).[122]

245. The Commissioner is of the view that the blending of one or more of the products specified at paragraphs 10(a) to 10(f) (with or without other substances) other than blends covered by subsection 77H(1) or (3) of the Excise Act is manufacture for the purposes of the FT Act.

Blends of gasoline (petrol) and ethanol

246. The term 'gasoline' is not defined in the Excise Tariff Act and therefore takes on its ordinary meaning. The *Macquarie Dictionary*[123] defines 'gasoline' as ***petrol***.

247. Petrol is a product manufactured from the refining of stabilised or topped crude petroleum oil or petroleum condensate. Petrol is typically marketed as premium unleaded petrol or unleaded petrol.

248. The blending of gasoline and ethanol constitutes the manufacture of excisable goods.[124]

249. The Commissioner considers that the blending of gasoline (petrol) and ethanol is manufacture for the purposes of the FT Act.

250. A blend of gasoline (petrol) and ethanol is a taxable fuel as excise duty is payable. Blends of gasoline and ethanol are classifiable to subitem 10.7 of the Excise Tariff.

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[119] The Commissioner may determine by legislative instrument that a fuel blend does not constitute a fuel. See *Fuel Tax (Fuel Blends) Determination 2006 (No. 3)*.
[120] Subsection 77H(2) of the Excise Act.
[121] Subsection 77H(4) of the Excise Act.
[122] See *Excise (Blending exemptions) Determination 2006 (No. 1)*.
[123] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.
[124] Sections 77G and 77H of the Excise Act.

Blends of diesel and ethanol

251. Diesel for use as fuel in a diesel engine is known by various terms in the petroleum industry. Diesel is also known as:

- diesel oil;
- distillate;
- diesoleum;
- automotive diesel oil;
- marine diesel; or
- gas oil.

252. The blending of diesel and ethanol constitutes manufacture of excisable goods.[125]

253. The Commissioner considers that the blending of diesel and ethanol is manufacture for the purposes of the FT Act.

254. A blend of diesel and ethanol is a taxable fuel as excise duty is payable. Blends of diesel and ethanol are classifiable to subitem 10.11 of the Excise Tariff.

Blends of diesel and biodiesel

255. Blends of diesel and biodiesel are the principal way in which biodiesel reaches the market.

256. The blending of diesel and biodiesel constitutes manufacture of excisable goods.[126]

257. The Commissioner considers that the blending of diesel and biodiesel is manufacture for the purposes of the FT Act.

258. A blend of diesel and biodiesel is a taxable fuel as excise duty is payable. Blends of diesel and biodiesel are classifiable to subitem 10.12 of the Excise Tariff.

Blends of fuel not elsewhere included in the Excise Tariff

259. Subitem 10.30 of the Excise Tariff covers blends of one or more of the products specified at subitems 10.1 to 10.28 (with or without other substances) not elsewhere included that can be used as fuel in an internal combustion engine (other than goods covered by section 77J of the Excise Act). For a full discussion of goods covered by section 77J of the Excise Act, see paragraphs 230 to 231 of this Ruling.

260. Blends of gasoline and ethanol, diesel and ethanol or diesel and biodiesel are ***not*** included in subitem 10.30 as these blends are covered separately in the Excise Tariff.

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[125] Sections 77G and 77H of the Excise Act.
[126] Sections 77G and 77H of the Excise Act.

261. Blends of fuel covered by subitem 10.30 of the Excise Tariff must be capable of use as a fuel in an internal combustion engine.

262. Section 77G of the Excise Act provides, for greater certainty, that, for the purposes of the Excise Act, fuel blending to produce goods covered by paragraph 10(g) of the Excise Tariff is taken to constitute the manufacture of those goods.[127]

263. The Commissioner considers that the blending of fuel to produce a fuel specified in subitem 10.30 of the Excise Tariff is manufacture for the purposes of the FT Act.

264. A blend of fuel classifiable to subitem 10.30 is a taxable fuel as excise duty is payable.

Imported taxable fuel entered for warehousing and used in excise manufacture

265. Imported taxable fuel while subject to the control of Customs may be used in the manufacture of excisable goods.[128] You are required to hold a licence under both the Customs and Excise Acts.[129]

266. You are required to lodge a return with Customs for the imported fuel that you use in the manufacture of taxable fuel.[130] Your customs duty liability is extinguished at the time the excisable goods are manufactured.[131] This allows the resulting product to be dealt with through the excise system.

267. For the purposes of the FT Act, where imported taxable fuel is used to manufacture taxable fuel, you are taken to manufacture the total quantity of resulting taxable fuel. You are not taken to separately import some fuel and separately manufacture in part the fuel.

268. For the purposes of the GST Act, you make a taxable importation of that quantity of imported fuel you use in excise manufacture at the time you enter the fuel for home consumption.[132]

Attribution rules for fuel tax credits for taxable fuel you manufacture

269. The fuel tax credit for taxable fuel that you manufacture in Australia for use in carrying on your enterprise is attributable to the tax period in which the fuel was entered for home consumption.[133]

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[127] See paragraphs 242 to 244 of this Ruling for an explanation of goods not covered by section 77H of the Excise Act.
[128] See section 24 of the Excise Act.
[129] Section 105E of the Customs Act.
[130] Section 105C of the Customs Act.
[131] Section 105B of the Customs Act.
[132] Subsection 105D(2) of the Customs Act.
[133] Subsection 65-5(3).

Meaning of 'import' into Australia

Import

270. The term 'import' is not defined in the FT Act and therefore takes its ordinary meaning. The *Macquarie Dictionary* [134] defines the term 'import' as:

> **1.** to bring in from a foreign country, as merchandise or commodities, for sale, use, processing, or re-export.

271. However, the meaning of the word must be determined from the context in which it is used. The ordinary meaning of import, in relation to goods, is to bring goods, or cause them to be brought, into Australia from abroad.

272. The meaning of import in the context of provisions of the Customs Act has been considered by the High Court of Australia on a number of occasions.

273. In *Wilson v. Chambers & Co. Pty. Ltd*[135] the High Court held that goods are imported into Australia when they are brought to their port of destination for the purpose of being unloaded.

274. In *R v. Bull*[136] Barwick CJ stated that:

> …in general importation of goods in my opinion, according to the natural meaning of the word, involves landing them, or bringing them within a port for the purpose of landing them in the country or place in relation to which importation is regulated.[137]

275. Gibbs J in the same case said:

> It does not conform to ordinary usage to say that goods are imported into a place if they are brought there in the course of transit but with no intention that they should be unloaded there. … Even if goods are brought into port they are not necessarily imported; for example, a cargo being carried from England to New Zealand is not imported into Australia when the ship on which it is carried puts into an Australian port en route. …However, if goods are brought into port with the intention of being discharged there they are imported; Wilson v. Chambers & Co. Pty. Ltd. (1926) 38 CLR, at pp. 136, 147, 150; and see also Forbes v. Traders Finance Corporation Ltd (1971) 126 CLR 429 at pp 443-444. … Of course it is not necessary, to constitute an importation, that the goods should be brought into port – they may be landed in some other way.[138]

276. For the purposes of the FT Act, taxable fuel is imported into Australia when it is brought into an Australian port or airport with the intention of being unloaded in Australia.

277. Fuel is not imported into Australia if the fuel passes through Australia in transit to another country.

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[134] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.
[135] *Wilson v. Chambers & Co. Pty. Ltd* (1926) 38 CLR 131; (1926) 32 ALR 274.
[136] *R v. Bull* (1974) 131 CLR 203; (1974) 3 ALR 171; (1974) 48 ALJR 232.
[137] *R v. Bull* (1974) 131 CLR 203 at 212; (1974) 3 ALR 171 at 176; (1974) 48 ALJR 232 at 235.
[138] *R v. Bull* (1974) 131 CLR 203 at 254-255; (1974) 3 ALR 171 at 211; (1974) 48 ALJR 232 at 252.

Entering goods for home consumption

278. Customs duty is imposed on certain goods (including alcohol, tobacco and petroleum products) imported into Australia. If these goods were produced or manufactured in Australia they would be liable for excise duty. The Customs Act imposes an equivalent rate of duty on the imported (or excise equivalent) goods to ensure consistency in treatment for both imported and domestic goods in the Australian market.

279. Section 68 of the Customs Act requires imported goods to be entered for home consumption, warehousing or transhipment.[139]

280. Most importations of taxable fuel are either entered for home consumption or warehousing.

281. An entry for home consumption is a request by the importer to have the goods released from the control of Customs directly into the economy.[140] An entry can be made prior to or on arrival of the goods into an Australian port or airport.[141] An entry for home consumption is made by communicating to Customs an import declaration[142] or a Request for Cargo Release (RCR)[143] in respect of the goods.[144]

282. Once the 'owner'[145] (the importer) has lodged an import entry in its name, the importer has entered the imported goods for home consumption within the meaning of the Customs Act and must pay any customs duty.[146]

283. If the importation is a taxable importation, the importer is also liable to pay GST on the taxable importation at the same time the customs duty is payable.[147]

284. For the purposes of the FT Act, it is not necessary that fuel be entered for home consumption within the meaning of the Customs Act for it to be imported into Australia.

285. If you make an entry in advance, although the fuel is entered for home consumption and duty is payable, you have not imported the fuel until it has been brought into an Australian port or airport with the intention of being unloaded.

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[139] There are certain situations where Customs entries are not required under paragraphs 68(1)(d) to 68(1)(j) of the Customs Act.
[140] This also includes an ex-warehouse declaration (entry for home consumption) made if and when warehoused goods are required.
[141] Subsection 68(2) or 68(3) of the Customs Act.
[142] Commonly known as a Nature 10.
[143] Request for Cargo Release (RCR) communicated to Customs under section 71DB of the Customs Act.
[144] Subsection 68(3A) of the Customs Act.
[145] An 'owner' in respect of goods includes any person (other than an officer of customs) being or holding themselves out to be the owner, importer, exporter, consignee, agent or person possessed of, or beneficially interested in, or having any control of, or power of disposition over, the goods – section 4 of the Customs Act.
[146] Subsection 132AA(1) of the Customs Act.
[147] Subject to being an importer registered under the deferred GST scheme.

The meaning of 'you import' taxable fuel

286. Section 41-5 states in part:

> You are entitled to a fuel tax credit for taxable fuel that you … import into, Australia to the extent that you do so for use in *carrying on your *enterprise.

287. Section 41-5 provides for a fuel tax credit for taxable fuel that *you import* into Australia to the extent that you do so for use in carrying on your enterprise. To determine who is entitled to a fuel tax credit, it is necessary to identify 'you', that is the entity that imports taxable fuel for use in carrying on its enterprise.

288. Consistent with the meaning of 'import' as set out in paragraph 276 of this Ruling, the expression 'you import taxable fuel' requires that you bring the fuel or cause the fuel to be brought, into Australia.

289. You bring taxable fuel into Australia by physically carrying or transporting the fuel yourself. You cause taxable fuel to be brought to Australia by engaging, or instructing your agent to engage another party such as a freight forwarder, international courier or other transport provider to bring the fuel to Australia on your behalf. Alternatively, you may cause taxable fuel to be brought into Australia by requesting a foreign supplier to dispatch the fuel to you in Australia.

290. If you physically bring taxable fuel to Australia at the request of, or under engagement for, another entity, you do not import the fuel for use in carrying on your enterprise. In this case you are not entitled to a fuel tax credit because you have not imported it. It is imported by the entity at whose request or engagement you brought the fuel into Australia. For example, where a freight forwarder is engaged to bring the fuel on behalf of another, the freight forwarder does not cause the fuel to be brought to Australia.[148]

291. While there can be several entities involved in importing fuel, section 41-5 clearly intends to identify one entity that imports the taxable fuel. This is because Division 41 contemplates only one entity, being the entity that imports the taxable fuel into Australia to the extent that it does so for use in carrying on its enterprise as having the entitlement to a fuel tax credit.

292. Section 41-5 contemplates that the taxable fuel is imported for a particular purpose, that is, for use in carrying on an enterprise. Thus 'you import' connotes that, in importing the fuel into Australia you do so for your own purposes. This is to be distinguished from cases where an entity bringing the fuel to Australia does so only for the purposes of another entity, such as where a freight forwarder brings goods to Australia for the purposes of its client.

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[148] For a full discussion on the meaning of 'you import', see paragraphs 120 to 127 of Goods and Services Tax Ruling GSTR 2003/15 Goods and services tax: importation of goods into Australia.

293. In *He Kaw Teh v. R*[149] Dawson J referred to the purpose of importation in considering an alleged offence relating to prohibited imports. Whilst the other judges relied on other reasons, Dawson J acknowledged purpose as an intrinsic element of importation. Dawson J said:

> …importation connotes a commercial purpose or at least an intention to use or consume the goods. … it is not possible as a matter of language to speak of importation without introducing some element of purpose or intention. …[150]

294. It follows that the 'you' in 'you … import into' in subsection 41-5(1) refers to the entity that brings or causes the taxable fuel to be brought into Australia for its own purposes, that is, for use in carrying on its enterprise.

Taxable fuel you import for use in excise manufacture

295. You may import taxable fuel with the intention of using it in the manufacture of taxable fuel. For the purposes of the FT Act, you are considered to have manufactured all of the resultant fuel and not imported and manufactured it in part. Refer to paragraphs 265 to 268 of this Ruling, for a discussion on imported taxable fuel for use in excise manufacture.

Attribution rules for fuel tax credits for taxable fuel you import into Australia

296. A fuel tax credit for taxable fuel that you import is attributable to the same tax period that an input tax credit for the creditable importation of the fuel is attributable to or would have been attributable to if the fuel had been a creditable importation[151] under the GST Act.[152] This is normally the tax period in which the fuel is entered for home consumption.

297. Ordinarily, this means that your fuel tax credit is attributable to the tax period in which the GST on a taxable importation is paid. This is because, under the basic GST rules, an input tax credit for the creditable importation of the fuel is attributable to the tax period in which you pay the GST on the importation.[153]

298. An input tax credit for a creditable importation is attributable to the tax period in which the taxpayer pays the GST on the importation regardless of whether it accounts for GST on a cash or accruals basis.[154]

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[149] *He Kaw Teh v. R* (1985) 157 CLR 523; (1985) 60 ALR 449; (1985) 59 ALJR 620; (1985) 15 A Crim R 203.
[150] *He Kaw Teh v. R* (1985) 157 CLR 523 at 596; (1985) 60 ALR 449 at 502; (1985) 59 ALJR 620 at 651; (1985) 15 A Crim R 203 at 256.
[151] Section 15-5 of the GST Act.
[152] Subsection 65-5(1).
[153] Subsection 29-15(1) of the GST Act.
[154] Subsection 29-15(2) of the GST Act.

Attribution of a fuel tax credit where a creditable importation has been made

299. You must pay the GST on a taxable importation at the same time, place and in the same manner as customs duty is paid on the goods or would be paid if the goods were subject to customs duty, or within such further time, place and manner as specified in the GST regulations.[155]

300. Customs duty is normally paid on taxable fuel when it is entered for home consumption.[156] Taxable fuel is entered for home consumption by communicating to Customs an entry in respect of the fuel.[157] Consequently GST on a taxable importation of taxable fuel is required to be paid when it is entered for home consumption. Hence, the fuel tax credit will be attributed to the tax period in which taxable fuel is entered for home consumption.

301. However, different provisions apply if you are registered under the deferred GST scheme or operate under a weekly settlement permission.[158]

Attribution of a fuel tax credit for importers registered under the GST deferral scheme

302. Importers can defer their payment of GST on taxable importations and account for it directly to the Tax Office in the following tax period.[159]

303. Where you defer the payment of GST on a taxable importation you make, you attribute your input tax credit for the creditable importation to the tax period in which the liability for the GST arose.[160] Liability for GST on an importation of taxable fuel arises once the fuel is imported and entered for home consumption.[161]

304. As an input tax credit for the creditable importation is attributable to the tax period in which the fuel is entered for home consumption because this is the tax period in which the liability for GST arises, the fuel tax credit is also attributable to the tax period in which the fuel is entered for home consumption.

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[155] Section 33-15 of the GST Act. The GST regulations specify when GST is to be paid under the deferred scheme.
[156] Section 132AA of the Customs Act.
[157] Subsection 68(3A) of the Customs Act.
[158] A weekly settlement permission is explained in paragraph 305 of this Ruling.
[159] See Regulation 33-15.07 of the GST Regulations. For approval to defer GST, the importer must satisfy the eligibility requirements for the deferral scheme set out in subregulation 33-15.03(1) of the GST regulations.
[160] Subsection 29-15(2) of the GST Act.
[161] Subsection 13-5(1) of the GST Act.

Attribution of a fuel tax credit for taxable fuel entered for warehousing

305. If you import taxable fuel for use in carrying on your enterprise and you enter the fuel for warehousing, you attribute your fuel tax credit to the tax period in which the fuel is entered for home consumption ex-warehouse. This is the tax period to which you attribute your input tax credit for the creditable importation of the fuel.

306. Taxable fuel which has been entered merely for warehousing is not a creditable importation. Entry for warehousing is not entry for home consumption and under the basic GST rules you do not have a taxable importation, and therefore do not have a creditable importation until the fuel is entered for home consumption. You are entitled to an input tax credit for the creditable importation of the fuel at the time it is entered for home consumption.[162]

307. In some cases, you may import taxable fuel for warehousing in one tax period but enter it for home consumption (and therefore make a taxable importation and a creditable importation) in a later tax period. In these cases, although you are entitled to a fuel tax credit in the earlier tax period, you do not attribute your fuel tax credit to that period but to the later period to which you attribute your input tax credit for the creditable importation. This is because paragraph 65-5(1)(a) requires you to attribute your fuel tax credit to the tax period that your input tax credit for the fuel is attributable to under the GST Act.

Importers operating under a weekly settlement permission

308. The majority of importers of taxable fuel operate under a weekly settlement permission. A weekly settlement permission entitles a permission holder to deliver goods[163] for home consumption without entering them for that purpose. The permission holder is required to give a return at an interval specified in the permission (usually 7 days) in relation to goods delivered into home consumption and pay any customs duty owing at the rate applicable when the goods were delivered into home consumption.[164]

Importers operating under a weekly settlement permission who are not registered under the deferred GST scheme

309. If you are the holder of a weekly settlement permission and you are not registered under the deferred GST scheme, you attribute your fuel tax credit to the same tax period in which you attribute your input tax credit on the creditable importation of the taxable fuel.

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[162] A requirement of a creditable importation is that it is a taxable importation. A taxable importation is an importation of goods which has been imported into Australia and entered for home consumption.

[163] A condition for the granting of a weekly settlement permission is that goods must have been entered for warehousing – subsection 69(4) of the Customs Act.

[164] Section 69 of the Customs Act.

This is the tax period in which you lodge the return for goods delivered into home consumption as required under the terms of your weekly settlement permission.[165]

310. You will attribute your input tax credit on the importation of the taxable fuel to the tax period in which you paid the GST on the importation. You must pay the GST on a taxable importation at the same time, place and in the same manner as customs duty is paid on the goods or would be paid if the goods were subject to customs duty, or within such further time, place and manner as specified in the GST regulations.[166]

311. Where fuel has been delivered for home consumption without an entry, customs duty is payable when a return is provided for the goods delivered for home consumption during the stipulated period.[167]

312. It is the Commissioner's view that if you are an importer operating under a weekly settlement permission and are not registered under the deferred GST scheme, your fuel tax credit is attributable to the tax period in which a return is provided for goods delivered for home consumption during the stipulated period. This is when you are required to pay the customs duty and the GST on the importation. Therefore, your input tax credit for the creditable importation of the fuel is attributable to the same tax period in which GST on the taxable importation is paid.

Importers operating under a weekly settlement permission who are registered under the deferred GST scheme

313. If you are a holder of a weekly settlement permission and you are registered under the deferred GST scheme, you attribute your fuel tax credit to the same tax period in which you attribute your input tax credit on the creditable importation of the taxable fuel. This is the tax period in which you provide a return for goods delivered into home consumption during the stipulated period.[168]

314. You must pay the GST on a taxable importation at the same time, place and in the same manner as customs duty is paid on the goods or would be paid if the goods were subject to customs duty, or within such further time, place and manner as specified in the GST regulations.[169]

315. Where fuel is delivered for home consumption without an entry, customs duty is payable when a return is provided for the

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[165] Paragraph 69(5)(d) of the Customs Act.
[166] Section 33-15 of the GST Act. The GST regulations specify when GST is to be paid under the deferred scheme.
[167] Paragraph 69(5)(d) of the Customs Act.
[168] Paragraph 69(5)(d) of the Customs Act.
[169] Section 33-15 of the GST Act. The GST regulations specify when GST is to be paid under the deferred scheme.

goods delivered for home consumption during the stipulated period.[170]

316. If you are an importer operating under a weekly settlement permission and are registered under the deferred GST scheme, your fuel tax credit is attributable to the tax period in which a return is provided for goods delivered for home consumption during the stipulated period as this is when you are required to pay the customs duty and the GST on the taxable importation of the fuel. Also, this is the tax period to which your input tax credit for the creditable importation of the fuel is attributable.

Attribution of a fuel tax credit for taxable fuel sold under bond

317. If you sell the taxable fuel that you import for warehousing, you are not entitled to a fuel tax credit for the fuel that you sell. This is because the fuel is not for use in carrying on your enterprise.[171]

318. If fuel has been imported for warehousing by another person and you purchase and enter it for home consumption, for the purposes of the FT Act, you do not import the fuel into Australia but you acquire the taxable fuel.

319. However, for GST purposes, you are taken to be the importer of the fuel.[172] This means that for GST purposes you are entitled to an input tax credit on the basis that you have made a creditable importation of the fuel.

320. You therefore attribute your fuel tax credit to the tax period to which you attribute the input tax credit for the creditable importation of the fuel. This may be a different tax period to the tax period in which you acquire the taxable fuel under an 'under bond sale'.[173]

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[170] Paragraph 69(5)(d) of the Customs Act.
[171] See paragraph 2.34 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006 – sale of fuel is not a use of the fuel.
[172] Section 114-25 of the GST Act.
[173] The expression 'under bond' is used to describe imported goods that are subject to customs control and have not been delivered for home consumption.

Appendix 2 – Background

This Appendix is provided as information to help you understand the fuel tax credit system. It does not form part of the binding public ruling.

Fuel tax credit system

321. The fuel tax credit system provides relief in the form of a fuel tax credit for fuel tax[174] embedded in the price of the fuel.

322. This system of taxing (via the imposition of excise and customs duty on specified fuels) and crediting is necessary to deal with the fact that currently fuel tax is generally paid by the licensed manufacturer[175] or importer of the fuel, before its eventual use. Therefore fuel tax is levied under the current excise and customs arrangements on the assumption that the fuel could be used in a taxable way, and entitlement to a fuel tax credit removes or reduces the effect of the tax when the fuel is put to an eligible use under the FT Act as affected by the Transitional Act.[176]

323. Under the fuel tax credit system, all fuels acquired or manufactured in, or imported into Australia for use, other than on a public road, for business purposes will become tax-free over time.[177]

324. Fuel tax relief for fuel used in road transport is provided by allowing a partial fuel tax credit for taxable fuel acquired, manufactured in, or imported into Australia for use on a public road for all business purposes in vehicles with a gross vehicle mass of more than 4.5 tonnes. The partial credit is equal to the effective fuel tax minus a road user charge.

325. Fuel tax credits are claimed by business taxpayers on their business activity statement (BAS).

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[174] See section 110-5. 'Fuel tax' means duty that is payable on fuel under the Excise Act and the Customs Act and the respective Tariff Acts, other than duty that is expressed as a percentage of the value of fuel for the purposes of section 9 of the Customs Tariff Act.

[175] Section 4 of the Excise Act defines 'licensed manufacturer' to be a person or partnership who holds a manufacturer licence.

[176] See paragraph 1.8 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006.

[177] Fuel tax credit system commenced on 1 July 2006 with the system to be phased in over the period ending 30 June 2012.

326. Accounting and reporting arrangements for business taxpayers under the fuel tax credit system align, as far as possible, with existing arrangements under the GST law.[178] For example this means that a business taxpayer:

- is required to be registered for GST to claim a fuel tax credit;[179]
- claims fuel tax credits in the BAS[180] in the same way that they claim GST input credits;
- applies the same tax period for fuel tax credits as they apply for GST;[181] and
- attributes fuel tax credits to the same tax period as the GST input tax credit for the acquisition or importation of fuel.[182]

327. For a more detailed explanation of the fuel tax credit system and the transitional arrangements, see Fuel Tax Ruling FTR 2006/1 Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'agriculture' as defined in section 22 of *the Energy Grants (Credits) Scheme Act 2003*.

[178] See paragraph 2.9 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006.
[179] Subsection 41-5(2).
[180] Subsection 61-15(3).
[181] Section 61-15.
[182] Division 65.

Appendix 3 – Taxable fuel

This Appendix provides a list of taxable fuel for the purposes of the Fuel Tax Act. It does not form part of the binding public ruling.

328. The following is a list of taxable fuel being petroleum and liquid hydrocarbon products classifiable to item 10 (subject to the exclusions contained therein) and for which a rate of excise duty is specified in subitem 10.1 to 10.30 of the Excise Tariff. Gasoline and kerosene for use as fuel in aircraft (subitems 10.6 and 10.17) are not listed, as there is no entitlement to a fuel tax credit for such fuel.[183]

Subitem	Description
10.1	Petroleum condensate
10.2	Stabilised crude petroleum oil
10.3	Topped crude petroleum oil
10.5	Gasoline (other than for use as fuel in aircraft)
10.7	Blends of gasoline and ethanol
10.10	Diesel (other than biodiesel)
10.11	Blends of diesel and ethanol
10.12	Blends of diesel and biodiesel
10.15	Heating oil
10.16	Kerosene (other than for use as fuel in aircraft)
10.18	Fuel oil
10.20	Denatured ethanol for use as fuel in an internal combustion engine
10.21	Biodiesel
10.25	Liquid aromatic hydrocarbons consisting principally of benzene, toluene or xylene or mixtures of them (other than goods covered by section 77J of the *Excise Act 1901*)
10.26	Mineral turpentine (other than goods covered by section 77J of the *Excise Act 1901*)
10.27	White spirit (other than goods covered by section 77J of the *Excise Act 1901*)
10.28	Petroleum products (other than blends) not elsewhere included that can be used as fuel in an internal combustion engine (other than goods covered by section 77J of the *Excise Act 1901*)

[183] You are not entitled to a fuel tax credit for taxable fuel that you acquire, manufacture or import for use in an aircraft if the fuel was entered for home consumption for that use – see section 41-30.

Subitem	Description
10.30	Blends of one or more of the above goods (with or without other substances) not elsewhere included that can be used as fuel in an internal combustion engine (other than goods covered by section 77J of the *Excise Act 1901*)

329. The following is a list of taxable fuel being imported petroleum and liquid hydrocarbon products which if produced or manufactured in Australia would be liable to excise duty and for which an equivalent rate of customs duty ($0.38143 per litre) is specified at a subheading of the Customs Tariff:

Subheading	General description
2207.20.10	Ethanol for use as fuel in an internal combustion engine
2707.10.00	Benzol (benzene)
2707.20.00	Toluol (toluene)
2707.30.00	Xylol (xylenes)
2707.50.00	Other aromatic hydrocarbon mixtures of which 65% or more by volume (including losses) distils at 250°C by the ASTM D86 method
2707.09.90	Crude oil (petroleum condensate or stabilised crude oil) for use other than as a petroleum refinery feedstock
2710.11.69	Gasoline (other than for use as a fuel in aircraft)
2710.11.70	Other refined or partly refined petroleum products; mineral turpentine
2710.11.80	Blends of biodiesel and other substances
2710.19.16	Crudes, topped or enriched for use other than as a petroleum refinery feedstock
2710.19.20	Diesel, other than blends of 2710.19.80
2710.19.51	Heating oil
2710.19.52	Kerosene (other than for use as fuel in aircraft)
2710.19.53	Fuel oil
2710.19.70	Other refined or partly refined petroleum products other than lubricants (including lubricant base oils), hydraulic oils, transformer oils and bitumen; mineral turpentine
2710.19.80	Blends of biodiesel and other substances
2710.91.16	Crudes, topped or enriched for use other than as a petroleum refinery feedstock
2710.91.20	Diesel, other than blends of 2710.91.80

Subheading	General description
2710.91.51	Heating oil
2710.91.52	Kerosene (other than for use as fuel in aircraft)
2710.91.53	Fuel oil
2710.91.69	Gasoline (other than for use as fuel in aircraft)
2710.91.70	Other refined or partly refined petroleum products other than lubricants (including lubricant base oils), hydraulic oils, transformer oils and bitumen; mineral turpentine
2710.91.80	Blends of biodiesel and other substances
2710.99.16	Crudes, topped or enriched for use other than as a petroleum refinery feedstock
2710.99.20	Diesel, other than blends of 2710.99.80
2710.99.51	Heating oil
2710.99.52	Kerosene (other than for use as fuel in aircraft)
2710.99.53	Fuel oil
2710.99.69	Gasoline (other than for use as fuel in aircraft)
2710.99.70	Other refined or partly refined petroleum products other than lubricants (including lubricant base oils), hydraulic oils, transformer oils and bitumen; mineral turpentine
2710.99.80	Blends of biodiesel and other substances
2902.20.00	Benzene
2902.30.00	Toluene
2902.41.00	*o*-Xylene
2902.42.00	*m*-Xylene
2902.43.00	*p*-Xylene
2902.44.00	Mixed Xylene isomers
3817.00.10	Mixed alkylbenzenes
3824.90.20	Biodiesel other than blends of 3824.90.30
3824.90.30	Blends of biodiesel and other substances, not being blends classified to 2710

Appendix 4 – Detailed contents list

330. The following is a detailed contents list for this Ruling:

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FTR 2007/D1

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- blend
- carrying on your enterprise
- creditable acquisition
- creditable importation
- customs duty
- energy grant
- Energy Grants Credits Scheme
- entry for home consumption
- excise
- excise duty
- fuel
- fuel tax
- fuel tax credit
- fuel tax credit system
- GST
- import
- input tax credit
- manufacture
- payable
- production
- recycling
- tax period
- taxable fuel
- taxable importation
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NO:	2006/3598
ISSN:	1834-1470
ATOlaw topic:	Fuel Tax