FTR 2008/1A4 - Addendum - Fuel tax: vehicle's travel on a public road that is incidental to the vehicle's main use and the road user charge

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Addendum

Fuel Tax Ruling

Fuel tax: vehicle's travel on a public road that is incidental to the vehicle's main use and the road user charge

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Fuel Tax Ruling FTR 2008/1 to reflect the Commissioner's view on when taxable fuel is acquired to use, in a vehicle, for travelling on a public road.

FTR 2008/1 is amended as follows:

1. Paragraph 2

Omit the paragraph; substitute:

> 2. This Ruling also explains the road user charge, and the meaning of the terms 'vehicle', 'travel', 'for travelling', 'public road', 'main use' and 'incidental to' for the purposes of subsections 43-10(3) and (4) of the FT Act.

2. Paragraph 4

Omit the paragraph; substitute:

> 4. However, under subsection 43-10(3) of the FT Act, the amount of the fuel tax credit to which you are entitled is reduced by the road user charge. Subsection 43-10(3) of the FT Act provides:
>
> > To the extent that you acquire, manufacture or import taxable fuel to use, in a vehicle, for travelling on a public road, the amount of your fuel tax credit for the fuel is reduced by the amount of the road user charge for the fuel.
> >
> > **Note:** Only certain motor vehicles whose gross vehicle mass is more than 4.5 tonnes are entitled to any credit (see sections 41-20 and 41-25).

3. Paragraph 7

Omit:

- 'incidental use' is a reference to incidental use as defined in section 8 of the Energy Grants Act;

4. Footnote 7

Omit the footnote; substitute:

> [7] Subsection 43-10(3). The amount of the road user charge is determined by the Minister for Transport. Legislative instruments which set the road user charge are published at www.comlaw.gov.au.

5. Paragraphs 16 and 17

Omit the paragraphs; substitute:

> 16. Travel or travelling on a public road includes all the ordinary incidents of a journey undertaken by a vehicle, including stopping and idling while stationary in the course of a journey.

6. Footnotes 9A, 9B and 9C

Omit 'of the FT Act'.

7. Paragraph 23

After the paragraph; insert:

> ***Meaning of 'taxable fuel to use, in a vehicle, for travelling on a public road'***
>
> 23A. The expression 'for travelling' in subsection 43-10(3) refers to the purpose for which taxable fuel is acquired. The amount of fuel tax credit for taxable fuel that is acquired to use, in a vehicle, for travelling on a public road, is reduced by the amount of road user charge.
>
> 23B. Fuel to use 'for travelling', in the context of subsection 43-10(3), encompasses not only fuel for propulsion, but also fuel for aspects of the vehicle's function and operation that are for the purpose of travelling on a public road. Fuel for travelling would include fuel used for stopping and idling while stationary in the course of a journey as well as the use of lights, brakes, power-steering and windscreen wipers.
>
> 23C. Determining whether an aspect of the vehicle's function or operation has this character requires a practical assessment of its connection with travelling, as distinct from some other function of the vehicle.
>
> 23D. In assessing this connection, where the relevant machinery or source of the fuel is located is not determinative. Similarly, the design of the engine is not determinative of the connection between the vehicle's function or operation and travel.

23E. The expression 'for travelling' does not include fuel used for a purpose unrelated to a vehicle's movement on a public road.

8. Paragraphs 30 and 31

Omit the paragraphs; substitute:

30. *A garbage truck collects rubbish from rubbish bins along a public road. The garbage truck moves along the road to a bin, momentarily stops to empty the contents of the bin into its enclosed rubbish container using an automated side lift, and then moves to the next bin. A compacting mechanism compacts the rubbish inside the enclosed rubbish container. The garbage truck deposits the collected rubbish at a council landfill site. The garbage truck is using the public road to collect rubbish and transport the rubbish collected to a landfill site.*

31. *The garbage truck's travel begins when it leaves its depot and ends when it arrives back at the depot. The fuel used for the vehicle to travel along the public road is subject to the road user charge. The fuel used to operate the bin lift and the compacting mechanism is unrelated to the vehicle's movement along the public road. Hence, the fuel used to operate the bin lift and the compacting mechanism is not subject to the road user charge.*

9. Paragraph 43

After the paragraph; insert:

Example 9A: fuel that is not 'for travelling' – refrigerated vehicle

43A. *A refrigerated vehicle transports temperature sensitive goods and travels on a public road. The goods are cooled by a refrigeration unit that is powered by fuel stored in a tank separate to that which supplies the main engine. The fuel that powers the refrigeration unit is not 'for travelling'. The fuel is used for the purpose of refrigeration. The location of the fuel is not determinative.*

Example 9B: fuel that is not 'for travelling' – coach

43B. *A commercial bus and coach enterprise transports passengers both within the metropolitan area and to country and interstate destinations. The buses and coaches have air-conditioning for passenger comfort. The additional fuel consumed by the air-conditioner is not 'for travelling'. The fuel is used for the purpose of passenger comfort. The design of the air-conditioner is not determinative.*

Example 9C: fuel that is not 'for travelling' – sleeper cab

43C. *A truck used for long distance travel is fitted with a sleeper cab where the driver can take rest breaks as required by the relevant state legislation. While the truck is stationary and the engine is turned off, the sleeper cab is cooled by an air-conditioner that is powered by an auxiliary engine, which draws fuel from the fuel tank that supplies the truck's main engine. The fuel that powers the auxiliary engine for the sleeper cab air-conditioner is not 'for travelling'. The fuel is used for the purpose of cooling the sleeper cab. The design of the sleeper cab air-conditioning is not determinative.*

10. Paragraph 79

Omit 'paragraphs 75 to 77 of Taxation Ruling TR 2006/10 Income tax, fringe benefits tax and product grants and benefits: Public Rulings'; substitute 'paragraphs 75 to 76 of Taxation Ruling TR 2006/10'.

11. Footnote 13

Omit the footnote; substitute:

[13] See Revised EM, paragraphs 2.81 and 2.84. The amount of the road user charge is determined by the Minister for Transport. Legislative instruments which set the road user charge are published at www.comlaw.gov.au.

12. Paragraph 105

Omit 'or standing'; substitute 'and idling while stationary'.

13. Paragraphs 109 to 116

Omit the paragraphs, including the heading.

14. Paragraph 120

After the paragraph; insert:

Meaning of 'taxable fuel to use, in a vehicle, for travelling on a public road''

120A. The expression 'for travelling' in subsection 43-10(3) refers to the purpose for which taxable fuel is acquired. The amount of fuel tax credit for taxable fuel that is acquired to use, in a vehicle, for travelling on a public road, is reduced by the amount of road user charge. Therefore, the purpose for which fuel is acquired determines whether the amount of fuel tax credit is reduced by the road user charge.

120B. The term 'travelling' has particular application in subsection 43-10(3).

120C. In *Linfox Pty Ltd* v. *Commissioner of Taxation*[30A] the Administrative Appeals Tribunal considered the meaning of the phrase 'to use, in a vehicle, for travelling on a public road'. It said:

> …[A]s the provision is expressed, it is clear that two conditions must be satisfied before s 43-10(3) is triggered: first, the fuel must be acquired to use in a vehicle; and second, the fuel must be acquired to use for travelling on a public road.
>
> …
>
> ...[W]e consider that the only circumstance in which the second condition is s 43-10(3) is met, is the circumstance where fuel is acquired to use for the purpose of travelling on a public road.

120D. Fuel in a vehicle can be said to serve several purposes, such as powering mechanical propulsion and auxiliary equipment. Travelling, in the context of fuel use in subsection 43-10(3), encompasses all aspects of vehicle function and operation that are for the purpose of travelling on a public road. Fuel for travelling would include fuel used for stopping and idling while stationary in the course of a journey as well as the use of lights, brakes, power-steering and windscreen wipers.

120E. Determining whether an aspect of the vehicle's function or operation has this character requires a practical assessment of its connection with travelling, as distinct from some other function of the vehicle.

120F. The location of the relevant machinery or source of the fuel associated with a vehicle's function or operation is not determinative of whether fuel is for use in travel. The design of the engine, or how the vehicle operates, is also not determinative of this. Provided fuel directly or indirectly powers machinery sufficiently connected with the travel the fuel is to use, in a vehicle, for travelling.

15. Footnote 31

Omit the footnote; substitute:

> [31] For a full discussion on the meaning of 'public road' see paragraphs 446 to 468 of Fuel Tax Ruling FTR 2012/1 *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 43-15 of the Fuel Tax Act 2006*.

[30A] *Linfox Australia Pty Ltd* v. *Commissioner of Taxation* [2012] AATA 517 at 31 and 34.

16. Footnote 37

Omit the footnote; substitute:

[37] See Revised EM, paragraph 2.52. For a more detailed explanation of the meaning of 'forestry roads' see paragraphs 221 to 232 of Fuel Tax Ruling FTR 2012/2 *Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'forestry' as defined in section 43-75 of the Fuel Tax Act 2006*.

17. Footnote 38

Omit the footnote; substitute:

[38] See Revised EM, paragraph 2.53. For examples of private access roads for use in mining operations see paragraphs 139 to 149 of FTR 2006/2 *Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'mining operations' as defined in section 11 of the Energy Grants (Credit) Scheme Act 2003*.

18. Detailed contents list

(a) Omit:

'Incidental use' of fuel in a vehicle travelling on a public road 109

(b) Insert:

Meaning of 'taxable fuel to use, in a vehicle, for travelling on a public road' 23A

Example 9A: fuel that is not 'for travelling' – refrigerated vehicle 43A

Example 9B: fuel that is not 'for travelling' – coach 43B

Example 9C: fuel that is not 'for travelling' – sleeper cab 43C

Meaning of 'taxable fuel to use, in a vehicle, for travelling on a public road' 120A

19. Related Rulings/Determination

(a) Omit 'FTR 2006/3'.

(b) Insert 'FTR 2008/1A4; FTR 2012/1; FTR 2012/2;'.

20. Legislative references

(a) Omit:

- Road Charges Legislation Repeal and Amendment Act 2008

(b) Insert:

- FTA 2006 Div 43
- TAA 1953

21. Case references

Insert:

- Linfox Pty Ltd v. Commissioner of Taxation [2012] AATA 517

This Addendum applies on and from 9 April 2008.

Commissioner of Taxation

1 May 2013

ATO references

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