

CR 2017/61 - Fuel tax: clients of Better Driver Pty Ltd who use the reports generated by BetterDriver In-Vehicle Solution for calculating the kilometres travelled and fuel used in a vehicle as a record for fuel tax credit purposes

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Class Ruling

Fuel tax: clients of Better Driver Pty Ltd who use the reports generated by BetterDriver In-Vehicle Solution for calculating the kilometres travelled and fuel used in a vehicle as a record for fuel tax credit purposes

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1 This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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.

Summary – what this ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- Subdivision 41-B of the *Fuel Tax Act 2006* (FTA)
- section 41-20 of the FTA
- section 60-5 of the FTA
- section 110-5 of the FTA
- subsection 41-5(1) of the FTA
- subsection 41-5(2) of the FTA

- section 43-5 of the FTA
- subsection 43-10(3) of the FTA
- section 382-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)
- subsection 382-5(1) of Schedule 1 to the TAA
- subsection 382-5(8) of Schedule 1 to the TAA.

All legislative references in this Ruling are to the FTA unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are clients of Better Driver Pty Ltd who are registered for goods and services tax and who use measurements from reports generated by the BetterDriver In-Vehicle Solution for apportioning fuel usage in vehicles for the purposes of calculating the extent of their fuel tax credit entitlement.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling and does not rule on whether particular roads are public roads for the purposes of the FTA. Nor does this Ruling extend to determining entitlement to claim fuel tax credits.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 23 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 22 March 2017 to 30 June 2020. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant in the application and subsequently requested from the applicant.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

9. The BetterDriver In-Vehicle Solution consists of:

- a non-hardwired device installed in a vehicle (referred to as an In-Vehicle Device) that operates to capture information at specific intervals
- a cloud-based remote data storage and management platform (Platform) that securely receives, processes, reports and stores the location information, and
- a web browser based secure portal (Portal) that allows the parties to review and generate reports.

In-Vehicle Device

10. The In-Vehicle Device (IVD) is a global positioning system (GPS) device that monitors a vehicle's use including the position of the vehicle, the vehicle's travel (measured in kilometres) and the time and date. When the vehicle's engine protocol is compatible with the IVD's functionality, the IVD will also measure fuel consumed by the vehicle on a second by second basis.

11. The IVD contains a GPS module, movement sensors, solid state memory, mobile communication modules, sim card, battery and power socket. The device is inserted into the On Board Diagnostic (OBD) port of the vehicle. The device is powered through the vehicle's electrical system. The BetterDriver In-Vehicle Solution system uses GPS/Glonass for positional accuracy.

12. If the data connection is out of range the IVD automatically stores recorded data and sends it to the Platform once the connection is re-established.

Platform

13. The platform receives, processes, manages and stores trip and fuel data recorded and transmitted by the IVD. Initially, the following data for each relevant vehicle is input to the Platform by the client using the BetterDriver In-Vehicle Solution, to the extent relevant to the client's enterprise:

- vehicle category and vehicle sub-category
- body type

- registration number
- make, model and year
- fuel type
- engine capacity, and
- Gross Vehicle Mass (GVM).

14. The Platform processes trip data recorded by the IVD and compares the locations of the segments of the vehicle's travel to a digitised map of the Australian road network to classify the location of travel. Speed and positioning of the vehicle on the road are factors that can be used to assist with determining boundaries for the classification of the travel, or to alert the Administrator of the Platform of the need to review the initial classification and possibly create geofences for more accurate classification of the travel or fuel use location. The Administrator can create geofences around specific locations where the more automated dataset of the Australian road network may require adjustment to reflect the categorisation of locations for the purposes of fuel tax credits. Examples may include: newly opened roads not yet updated on maps based on the dataset of the Australian road system, or a road that is closed and undergoing construction and maintenance.

15. The Platform uses a combination of data points from trips made and fuel used, compares this data against the digitised map to calculate allocation of fuel usage between different categories of travel or fuel use location.

Portal

16. A web browser based secure portal allows the relevant parties to review and generate reports.

Summary of process

17. Each time the ignition is turned on the IVD automatically and continuously records the vehicle's current location using the GPS geocoding. The system records the current location, time and date and kilometres travelled. When the vehicle's engine protocol is compatible with the IVD's functionality, the fuel used in the travel and at the location is also recorded.

18. The recorded data is transmitted to the Platform at the end of the trip using wireless data interchange on a mobile network. If the mobile network is unavailable, the IVD automatically stores the recorded data and sends it to the Platform once the network is again available.

19. The Platform receives all transmissions at the end of each trip and verifies data integrity and receipt. The Platform then processes the transmissions and generates an individual trip log (Trip Log).

20. The Trip Log is then automatically compared to geocodes on the digitised map of the Australian road system and applied to determine the total number of kilometres travelled within and outside the boundaries of particular categories of locations, the time in those locations and the fuel used within and outside the boundaries of particular categories of locations. In certain circumstances, this data may also be subject to further review and verification of classification of the location of travel by the Platform.

21. The Portal then can download or display the following information for the reporting period:

- vehicle identification
- kilometres travelled in different categories of locations
- total kilometres travelled
- percentage split between kilometres travelled in different categories of locations
- total time in different categories of locations, and
- litres used while travelling on different categories of locations.

All reports and outputs are in English and outputs are exportable in Microsoft Excel (xls), portable document format (PDF) and comma separated values (CSV) format.

Determining fuel consumption

22. The IVD has a software module that reads the actual fuel consumed by the engine (the 'burn rate') per second. This burn rate is then compared against time and date stamped geo-location data to identify fuel being used during travel on particular segments of road and at specific locations.

23. Should the burn rate not be available due to technical or engineering constraints the apportionment of fuel based on the geo-location data is applied to fuel purchase data from the dedicated vehicle fuel card for a vehicle for a given period.

24. These features enable the allocation of kilometres travelled and total running time of the engine to allocate fuel usage between different activities for the purpose of determining the extent of use of taxable fuel for different purposes.

Ruling

25. The BetterDriver In-Vehicle Solution includes a device that may be used to determine the number of kilometres a vehicle travels and total running time of the engine in specified locations. The locations of the vehicle and its travel are categorised by the Platform based on comparison of geocodes of the vehicle's location from the IVD, with the geocodes in the Platform's digitised maps.

26. The report generated by the BetterDriver In-Vehicle Solution details the kilometres travelled and total running time of the engine by the vehicle in the specified locations.

27. The report is in English.

28. This report is a document that satisfies a record for the purposes of subsection 382-5(8) of Schedule 1 of the *Taxation Administration Act 1953* (TAA).

29. Provided the report is retained for 5 years, or in accordance with the specific requirements of section 382-5 of Schedule 1 of the TAA, it can be used for record keeping purposes to the extent of the kilometres travelled, total running time of the engine and location of the vehicle for the purposes of calculating fuel tax credit.

30. Where the BetterDriver In-Vehicle Solution also generates a report of fuel burn rates and fuel consumed because the vehicle's engine protocol is compatible with the installed IVD's functionality, the report will also be a record of the fuel used for the travel of the vehicle and, where applicable:

- during travel on particular segments of road, or
- during travel on or time at particular locations.

Appendix 1 – Explanation

❶ *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.*

Is apportionment a requirement to work out the entitlement to a fuel tax credit?

31. Subsection 41-5(1) provides that an entity is entitled to a fuel tax credit for taxable fuel they acquire or manufacture in, or import into, Australia to the extent that they do so for use in carrying on their enterprise.

32. Taxable fuel is defined in section 110-5.

33. However, under subsection 41-5(2), the entity is only entitled to the fuel tax credit if they are registered for goods and services tax at the time they acquire, manufacture or import the fuel.

34. Section 43-5 provides that the amount of an entity's fuel tax credit is the amount of effective fuel tax that is paid on the fuel. Subsection 43-10(3) provides that to the extent an entity acquires taxable fuel to use, in a vehicle, for travelling on a public road, the amount of its fuel tax credit for the fuel is reduced by the road user charge for the fuel.

35. Subdivision 41-B contains the disentanglement rules for fuel tax credits and includes at section 41-20 the following disentanglement:

41-20 No fuel tax credit for fuel to be used in light vehicles on a public road

You are not entitled to a fuel tax credit for taxable fuel to the extent that you acquire, manufacture or import the fuel for use in a vehicle with a gross vehicle mass of 4.5 tonnes or less travelling on a public road.

36. Hence an entity that acquires taxable fuel for use in their enterprise in a vehicle with a gross vehicle mass of 4.5 tonnes or less (a light vehicle), is entitled to a fuel tax credit to the extent the fuel is used otherwise than in the vehicle travelling on a public road.

37. The use of the phrase 'to the extent' in section 41-5, section 41-20 and subsection 43-10(3) contemplates apportionment between fuel acquired for an eligible use and fuel acquired for an ineligible use, or uses which may give rise to different rates of fuel tax credit entitlement. The implications of this phrase for the purposes of entitlement has been considered in paragraph 5 of Fuel Tax Determination FTD 2010/1 *Fuel tax: is apportionment used when determining total fuel tax credits in calculating the net fuel amount under section 60-5 of the Fuel Tax Act 2006?*

38. At paragraph 5 of FTD 2010/1 the Commissioner relevantly states:

5. The use of the phrase 'to the extent that' in the FT Act contemplates apportionment in the case of:

- section 41-5 of the FT Act between a use that entitles you to a fuel tax credit and one that does not, and between uses that give rise to different rates of fuel tax credits, taking into account the operation of Division 41 of the FT Act ...¹
- section 41-10 between a use that entitles you to a fuel tax credit and one that does not;
- section 42-5 between a use that entitles you to a fuel tax credit and one that does not;...and
- subsection 43-10(3) between a use that reduces your fuel tax credit amount by the road user charge and one that does not.

39. To determine the extent of the fuel tax credit an entity that acquires taxable fuel, will need to apportion the fuel between:

- for vehicles with a gross vehicle mass exceeding 4.5 tonnes – the use for travelling on a public road (where the fuel tax credit rate is the excise rate less the road user charge) and the use while travelling on non-public roads, or off-road while or while not travelling (where the fuel tax credit rate is the excise rate), and
- for vehicles with a gross vehicle mass of 4.5 tonnes or less – the use in a vehicle travelling on a public road and travelling on non-public roads or off-road.

What are the principles for apportioning fuel used in a vehicle?

40. The FTA does not prescribe how to apportion fuel between different uses. The Commissioner has explained in FTD 2010/1 that methods that are fair and reasonable are acceptable.

41. Specifically paragraph 33 of FTD 2010/1 says:

33. It is not necessary for an apportionment method to track the intended use of every last drop of fuel. A method may be fair and reasonable without doing so provided that the application of the method reasonably reflects the extent to which taxable fuel is acquired for an eligible activity.

42. Apportionment of fuel for the purpose of working out an entitlement, and calculating the amount of the entitlement, are distinct phases. Specifically, an entity can either:

- undertake all the necessary apportionment as a single step process that encompasses working out the entitlement as well as the calculation of a fuel tax credit amount, or
- undertake apportionment as discrete steps, for example:

¹ During the transitional phase, which extends from 1 July 2006 to 30 June 2012.

- apportionment takes place in working out entitlement to a fuel tax credit and then in calculating the fuel tax credit amount, or
- apportionment takes place in working out the amount of fuel used in particular equipment or particular auxiliary equipment of a vehicle travelling on a public road or in a group of equipment or group of auxiliary equipment and then apportioning the uses of fuel in relation to that equipment or group to calculate the fuel tax credit amount.

43. The amount of the entitlement calculated should be the same whether a single step process or a discrete step calculation is performed.

44. To apportion the taxable fuel an entity has acquired to the different activities for which the fuel was used, a measure can be used as part of an apportionment methodology. The Commissioner accepts that an entity can use any appropriate reliable measure as the basis for calculating the amount of taxable fuel that it acquires for use in an eligible activity.

45. Examples of known reliable measures include:

- odometer readings of kilometres actually travelled
- route distances
- hours of operation of vehicle or equipment, or
- average hourly fuel consumption of vehicle or equipment.

46. Although these are commonly used measures, because of the diverse range of eligible activities, this is not an exhaustive list and there may be other measures that are appropriate to an entity's circumstances.

Does the BetterDriver In-Vehicle Solution provide a step in the apportionment of fuel such that it determines the fuel used and kilometres travelled by a vehicle and the location of the travel?

47. The Platform processes trip data recorded by the IVD and validates the classification of the location by comparing geocodes of the segment of travel or location with a digital map that incorporates data of the Australian road system and in some instances data that may be input by the Platform. The Platform inputs data generally where there are factors that indicate inconsistency between the classification of the location of travel based on the digital map and other information or indicators available.

48. Subject to the parameters set in the system the BetterDriver In-Vehicle Solution can be used as a step in determining the kilometres travelled and total running time of the engine for which the taxable fuel used may be eligible for fuel tax credit purposes.

49. This data must then be used as part of the formula to determine the extent of the taxable fuel to be apportioned between claim rate and eligible uses for fuel tax credit purposes.

50. Where the system generates data on fuel usage (fuel burn rates and fuel consumed) this data can also be used as part of the formula to determine the extent of the taxable fuel to be apportioned between claim rate and eligible uses for fuel tax credit purposes.

Does the report generated from the BetterDriver In-Vehicle Solution satisfy a record for the purposes of subsection 382-5(8) of the Schedule 1 to the TAA?

51. Section 382-5(1) of Schedule 1 of the TAA provides that you must keep records that record and explain all transactions and other acts you engage in that are relevant to an entitlement to a fuel tax credit.

52. You must retain these records for at least five years after the completion of the transactions or acts to which they relate.

53. Subsection 382-5(8) of Schedule 1 to the TAA provides that the records must be in English, or easily translated into English, and enable an entitlement under an indirect tax law, that is, a fuel tax law, to be ascertained.

54. The BetterDriver In-Vehicle Solution includes a device (referred to as an IVD) that records kilometres travelled in a vehicle and allows for recording time, date and classification of the kilometres travelled within and outside set parameters. When the vehicle's engine protocol is compatible with the IVD's functionality, it also records fuel used for particular segments of travel and at specific locations.

55. The IVD automatically and continuously records the vehicle's current location using the GPS geocoding and the time and kilometres travelled.

56. The recorded data is saved onto the IVD memory. On a regular basis the data is automatically sent to the Platform using wireless data interchange on the mobile network.

57. The Platform receives all transmissions continuously as the IVD is operating and verifies data integrity and receipt. The Platform then processes the transmissions and generates a Trip Log of travel.

58. The Trip Log is then automatically compared to geocodes on the digitised map of the Australian road system and applied to classify the locations of travel and the total number of kilometres travelled in those locations of travel and total running time of the engine in the locations.

59. The IVD has a software module that reads the actual fuel consumed by the engine (the 'burn rate') per second. This burn rate is then compared against time and date stamped geo-location data to identify fuel being used during travel on particular segments of road and at specific locations.

60. Should the burn rate not be available due to technical or engineering constraints the apportionment of fuel based on the geo-location data is applied to fuel purchase data from the dedicated vehicle fuel card for a vehicle for a given period.

61. These features enable the allocation of kilometres travelled to fuel usage between different activities for the purpose of determining the extent of use of taxable fuel for different purposes.

62. The Portal allows the entity using the BetterDriver In-Vehicle Solution in their enterprise to generate reports. The report available to the entity shows:

- the reporting period
- vehicle identification
- kilometres travelled on different categories of roads or other locations and
- total kilometres travelled.
- running time of engine in different locations, and
- total running time of the engine.

63. A full Trip Log is available showing the vehicle's travel, time and date of travel, locations of the travel and, total kilometres and total running time of the engine. The Portal then can download or display the following information for the reporting period:

- vehicle identification
- kilometres travelled on different categories of roads or other locations
- total kilometres travelled
- percentage split between kilometres travelled on different categories of roads or other locations
- total time in different categories of locations, and
- litres used while travelling on different categories of roads or other locations.

64. The reports are produced in English and are exportable to Microsoft excel (xls), portable document format (PDF) and comma separated values (CSV) format.

65. The report is a record that can be used in determining apportionment for fuel tax credit purposes. As such, it is a document that satisfies a record for the purposes of subsection 382-5(8) of Schedule 1 to the TAA.

66. The Ruling section provides a detailed explanation of the Commissioner's decision. Therefore, no further explanation is needed.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- FTA 2006 Subdiv 41-B
- Not previously issued as a draft
- FTA 2006 41-20
 - FTA 2006 42-5
- Related Rulings/Determinations:*
- FTA 2006 43-5
 - FTA 2006 43-10(3)
 - FTA 2006 60-5
 - FTA 2006 110-5
- TR 2006/10; FTD 2010/1
- Legislative references:*
- FTA 2006
 - FTA 2006 Div 41
 - FTA 2006 41-5
 - FTA 2006 41-5(1)
 - FTA 2006 41-5(2)
 - FTA 2006 41-10
 - TAA 1953
 - TAA 1953 Sch 1 382-5
 - TAA 1953 Sch 1 382-5(1)
 - TAA 1953 Sch 1 382-5(8)
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ATO references

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