

# ***FTD 2019/D1 - Fuel tax: fuel tax credits - vehicles and satisfying environmental criteria***

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This document has been finalised by FTD 2019/1.

! There is a Compendium for this document: **FTD 2019/1EC** .



# Draft Fuel Tax Determination

## Fuel tax: fuel tax credits – vehicles and satisfying environmental criteria

### ❶ Relying on this draft Ruling

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Ruling applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if the draft Ruling turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

### What this draft Ruling is about

1. Under the *Fuel Tax Act 2006*<sup>1</sup>, you are not entitled to claim a fuel tax credit for fuel used in a motor vehicle that does not meet specified environmental criteria.<sup>2</sup>
2. Subsection 41-25(2) provides several exemptions including where the motor vehicle is used primarily on an agricultural property in carrying on a primary production business.<sup>3</sup>
3. This Ruling<sup>4</sup> explains:
  - what the phrase a 'motor vehicle' means
  - when a motor vehicle is used 'primarily' on an agricultural property, and
  - how to account for any fuel used in a motor vehicle which no longer satisfies the environmental criteria.

### Ruling

#### What is a 'motor vehicle' for the purposes of the FTA

4. A 'motor vehicle' is defined in the FTA to mean:  
'any motor-powered road vehicle (including a 4 wheel drive vehicle)<sup>5</sup>

<sup>1</sup> All legislative references in this Ruling are to the *Fuel Tax Act 2006* (FTA) unless otherwise indicated.

<sup>2</sup> Section 41-25, the environmental criteria are set out in subsection 41-25(1).

<sup>3</sup> Paragraph 41-25(2)(a).

<sup>4</sup> All further references to 'this Ruling' refer to the Ruling as it will read when finalised. Note that this Ruling will not take effect until finalised.

<sup>5</sup> Section 110-5 provides that motor vehicle has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

5. In discussing the environmental criteria, the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 (EM) explains that '(t)he criteria are only intended to apply to motor powered road vehicles. They are not intended to apply to vehicles that are not road vehicles'.<sup>6</sup>
6. The Commissioner considers that the term 'motor vehicle' as defined should be interpreted in a practical and common sense manner, consistent with the explanation provided in the EM.
7. Accordingly, we do not consider a motor vehicle to be a road vehicle where both of the following apply:
- the main function of the vehicle is not related to public road use, and
  - the vehicle's ability to travel on a public road is secondary to its main function.
8. Examples of such vehicles which are not road vehicles include road rollers, graders, tractors and earthmoving equipment.

### **Motor vehicles used primarily on an agricultural property**

9. To be exempt from having to meet the environmental criteria, the motor vehicle must:
- be used in carrying on a primary production business<sup>7</sup> and
  - be used primarily on an agricultural property.<sup>8</sup>
10. The term 'primarily' is not defined in the FTA and takes its ordinary, natural meaning<sup>9</sup>, shaped by the statutory context in which it appears. The courts have interpreted phrases similar to 'primarily' to mean 'more than half'.<sup>10</sup>
11. The Commissioner considers that the issue of whether a motor vehicle is used primarily on an agricultural property should be interpreted in a quantitative sense, consistent with judicial reasoning and in a practical and common sense manner.
12. You are using a motor vehicle primarily on an agricultural property when at least one of the following applies:
- the motor vehicle travels more than half its total kilometres on an agricultural property
  - the motor vehicle was used on an agricultural property for an amount of time equating to more than half of the time that the vehicle was used during the calendar year.
13. When determining the primary use of a vehicle, you may take all relevant factors into consideration, including the amount of time you use the vehicle on the agricultural

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<sup>6</sup> At paragraph 2.55.

<sup>7</sup> Subparagraph 41-25(2)(a)(i).

<sup>8</sup> Subparagraph 41-25(2)(a)(ii).

<sup>9</sup> As 'in the first place; chiefly; principally' per Macmillan Publishers Australia, *The Macquarie Dictionary* online, [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au), viewed 1 July 2019.

<sup>10</sup> For example, *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 included a discussion of the definition of the term 'mainly' which is similar to 'primarily'. Lord Morton of Henryton stated at [669] that it means 'more than half'. See also Taxation Rulings TR 96/8 *Income tax: school and college buildings funds* (withdrawn) and TR 2001/7 *Income tax: the meaning of personal services income*.

property and the distance it travels on and off the agricultural property. We accept that as long as one of these factors indicates that the motor vehicle is used primarily on an agricultural property, the test outlined in subparagraph 41-25(2)(a)(ii) will be satisfied.

### **Adjustment when a motor vehicle no longer satisfies the environmental criteria**

14. You have a fuel tax adjustment if your actual use of fuel differs from your projected use. If your vehicle satisfied the environmental criteria when you acquired the fuel, but not when you actually used it, you have an increasing fuel tax adjustment.<sup>11</sup>

### **Examples**

#### ***Example 1 – primary use based on distance travelled***

15. *John is a wheat farmer who operates a primary production business with his partner Jane. John uses an old diesel tray truck (with a gross vehicle mass (GVM) of over 4.5 tonne) that does not meet the specified environmental criteria.*

16. *The diesel tray truck is used:*

- *daily to transport fertiliser, seed, produce, equipment and other goods around the agricultural property, and*
- *twice a week on average to transport produce on a public road to a local market which is approximately 5 kilometres away from the property.*

17. *John estimates that in a calendar year, 70% of the truck's total kilometres was on the agricultural property. We consider the truck to be used primarily on an agricultural property.*

18. *As it meets one of the exemptions, the business is entitled to a fuel tax credit for the fuel used in the vehicle despite it not meeting the specified environmental criteria.*

#### ***Example 2 – primary use based on time***

19. *Jane (from Example 1 of this Ruling), operates a similar diesel tray truck that also does not meet the specified environmental criteria. She uses the truck around the agricultural property in the same way as John.*

20. *During the harvest season, this truck is used to transport the harvested crop on a public road to a storage facility which is approximately 20 kilometres away from the property. The harvest season lasts for approximately four weeks of the calendar year.*

21. *Jane estimates that in a calendar year, 60% of the truck's total kilometres travelled occur during the harvest season on public roads. The remaining 40% of the total kilometres are undertaken on the agricultural property.*

22. *However, as the truck is used every day on the property, a review of the time the vehicle is used both on and off the agricultural property shows that it is used more than 50% of the time on the property over the calendar year. The truck has, therefore, been used primarily on the agricultural property.*

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<sup>11</sup> Section 44-5.

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23. *As it meets one of the exemptions, the business is entitled to a fuel tax credit for the fuel used in the vehicle despite it not meeting the specified environmental criteria in subsection 41-25(1).*

**Example 3 – adjusting for a motor vehicle that no longer satisfies the environmental criteria**

24. *Jesse runs a grain haulage business using a number of vehicles including an old 1995 Heavy Combination (HC) truck with a GVM of 10 tonnes. All vehicles are regularly serviced in line with maintenance schedules that meet the specified environmental criteria.*

25. *On the first of every month, Jesse buys diesel fuel for the fleet, which is stored in an on-site tank. Fuel tax credits are calculated and claimed monthly.*

26. *Jesse's drivers keep records of fuel usage by recording the date, time, vehicle and the amount of fuel taken each time they fill a truck from the tank.*

27. *On 1 July, Jesse buys a new truck and decides to retire the 1995 HC truck. Jesse also cancels the scheduled 3 August maintenance service on the old truck (so it no longer meets its environmental criteria) and starts a fresh maintenance schedule with the new truck.*

28. *At the peak of the harvesting season in mid-August, one of the haulage vehicles has a breakdown, and Jesse decides to use the old truck while waiting for the vehicle to be repaired. Some fuel that was acquired for use in the new truck was instead used in the old truck. Jesse had already claimed a fuel tax credit for this fuel on the assumption it would be used in the new truck.*

29. *Once Jesse becomes aware that the fuel has in fact been used in the old truck, Jesse is required to record an increasing adjustment. This is because the fuel has been used in the old truck at a time when the vehicle no longer satisfied the environmental criteria as the vehicle had not undergone its scheduled maintenance service.*

30. *Jesse is required to include the increasing fuel tax adjustment in her activity statement for the tax period in which she became aware of the change in use of the fuel.<sup>12</sup>*

**Date of effect**

31. *When the final Ruling is issued, it is proposed to apply both before and after its date of issue. However, the 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 the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).*

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**Commissioner of Taxation**21 November 2019

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<sup>12</sup> Section 44-5 provides for increasing and decreasing fuel tax adjustments.

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## **Appendix 1 – Your comments**

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1. This draft Determination is being published using a new fast-tracked process designed to accelerate the finalisation of Determinations in certain circumstances and the comments period is reduced to two weeks.
2. You are invited to comment on this draft Determination including the proposed date of effect. Please forward your comments to the contact officer by the due date.
3. If we receive no comments, the draft Determination will be finalised as soon as possible after the conclusion of the comments period.
4. A compendium of comments is prepared for the consideration of the relevant Public Advice and Guidance Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:
  - provide responses to persons providing comments
  - be published on the ATO website at [www.ato.gov.au](http://www.ato.gov.au).

Please advise if you do not want your comments included in the edited version of the compendium.

**Due date:** 6 December 2019  
**Contact officer:** Anthony Barnard  
**Email address:** [Anthony.Barnard@ato.gov.au](mailto:Anthony.Barnard@ato.gov.au)  
**Telephone:** (03) 9285 1974

## References

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*Previous draft:*

Not previously issued as a draft

- FTA 2006 110–5
- ITAA 1997 995–1

*Related Rulings/Determinations:*

TR 96/8; TR 2001/7; TR 2006/10

*Cases relied on:*

- Fawcett Properties Ltd v Buckingham County Council [1961] AC 636; [1960] All ER 503; [1960] 3 WLR 831; 59 LGR 69, HL(E)

*Previous interpretative decisions:*

ATO ID 2007/65; ATO ID 2007/100;  
ATO ID 2007/120; ATO ID 2007/156

*Other references:*

*Legislative references:*

- FTA 2006 41–25
- FTA 2006 41–25(1)
- FTA 2006 41–25(2)
- FTA 2006 41–25(2)(a)
- FTA 2006 41–25(2)(a)(i)
- FTA 2006 41–25(2)(a)(ii)
- FTA 2006 44–5

- The Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006
- Macquarie Dictionary online

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ATO references

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