Australian Government

Australian Taxation Office

Explanatory Statement

Fuel Tax (Fuel Blends) Determination 2026

General outline of instrument

1. This instrument is a determination made under subsection 95-5(1) of the *Fuel Tax Act 2006* (the Act).

2. This instrument specifies circumstances in which blends of a taxable fuel and other products do not constitute a fuel for the purposes of the fuel tax law. For blends covered by this instrument, the producer of the blend may be entitled to claim fuel tax credits on the taxable fuel used in producing the blend and, as these blends are taken not to be excisable under subsection 77G(1) of the *Excise Act 1901* (Excise Act), excise duty will not be payable.

3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Background

6. Fuel tax (excise or customs duty) is imposed when fuel is manufactured in, or imported into, Australia. Eligibility to offset that tax with fuel tax credits (FTC) is determined by how the fuel is used. An entity cannot claim FTCs for fuel that is used for private purposes or used on-road in light vehicles (including light vehicles being used for a business purpose).

7. However, under section 41-5 of the Act an entity is entitled to claim FTCs for taxable fuel that they acquire, manufacture in or import into Australia for use in carrying on its own enterprise, provided the entity is registered (or required to be registered) for GST at that time or is a non-profit body that satisfies the criteria in subsection 41-5(3) of the Act. If the fuel is not used in carrying on the entity's enterprise, there is no entitlement to a FTC in relation to the fuel.

8. Fuel is 'used' if it ceases to exist after an action to use it, including where the fuel is used to produce another product.

9. While there are circumstances in which it is clear that a taxable fuel has been used in producing other products (for example, products that cannot be used in an internal combustion engine such as paints, printing inks and adhesives), there are circumstances in which it is more difficult to determine if a fuel has been used, particularly where it is unclear if the blended product could be used as a fuel.

10. Section 95-5 of the Act allows the Commissioner of Taxation to determine that a blend of a fuel and another product does not constitute a fuel for the purposes of fuel tax law. Under subsection 95-5(2) of the Act, the entity that makes a blend covered by the Commissioner's determination is taken to have used that fuel in producing the blend.

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11. Although blending may constitute the manufacture of an excisable good, resulting in excise being payable on the blend under paragraph 10(g) in the schedule to the *Excise Tariff Act 1921* (Tariff Act), blends covered by the Commissioner's determination are not goods to which paragraph 10(g) of the schedule to the Tariff Act applies. Excise duty is therefore not payable on the blended product covered by the Commissioner's determination.

12. When determining which blends should not constitute a fuel for the purposes of fuel tax law the Commissioner must consider the matters specified in subsection 95-5(3) of the Act, including the physical and chemical properties of the blend, its potential use in internal combustion engines, how it is marketed and distributed, and most importantly, the risk and financial impact of the blend being used as a fuel.

13. These factors enable the Commissioner to consider both the proportion of the non-excisable component in a blend and the intended use of the blend, such that the resulting untaxed product is unlikely to present a risk of fuel substitution.

14. For example, if the non-excisable component is materially more expensive than the fuel component, once a particular proportion is reached, the blend would no longer be economically attractive for use as a fuel.

15. The *Fuel Tax (Fuel Blends) Determination 2016 (No. 1)* (2016 Determination) specifies blends of taxable fuel and other products that do not constitute a fuel for the purpose of fuel tax laws. As blends often contain several components, with a large number of final products resulting from slight variations in components, it is difficult to produce a conclusive list of all possible blends that the Commissioner would consider appropriate when assessed against the factors in subsection 95-5 of the Act.

16. Therefore, instead of producing a list of specific blends, the Commissioner determined in the 2016 Determination that when certain products are added to taxable fuels at or above a minimum concentration and the blend is not marketed or sold for use as a fuel in an internal combustion engine the resulting blend does not constitute a fuel for the purposes of the fuel tax law.

17. This instrument repeals and replaces the 2016 Determination which would otherwise sunset on 1 October 2026. Although this instrument has largely the same effect as the 2016 Determination, it introduces a new requirement for blends of biodiesels that contain surfactants or oleic acid – if these blends also contain any other fuel they will constitute a fuel for the purposes of fuel tax law. This ensures fuel tax is payable on these blends and thereby manages the associated risks to revenue of the blends being re-purposed as fuel.

Effect of this instrument

18. Section 6 specifies circumstances in which blends containing a prescribed taxable fuel will not constitute a fuel for the purposes of fuel tax law.

19. Prescribed taxable fuel means fuels classified to sub-items 10.25, 10.26, 10.27 or 10.28 of the Schedule to the Tariff Act and imported fuels that would be classified to those items if they had been manufactured in the indirect tax zone.

Subsection 6(1)

20. Subsection 6(1) applies to blends of a prescribed taxable fuel and at least one specified product, with or without other substances. Specified products are listed in column 1 of the table in subsection 6(1).

21. A blend will not constitute a fuel if it is not marketed or sold for use as a fuel in an internal combustion engine and if it contains specified product at or above the concentration required under paragraph 6(1)(b).

22. Under paragraph 6(1)(b), a blend must contain:

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(a) at least one specified product at a concentration that equals or exceeds the required minimum concentration set out in column 3 of the table in subsection 6(1) for that product, or

(b) where a blend contains more than one specified product, but none of those specified products individually meets or exceeds the minimum concentration for that product, the combined concentration of all specified products in the blend must be at least 10%v/v.

23. Column 2 in the table in subsection 6(1) provides the CAS registry number, a unique identifier allocated to chemical substances, that relates to certain specified products in column 1. These identifiers are incorporated, as they exist on the Chemical Registry System and Chemical Abstracts Service, at the time this instrument commences. The material is freely available on the CAS Common Chemistry resource and can be accessed at https://commonchemistry.cas.org.

Example 1

An entity that produces blends of toluene and other products must determine if each blend constitutes a fuel for fuel tax purposes. The blends are not marketed or sold for use as fuel in an internal combustion engine.

Toluene is a prescribed taxable fuel classified to sub-item 10.25 in the Schedule to the Tariff Act. Methyl ethyl ketone, butanol and surfactants are all specified products.

Blend 1: 90% toluene with 10% v/v methyl ethyl ketone

This blend contains toluene and 1 specified product. In order for the blend to not constitute a fuel it must contain methyl ethyl ketone at or above the minimum concentration specified in column 3 of the table in subsection 6(1). The required minimum concentration of ketones is 10%v/v.

As this blend contains methyl ethyl ketone at the required minimum concentration, it satisfies subparagraph 6(1)(b)(i) and does not constitute a fuel.

Blend 2: 90% toluene with 8% v/v methyl ethyl ketone and 2% v/v butanol (Other alcohol)

This blend contains toluene and 2 specified products.

In order for this blend to not constitute a fuel it must contain at least one specified product at a concentration that equals or exceeds the required minimum concentration for that product, or the total concentration of all specified products in the blend must equal or exceed 10%v/v.

The required minimum concentration for both methyl ethyl ketone and butanol is 10%v/v. Neither specified product equals or exceeds this concentration.

However, as the total concentration of specified product in the blend equals 10%v/v (8% methyl ethyl ketone plus 2% butanol) the blend satisfies subparagraph 6(1)(b)(ii) and does not constitute a fuel.

Blend 3: 92% toluene with 4% v/v methyl ethyl ketone and 4% v/v butanol (Other alcohol)

This blend also contains toluene and 2 specified products.

As neither product meets the required minimum concentration specified in column 3 of the table in subsection 6(1), and the total concentration of all specified products in the blend is less than 10%v/v (the total concentration of specified products is 8%v/v), this blend does not satisfy paragraph 6(b) and will constitute a fuel.

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Blend 4: 92% toluene with 3% v/v methyl ethyl ketone and 3% v/v butanol (Other alcohol) and 2% surfactants.

This blend contains toluene and 3 specified products.

The total concentration of all specified products in the blend is less than 10%v/v (the total concentration of all specified products is 8%v/v), and neither the concentration of methyl ethyl ketone nor butanol meets the required minimum concentration.

However, as the blend contains 2% surfactants (which exceeds the minimum concentration for surfactants of 1%v/v) it satisfies subparagraph 6(1)(b)(i) and will therefore not constitute a fuel.

Subsection 6(1)

24. Subsection 6(2) applies to blends of biodiesel and another product, with or without other substances. These blends will not constitute a fuel where the blend contains at least 5.0%v/v of surfactant or 2.0%v/v of oleic acid, is not marketed or sold for use as a fuel in an internal combustion engine, and does not contain any other kind of fuel (or imported fuel that would be classified as a fuel if it were manufactured in the indirect tax zone).

Example 2

An entity that produces blends of biodiesel and other products must determine if each blend constitutes a fuel for fuel tax purposes. The blends are not marketed or sold for use as fuel in an internal combustion engine.

Blend 1: 95%v/v biodiesel with 4%v/v surfactant and 1%v/v oleic acid

This blend contains biodiesel, surfactant and oleic acid, and does not contain any other fuel. In order for the blend to not constitute a fuel it must contain at least 5.0%v/v of surfactant or 2.0%v/v of oleic acid. The relative concentrations of surfactant and oleic acid in the blend cannot be added together to equal the required concentration.

As this blend does not contain the minimum required concentration of either surfactant or oleic acid it does not satisfy the requirements in subsection 6(2) and therefore will constitute a fuel.

Blend 2: 93%v/v biodiesel with 6%v/v surfactant and 1%v/v diesel

This blend contains biodiesel, surfactant, and diesel. Although the concentration of surfactant in the blend exceeds the required minimum, as the blend also contains diesel (a fuel) it does not satisfy the requirements of subsection 6(2) and will therefore constitute a fuel.

Compliance cost assessment

25. To be advised.

Consultation

26. Subsection 17(1) of the *Legislation Act 2003* requires that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a determination.

27. As part of the consultation process, you are invited to comment on the draft instrument and its accompanying draft explanatory statement.

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Please forward your comments to the contact officer by the due date.

Due date:	5 June 2026
Contact officer:	Anthony Barnard
Email:	Anthony.Barnard@ATO.gov.au
Phone:	**03 9285 1974**

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Statement of compatibility with human rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Fuel Tax (Fuel Blends) Determination 2026

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

Overview of the legislative instrument

This instrument specifies circumstances in which blends of a taxable fuel and other products do not constitute a fuel for the purposes of the fuel tax law.

In relation to blends covered by this instrument, a producer of such a blend may be entitled to claim fuel tax credits on taxable fuel used in the production of the blend, and excise duty will not be payable on the blended product as the blend is not be goods to which paragraph 10(g) of the schedule to the *Excise Tariff Act 1921* applies.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms as it merely specifies which blends of taxable fuels do not constitute a fuel for the purposes of fuel tax law. This instrument provides greater certainty in relation to excise obligations and entitlement to fuel tax credits for fuel blends.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

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