

Decision impact statement

Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation

Court citation:	[2019] FCA 1849
Venue:	Federal Court of Australia
Venue reference no:	VID 823 of 2018
Judge name:	Davies J
Judgment date:	14 November 2019
Appeals on foot:	No
Decision outcome:	Unfavourable to the Commissioner

Impacted advice

- Product Grant and Benefit Ruling PGBR 2012/1 *Product Stewardship (Oil) Benefit: the meaning of the expression 'goods produced from used oil' and the terms 'filtered', 'de-watered', and 'de-mineralised' for the purposes of the Product stewardship for oil benefit scheme*

Précis

Outlines the ATO's response to this case concerning entitlement to benefits under the *Product Stewardship (Oil) Act 2000* (PSO Act) for the recycling of diesel contaminated through use as a solvent or hydraulic medium. The key issue considered by the Federal Court was whether diesel is a petroleum based oil for the purposes of the PSO Act.

Brief summary of facts

The taxpayer imports, stores and sells petroleum products and is registered for entitlement to benefits under the PSO Act. It uses diesel in connection with refinery operations as a solvent to flush crude oil and petroleum products through shipping tanks and pipelines; and as a medium to push inspection devices through pipelines. This diesel becomes contaminated and must be refined to meet fuel quality standards before it is sold as automotive diesel fuel in Australia.

The taxpayer's claim for benefits for recycling and sale of contaminated diesel under the PSO Act was disallowed by the Commissioner.

Issues decided by the Court

The issue in this case concerned whether diesel is a petroleum based oil for the purposes of the PSO Act.

The term 'oils' is defined under subsection 6(1) of the PSO Act to mean, among other things:

- (a) petroleum based oils (including lubricant base oils; prepared lubricant additives containing carrier oils; lubricants for engines, gear sets, pumps and bearings; greases; hydraulic fluids; brake fluids; transmission oils; and transformer and heat transfer oils);
- (b) synthetic equivalents of goods covered by paragraph (a);

...

The Court found that diesel is a 'petroleum based oil' within the meaning of subsection 6(1) of the PSO Act, concluding that Parliament did not intend the words in brackets to be an exhaustive list of petroleum based oils for the purposes of the PSO Act. The Court rejected the Commissioner's construction of the term 'oils' to exclude petroleum based oils that are primarily for use as fuel and held that there was no evident reason to exclude recycled diesel from the scope of the PSO Act because its primary use is as a fuel.

ATO view of decision

The ATO accepts that it was reasonably open to the Court to find that diesel is a 'petroleum based oil' within the meaning of subsection 6(1) of the PSO Act.

The ATO (in consultation with the Department of Environment and Energy) is assessing the impacts of the decision on the effectiveness and sustainability of the Product Stewardship for Oil program.

The ATO is also considering any implications of the decision for the classification of diesel under the Schedule to the *Excise Tariff Act 1921* where that diesel is employed as a solvent or for some other non-fuel use in connection with refinery operations.

Comments

We invite you to advise us if you feel this decision has consequences we have not identified. Please forward your comments to the contact officer.

Date issued:	13 December 2019
Due date:	24 January 2020
Contact officer:	Brett O'Neill
Email address:	taxcredits@ato.gov.au
Telephone:	(08) 820 81832

Legislative references

Product Stewardship (Oil) Act 2000 6(1)
Excise Tariff Act 1921 The Schedule 5
Product Stewardship (Oil) Regulations 2000

Case references

BHP Billiton Iron Ore Pty Ltd v National Competition Council [2008] HCA 45; (2008) 236 CLR 145; 82 ALJR 1482; 249 ALR 418

Certain Lloyd's Underwriters Subscribing to Contract No IH00AAQS v Cross [2012] HCA 56; (2012) 248 CLR 378; 87 ALJR 131; 239 ALR 412

Commissioner of Taxation v Bargwanna [2009] FCA 620; 2009 ATC 20-107; 72 ATR 963

Corporate Affairs Commission (SA) v Australian Central Credit Union [1985] HCA 64; (1985) 157 CLR 201; 59 ALJR 785; 61 ALR 236

Gibb v Commissioner of Taxation (Cth) [1966] HCA 74; (1966) 118 CLR 628; 40 ALJR 394; [1967] ALR 527; (1966) 14 ATD 363

IW v The City of Perth [1997] HCA 30; (1997) 191 CLR 1; 71 ALJR 943; 146 ALR 696

Re Gray; Ex parte Marsh [1985] HCA 67; (1985) 157 CLR 351; 59 ALJR 804; 62 ALR 17

Saeed v Minister for Immigration and Citizenship [2010] HCA 23; (2010) 241 CLR 252; 84 ALJR 507; 267 ALR 204

YZ Finance Co Pty Ltd v Cummings [1964] HCA 12; (1964) 109 CLR 395; 37 ALJR 431; [1964] ALR 667

Zickar v MGH Plastic Industries Pty Ltd [1996] HCA 31; (1996) 187 CLR 310; 71 ALJR 32; 140 ALR 156