



PS LA 2008/3 (GA) - Attribution rules and late registration for fuel tax credits

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Practice Statement Law Administration (General Administration)

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This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences or is considered incorrect. Where this occurs Tax Office staff must follow their business line's escalation process.

SUBJECT:	Attribution rules and late registration for fuel tax credits
PURPOSE:	To guide staff on the attribution of fuel tax credits to a later period where the entity registered late for fuel tax credits and did not receive a fuel tax return

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BACKGROUND

- Under subsection 41-5(2) of the *Fuel Tax Act 2006* (FTA)¹ an entity is only entitled to a fuel tax credit for:
 - use of fuel in carrying on their enterprise, or
 - the entity is a non-profit body and the fuel is for use in a clearly identifiable emergency vehicle,if at the time the entity acquires,² manufactures or imports the fuel, the entity is registered or required to be registered for GST.³

¹ All legislative references in this practice statement are to the FTA, unless otherwise stated.

² Meaning of acquire is defined in the Fuel Tax Ruling FTR 2007/1.

³ Subsection 41-5(2) of the FTA does not apply to a non-profit body in certain circumstances that are not relevant to this advice.

2. The general attribution rules for fuel tax credits are explained in section 65-5 of the FTA. Effectively fuel tax credits are attributable to tax periods (or fuel tax return periods). Broadly, if an entity is a business taxpayer that acquires or imports taxable fuel, its fuel tax credit for taxable fuel is attributed to the same tax period as its input tax credit for the fuel.⁴ If the entity manufactures taxable fuel, the fuel tax credit is attributable to the tax period or fuel tax return period in which the fuel was entered for home consumption (within the meaning of the *Excise Act 1901*).⁵ If the entity is a non-business taxpayer that acquires or imports taxable fuel, its fuel tax credit for taxable fuel is attributed to the fuel tax return period in which it acquires or imports the fuel.⁶
3. However, subsection 65-5(4) of the FTA allows an entity to attribute its fuel tax credits to a later period in certain circumstances. If an entity's return for a tax period or fuel tax return period states a net fuel amount that does not take into account a fuel tax credit that is attributable to the period mentioned in subsections 65-5(1), 65-5(2) or 65-5(3) of the FTA, then the credit:
 - ceases to be attributable to that period; and
 - becomes attributable to the first period for which you give the Commissioner a return that does take it into account.

STATEMENT

4. The Commissioner is empowered with the general administration of the FTA pursuant to section 356-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA). Broadly, the purpose of the general administration power is to place the day to day administration of the various tax laws in the hands of the Commissioner.
5. Entities who register late for fuel tax credits, may attribute fuel tax credits to a later tax period where those credits are attributable to an earlier tax period in which a fuel tax return has not been given.
6. However, later attribution is conditional on the entity being allowed the choice of either claiming the fuel tax credits on a current or later activity statement (subject to the four year limit)⁷ or revising the relevant earlier activity statement.

EXPLANATION

Application of subsection 65-5(4) of the FTA – no fuel tax labels on the activity statement

7. Subsection 65-5(4) of the FTA allows an entity to attribute its fuel tax credit to a later period where its fuel tax return for a tax period or fuel tax return period **states a net fuel amount** that does not take into account a fuel tax credit.⁸

⁴ Subsection 65-5(1) of the FTA.

⁵ Subsection 65-5(3) of the FTA.

⁶ Subsection 65-5(2) of the FTA.

⁷ Section 105-55 of Schedule 1 to the TAA.

⁸ Note 3 to subsection 61-15(1) of the FTA points out that GST instalment payers may give their returns on a different day under section 46-5 of the FTA. As subsection 46-5(4) of the FTA has its own attribution rules, the issue with subsection 65-5(4) of the FTA does not apply to GST instalment payers.

8. 'Net fuel amount' is defined in section 110-5 of the FTA as having the meaning given by section 60-5 of the FTA, which provides that an entity's net fuel amount for a tax period or a fuel tax return period is worked out using the following formula:

$$\begin{array}{ccccccc} \text{Total fuel tax} & - & \text{Total fuel tax} & + & \text{Total increasing} & - & \text{Total} \\ & & \text{credits} & & \text{fuel tax} & & \text{decreasing} \\ & & & & \text{adjustments} & & \text{fuel tax} \\ & & & & & & \text{adjustments} \end{array}$$

9. The EM to the Fuel Tax Bill 2006 explains the policy intent of subsection 65-5(4) of the FTA in terms of the equivalent provision in the GST Act (subsection 29-10(4) of the GST Act). Paragraph 2.131 of the EM to the Fuel Tax Bill 2006 makes it clear that if a taxpayer does not hold a valid tax invoice when it lodges a GST return for a specified tax period, both the input tax credit and the fuel tax credit cease to be attributable to this period. Instead, the input tax credit and the fuel tax credit become attributable to the first tax period for which the taxpayer gives the Commissioner a GST return at a time when the taxpayer does hold the tax invoice.
10. Paragraph 2.137 of the EM to the Fuel Tax Bill 2006 further explains that an entity may choose to postpone the attribution of a fuel tax credit to a later period. However, this is stated in the context of subsection 29-10(4) of the GST Act.
11. Taxpayers may choose to postpone the attribution of a fuel tax credit to a later period. This can assist taxpayers, for example, in cases where they are not aware they hold a tax invoice in respect of a creditable acquisition until after they have lodged their BAS for a tax period. In these circumstances, the GST Act allows them to postpone the attribution of the input tax credit to any tax period after they hold a tax invoice, subject to the four-year time limit before a fuel tax credit claim expires.
12. The intent of subsection 65-5(4) of the FTA is not to override the general attribution rules in subsections 65-5(1), 65-5(2) or 65-5(3) of the FTA so that an entity can choose to postpone attribution of its fuel tax credits at any time. Rather, an entity can only postpone attribution in certain circumstances, for example where they were not aware that they held a tax invoice.
13. Therefore, in the circumstances described herein the exercise of the general administration powers must be considered in the context of the general attribution rules in subsections 65-5(1), 65-5(2) or 65-5(3) of the FTA.

Application of subsection 65-5(4) of the FTA – fuel tax labels on the activity statement

14. The fuel tax activity statement instructions for completing the fuel tax return labels, which are 7C (fuel tax credit over claim) and 7D (fuel tax credits). At page 6, the reader is instructed that if they have nothing to report at label 7D to leave it blank. This instruction appears after going through the calculation process. An entity would read this instruction and leave the label blank (intending to indicate that the net fuel amount is zero).⁹ A blank label at 7D could mean that the entity had a zero net fuel amount or it could mean that the entity never considered if it had a net fuel amount.
15. The broad policy intent of the FTA is to reduce the fuel tax burden on businesses and simplify claiming arrangements, as explained at paragraphs 1.3 and 1.6 of the EM to the Fuel Tax Bill 2006.
16. The attribution rules in subsections 65-5(1), 65-5(2) or 65-5(3) of the FTA specify the tax periods to which fuel tax credits must be attributed. However, at the time they lodge the relevant activity statement the affected entities cannot correctly attribute their fuel tax credits to the relevant tax period due to the Tax Office's administrative policy. Not adopting the proposed approach means that a barrier is created to entities accessing their entitlements as they will need to revise previous activity statements. This would be contrary to the underlying policy intent of reducing the fuel tax burden on businesses and simplifying claiming arrangements.

Taxpayers are able to choose whether to adopt the approach or not

17. An entity should be provided with a choice of either revising their earlier activity statements or including the fuel tax credits on their current or later activity statement (subject to the four year limit). Given the additional time and costs involved in revising activity statements, it is unlikely that entities would make this choice. However, there may be advantages to an entity in limited circumstances where a debt had been incurred on an earlier tax period to which fuel tax credits would otherwise have been attributed.¹⁰
18. The approach to allow a taxpayer to choose to postpone the attribution of a fuel tax credit to a later period even where they have not lodged a return pertaining to the earliest attributable period in which the fuel tax credit could have been claimed and would be consistent with the intent of the provision.

Example

19. Company A is a GST registered toy wholesaler which lodges quarterly Business Activity Statement (BAS).
20. Company A purchased diesel fuel for its delivery truck Gross Vehicle Mass (GMV) greater than 4.5 tonnes) in the March tax period.

⁹ Subsection 61-15(1) of the FTA provides that an entity must give a fuel tax return for a tax period if they are registered for GST or required to be registered. This is the case even where the net amount is zero (see paragraph 2.117 of the EM to the Fuel Tax Bill 2006).

¹⁰ Note 1 to subsection 61-5(1) of the FTA provides that Division 3 of Part IIB of the TAA allows the Commissioner to apply the amount owing under subsection 61-5(1) of the FTA as a credit against tax debts that an entity owes to the Commonwealth.

21. Company A claimed an input tax credit for the purposes of GST in relation to the purchase of the diesel fuel. The input tax credit was attributed to Company A's March quarterly activity statement.
22. At the time the fuel was acquired, Company A has not 'registered'¹¹ to claim fuel tax credits. Therefore, Company A's BAS form does not contain the FTC labels 7C and 7D.
23. Company A becomes aware in May that they are entitled to claim fuel tax credits in respect of the acquisition of diesel fuel which was used in the conduct of their enterprise.
24. Company A did not claim the fuel tax credit in the March activity statement.
25. Company A 'registers' for FTC and will receive the FTC labels on the next BAS to issue.
26. Company A can either:
 - revise its March activity statement (RBAS), or
 - claim the fuel tax credit in a subsequent activity statement (which will have the FTC labels).
27. Company A chooses to claim the fuel tax credit in its June activity statement.

¹¹ Business taxpayers that are correctly GST registered, have notified the Tax Office of their intention to claim FTC are referred to as having registered for fuel tax credit. These taxpayers have notified the Tax Office by completing a 'registration process' which automatically upon successful 'registration', updates their next BAS to include FTC labels.

Subject references	FTC attribution rules for fuel tax credit FTC fuel tax FTC fuel tax adjustments Fuel tax credits
Legislative references	Fuel Tax Act 2006 41-5(2) Fuel Tax Act 2006 46-5 Fuel Tax Act 2006 46-5(4) Fuel Tax Act 2006 60-5 Fuel Tax Act 2006 61-5(1) Fuel Tax Act 2006 61-15(1) Fuel Tax Act 2006 65-5 Fuel Tax Act 2006 65-5(1) Fuel Tax Act 2006 65-5(2) Fuel Tax Act 2006 65-5(3) Fuel Tax Act 2006 65-5(4) Fuel Tax Act 2006 110-5 TAA 1953 Sch 1 356-5
Related public rulings	FTR 2007/1
Related practice statements	Law Administration Practice Statement PS LA 1998/1
Case references	
Other references	Explanatory Memorandum to the Fuel Tax Bill 2006
File references	07/11652
Date issued	26 June 2008
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Other Business Lines consulted	Client Contact (CC) OPS Policy and Practice GST Admin CoE Excise CoE TechNet (all compliance BSLs) PTI & Public Rulings Branch Taxpayers' Charter Team