


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 tax period where a business taxpayer registers late for fuel tax credits and did not receive a fuel tax return

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BACKGROUND

1. Under subsection 41-5(2) of the *Fuel Tax Act 2006* (FTA)¹ an entity is only entitled to a fuel tax credit for taxable fuel for use in carrying on their enterprise where 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 discussed in the Fuel Tax Ruling FTR 2007/1.

³ There is no requirement for GST registration where the entity is a non-profit body at the time taxable fuel is acquired, manufactured or imported and the fuel is for use in a vehicle or vessel that provides emergency services and is clearly identifiable as such.

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) and are included on a fuel tax return⁴ for the relevant period. Broadly, if an entity is a business taxpayer⁵ that acquires or imports taxable fuel, its fuel tax credit for the fuel is attributable to the same tax period as its input tax credit for the fuel.⁶ 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*).⁷ If the entity is a non-business taxpayer⁸ that acquires or imports taxable fuel, its fuel tax credit for the fuel is attributable to the fuel tax return period in which it acquires or imports the fuel.⁹
3. However, subsection 65-5(4) 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), 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.¹⁰

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. The Commissioner will allow business taxpayers who register late for fuel tax credits, to attribute fuel tax credits to a later tax period where those credits are attributable to an earlier tax period in which a fuel tax return¹¹ 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 statement¹² or revising the relevant earlier activity statement.¹³

⁴ Fuel tax return in this context refers to either an activity statement with fuel tax credit labels 7C & 7D used by business taxpayers to claim fuel tax credit entitlements or a fuel tax credit claim form used by non-business taxpayers.

⁵ A reference to a business taxpayer includes any entity carrying on an enterprise where the entity is registered for GST.

⁶ Subsection 65-5(1) of the FTA.

⁷ Subsection 65-5(3) of the FTA.

⁸ A reference to a non-business taxpayer in this context is a reference to an entity that is claiming fuel tax credits solely for domestic electricity generation or a non-profit body that meets the requirements of subsection 41-5(3) of the FTA.

⁹ Subsection 65-5(2) of the FTA.

¹⁰ Subject to Division 47.

¹¹ Fuel tax return in this context refers to an activity statement with fuel tax credit labels 7C & 7D used by business taxpayers to claim fuel tax credit entitlements.

¹² Subject to Division 47 of the FTA.

¹³ Subject to Section 105-55 of Schedule 1 to the TAA.

EXPLANATION

Application of subsection 65-5(4) of the FTA – general principles

7. As explained in paragraph 2 of this practice statement, an entity can attribute a fuel tax credit on a fuel tax return for a tax period or fuel tax return period based on the relevant attribution rules at subsections 65-5(1), 65-5(2) or 65-5(3).¹⁴
8. However, subsection 65-5(4) 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.¹⁵
9. 'Net fuel amount' is defined in section 110-5 as having the meaning given by section 60-5, 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:

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

10. The intent of subsection 65-5(4) is to allow the later attribution of a fuel tax credit where the credit was not taken into account through the application of the general attribution rules in subsections 65-5(1), 65-5(2) or 65-5(3).
11. 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).

Entities registering late for fuel tax credits

12. The Commissioner will allow a business taxpayer that registers late for fuel tax credits and did not receive business activity statements with fuel tax credit labels 7C and 7D, the choice to either revise their earlier activity statements or include the fuel tax credits on their current or later activity statement.¹⁶
13. 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.¹⁷
14. The approach to allow a business 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 would be consistent with the intent of the provision.

¹⁴ Subject to section 105-55 of Schedule 1 to the TAA.

¹⁵ Subject to Division 47 of the FTA.

¹⁶ Subject to Division 47 of the FTA.

¹⁷ 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.

Example

15. Company A is a GST registered toy wholesaler which lodges quarterly Business Activity Statements (BAS).
16. Company A purchased diesel fuel for its delivery truck with a gross vehicle mass (GVM) greater than 4.5 tonnes in the March tax period.
17. 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.
18. At the time the fuel was acquired, Company A has not 'registered'¹⁸ to claim fuel tax credits. Therefore, Company A's BAS does not contain the FTC labels 7C and 7D.
19. 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.
20. Company A did not claim the fuel tax credit in the March activity statement.
21. Company A 'registers' for FTC and will receive the FTC labels on the June activity statement.
22. Company A can either:
 - revise its March activity statement, or
 - claim the fuel tax credit in the June activity statement or a subsequent activity statement (which will have the FTC labels).
23. Company A chooses to claim the fuel tax credit in its June activity statement.

¹⁸ 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.

Amendment history

Date of amendment	Part	Comment
4 August 2010	Paragraph 1	Rephrased for technical accuracy and consistency with subsection 41-5(3) of the FTA.
	Paragraph 2	Clarification of the terms 'business taxpayer' and 'non-business taxpayer' in relation to the attribution rules outlined in section 65-5 of the FTA.
	Paragraph 5	Updated to clarify that the concession applies to business taxpayers. Footnote added to verify the meaning of the phrase 'fuel tax return' used throughout this practice statement.
	Paragraph 6	References added to section 105-55 of the <i>Taxation Administration Act 1953</i> and Division 47 of the FTA relating to time limits.
	Paragraph 7	Subheading updated to better capture discussion in the following paragraphs.
	Paragraphs 9, 10 and 11	The paragraphs contained technical content regarding the circumstances in which the attribution rule at subsection 65-5(4) of the FTA can apply. Omitted as the practice statement should not contain what could be considered interpretative advice.
	Paragraph 12	Renumbered as paragraph 10 and rephrased to provide emphasis to subsection 65-5(4), which is the key provision under consideration in this practice statement.
	Paragraphs 14, 15 and 16	Omitted as they are out of scope and deal with a different scenario to that of this practice statement.
	Paragraph 17	Renumbered as paragraph 12 and revised for clarity.
	Example	Minor revision to aid clarity.
	Contact details	Updated.

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 Div 47 Fuel Tax Act 2006 60-5 Fuel Tax Act 2006 61-5(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 TAA 1953 Sch 1 105-55 Excise Act 1901
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	2007/11652 1-24GQU05
Date issued	26 June 2008
Date of effect	26 June 2008
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