


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

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Practice Statement Law Administration (General Administration)

PS LA 2008/3 (GA)

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Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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

- Under subsection 41-5(2) of the *Fuel Tax Act 2006* (FTA), 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 acquires¹, manufactures or imports the fuel, the entity is registered or required to be registered for goods and services tax (GST).²
- All legislative references in this Practice Statement are to the FTA, unless otherwise indicated.

¹ Meaning of 'acquire' is discussed in Fuel Taxation Ruling FTR 2007/1 *Fuel tax: the meaning of 'acquire', 'manufacture' and 'import' in the expression 'taxable fuel that you acquire or manufacture in, or import into, Australia to the extent that you do so for use in carrying on your enterprise' in the Fuel Tax Act 2006.*

² 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.

3. The general attribution rules for fuel tax credits are explained in section 65-5. Effectively, fuel tax credits are attributable to tax periods (or fuel tax return periods) and are included on a fuel tax return³ for the relevant period. Broadly, if an entity is a business taxpayer⁴ that acquires or imports taxable fuel, its fuel tax credit for the fuel is attributable to the same tax period as its GST credit for the fuel.⁵ 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*).⁶ If the entity is a non-business taxpayer⁷ 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.⁸
4. 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), (2) or (3), then the credit:
 - ceases to be attributable to that period, and
 - becomes attributable to the first period for which the entity gives us a return that does take it into account.⁹

STATEMENT

5. The Commissioner of Taxation 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.
6. We 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 return¹⁰ has not been given.
7. However, later attribution is conditional on the entity being allowed the choice of either claiming the fuel tax credits on a current or later business activity statement (BAS)¹¹ or revising the relevant earlier BAS.¹²

³ 'Fuel tax return' in this context refers to either a business activity statement (BAS) with fuel tax credit labels 7C and 7D used by business taxpayers to claim fuel tax credit entitlements or a fuel tax credit claim form used by non-business taxpayers.

⁴ A reference to a business taxpayer includes any entity carrying on an enterprise where the entity is registered for GST.

⁵ Subsection 65-5(1).

⁶ Subsection 65-5(3).

⁷ 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).

⁸ Subsection 65-5(2).

⁹ Subject to Division 47.

¹⁰ 'Fuel tax return' in this context refers to a BAS with fuel tax credit labels 7C and 7D used by business taxpayers to claim fuel tax credit entitlements.

¹¹ Subject to Division 47.

¹² Subject to section 105-55 of Schedule 1 to the TAA.

EXPLANATION

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

8. 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), (2) or (3).¹³
9. 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.¹⁴
10. 'Net fuel amount' is defined in section 110-5 as having the meaning given by section 60-5, which provides that you calculate an entity's net fuel amount for a tax period or a fuel tax return period as follows:
$$\text{Total fuel tax} - \text{Total fuel tax credits} + \text{Total increasing fuel tax adjustments} - \text{Total decreasing fuel tax adjustments}$$
11. 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), (2) or (3).
12. 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), (2) or (3).

Entities registering late for fuel tax credits

13. We will allow a business taxpayer that registers late for fuel tax credits and did not receive BASs with fuel tax credit labels 7C and 7D the choice to either revise their earlier BAS or include the fuel tax credits on their current or later BAS.¹⁵
14. Given the additional time and costs involved in revising BASs, 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.¹⁶
15. 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.

Example – not previously registered for fuel tax credits

16. *Company A is a GST-registered toy wholesaler which lodges quarterly BASs.*
17. *Company A purchases diesel fuel for its delivery truck with a gross vehicle mass greater than 4.5 tonnes in the March tax period.*

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

¹⁴ Subject to Division 47.

¹⁵ Subject to Division 47.

¹⁶ Note 1 to subsection 61-5(1) provides that Division 3 of Part IIB of the TAA allows the Commissioner to apply the amount owing under subsection 61-5(1) as a credit against tax debts that an entity owes to the Commonwealth.

18. *Company A claims a GST credit in relation to the purchase of the diesel fuel. The GST credit is attributed to Company A's March BAS.*
 19. *At the time the fuel was acquired, Company A has not 'registered'¹⁷ to claim fuel tax credits. Therefore, Company A's BAS does not contain the fuel tax credit labels 7C and 7D.*
 20. *In May, Company A becomes aware 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.*
 21. *Company A did not claim the fuel tax credit in the March BAS.*
 22. *Company A registers for fuel tax credit and will receive the fuel tax credit labels on the June BAS.*
 23. *Company A can either:*
 - *revise its March BAS, or*
 - *claim the fuel tax credit in the June BAS or a subsequent BAS (which will have the fuel tax credit labels).*
 24. *Company A chooses to claim the fuel tax credit in its June BAS.*
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¹⁷ Business taxpayers that are correctly GST-registered and have notified us of their intention to claim fuel tax credit are referred to as having registered for fuel tax credit. These taxpayers have notified us by completing a 'registration process' which, automatically upon successful 'registration', updates their next BAS to include fuel tax credit labels.

Amendment history

31 October 2024

Part	Comment
Throughout	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility requirements.

4 August 2010

Part	Comment
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.

References

Legislative references	FTA 2006 41-5(2) FTA 2006 41-5(3) FTA 2006 Div 47 FTA 2006 60-5 FTA 2006 61-5(1) FTA 2006 65-5 FTA 2006 65-5(1) FTA 2006 65-5(2) FTA 2006 65-5(3) FTA 2006 65-5(4) FTA 2006 110-5 TAA 1953 Div 3 Pt IIB TAA 1953 Sch 1 105-55 TAA 1953 Sch 1 356-5 Excise Act 1901
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