

# ***FTD 2019/1 - Fuel tax: fuel tax credits - vehicles and satisfying environmental criteria***

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# Fuel Tax Determination

## Fuel tax: fuel tax credits – vehicles and satisfying environmental criteria

### **❶ Relying on this Ruling**

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

### **What this Ruling is about**

1. Under the *Fuel Tax Act 2006* (FTA)<sup>1</sup>, you are not entitled to claim a fuel tax credit for fuel used in a motor vehicle that does not meet specified environmental criteria.<sup>2</sup>
2. Subsection 41-25(2) provides several exemptions including where the motor vehicle is used primarily on an agricultural property in carrying on a primary production business.<sup>3</sup>
3. This Ruling explains:
  - what the phrase a ‘motor vehicle’ means
  - when a motor vehicle is used ‘primarily’ on an agricultural property, and
  - how to account for any fuel used in a motor vehicle which no longer satisfies the environmental criteria.

### **Ruling**

#### **What is a ‘motor vehicle’ for the purposes of the FTA**

4. A ‘motor vehicle’ is defined in the FTA<sup>4</sup> to mean ‘...any motor-powered road vehicle (including a 4 wheel drive vehicle)’.

<sup>1</sup> All legislative references in this Ruling are to the FTA unless otherwise indicated.

<sup>2</sup> Section 41-25 –the environmental criteria are set out in subsection 41-25(1).

<sup>3</sup> Paragraph 41-25(2)(a).

<sup>4</sup> Section 110-5 provides that motor vehicle has the meaning given by section 995-1 of the *Income Tax Assessment Act 1997*.

5. In discussing the environmental criteria, the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 (the EM) explains that '(t)he criteria are only intended to apply to motor powered road vehicles. They are not intended to apply to vehicles that are not road vehicles'.<sup>5</sup>

6. The Commissioner considers that the term 'motor vehicle' as defined should be interpreted in a practical and common sense manner, consistent with the explanation provided in the EM.

7. Accordingly, we do not consider a motor vehicle to be a road vehicle where both of the following apply:

- the main function of the vehicle is not related to public road use, and
- the vehicle's ability to travel on a public road is secondary to its main function.

8. Examples of such vehicles which are not road vehicles include road rollers, graders, tractors and earthmoving equipment.

#### **Motor vehicles used primarily on an agricultural property**

9. To be exempt from having to meet the environmental criteria, the motor vehicle must:

- be used in carrying on a primary production business<sup>6</sup> and
- be used primarily on an agricultural property.<sup>7</sup>

10. The term 'primarily' is not defined in the FTA and takes its ordinary, natural meaning<sup>8</sup>, shaped by the statutory context in which it appears. The courts have interpreted phrases similar to 'primarily' to mean 'more than half'.<sup>9</sup>

11. The Commissioner considers that the issue of whether a motor vehicle is used primarily on an agricultural property should be interpreted in a quantitative sense, consistent with judicial reasoning and in a practical and common sense manner.

12. You are using a motor vehicle primarily on an agricultural property when at least one of the following applies:

- the motor vehicle travels more than half its total kilometres on an agricultural property
- the motor vehicle was used on an agricultural property for an amount of time equating to more than half of the time that the vehicle was used during the calendar year.

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<sup>5</sup> At paragraph 2.55.

<sup>6</sup> Subparagraph 41-25(2)(a)(i).

<sup>7</sup> Subparagraph 41-25(2)(a)(ii).

<sup>8</sup> As 'in the first place; chiefly; principally' per Macmillan Publishers Australia, *The Macquarie Dictionary* online, [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au), viewed 1 July 2019.

<sup>9</sup> For example, *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 included a discussion of the definition of the term 'mainly' which is similar to 'primarily'. Lord Morton of Henryton stated at [669] that it means 'more than half'. See also Taxation Rulings TR 96/8 *Income tax: school and college buildings funds* (withdrawn) and TR 2001/7 *Income tax: the meaning of personal services income*.

13. When determining the primary use of a vehicle, you may take all relevant factors into consideration, including the amount of time you use the vehicle on the agricultural property and the distance it travels on and off the agricultural property. We accept that as long as one of these factors indicates that the motor vehicle is used primarily on an agricultural property, the test outlined in subparagraph 41-25(2)(a)(ii) will be satisfied.

#### **Adjustment when a motor vehicle no longer satisfies the environmental criteria**

14. You have a fuel tax adjustment if your actual use of fuel differs from your projected use. If your vehicle satisfied the environmental criteria when you acquired the fuel, but not when you actually used it, you have an increasing fuel tax adjustment.<sup>10</sup>

#### **Examples**

##### ***Example 1 – primary use based on distance travelled***

15. *John is a wheat farmer who operates a primary production business with his partner Jane. John uses an old diesel tray truck (with a gross vehicle mass (GVM) of over 4.5 tonne) that does not meet the specified environmental criteria.*

16. *The diesel tray truck is used:*

- *daily to transport fertiliser, seed, produce, equipment and other goods around the agricultural property, and*
- *twice a week on average to transport produce on a public road to a local market which is approximately 5 kilometres away from the property.*

17. *John estimates that in a calendar year, 70% of the truck's total kilometres was on the agricultural property. We consider the truck to be used primarily on an agricultural property.*

18. *As it meets one of the exemptions, the business is entitled to a fuel tax credit for the fuel used in the vehicle despite its not meeting the specified environmental criteria.*

##### ***Example 2 – primary use based on time***

19. *Jane (from Example 1 of this Ruling), operates a similar diesel tray truck that also does not meet the specified environmental criteria. She uses the truck around the agricultural property in the same way as John.*

20. *During the harvest season, this truck is used to transport the harvested crop on a public road to a storage facility which is approximately 20 kilometres away from the property. The harvest season lasts for approximately four weeks of the calendar year.*

21. *Jane estimates that in a calendar year, 60% of the truck's total kilometres travelled occur during the harvest season on public roads. The remaining 40% of the total kilometres are undertaken on the agricultural property.*

22. *However, as the truck is used every day on the property, a review of the time the vehicle is used both on and off the agricultural property shows that it is used more than 50% of the time on the property over the calendar year. The truck has, therefore, been used primarily on the agricultural property.*

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<sup>10</sup> Section 44-5.

23. *As the truck's use meets one of the exemptions, the business is entitled to a fuel tax credit for its fuel despite it not meet the specified environmental criteria in subsection 41-25(1).*

**Example 3 – adjusting for a motor vehicle that no longer satisfies the environmental criteria**

24. *Jesse runs a grain haulage business using a number of vehicles including an old 1995 Heavy Combination (HC) truck with a GVM of 10 tonnes. All vehicles are regularly serviced in line with maintenance schedules that meet the specified environmental criteria.*

25. *On the first of every month, Jesse buys diesel fuel for the fleet, which is stored in an on-site tank. Fuel tax credits are calculated and claimed monthly.*

26. *Jesse's drivers keep records of fuel usage by recording the date, time, vehicle and the amount of fuel taken each time they fill a truck from the tank.*

27. *On 1 July, Jesse buys a new truck and decides to retire the 1995 HC truck. Jesse also cancels the scheduled 3 August maintenance service on the old truck (so it no longer meets its environmental criteria) and starts a fresh maintenance schedule with the new truck.*

28. *At the peak of the harvesting season in mid-August, one of the haulage vehicles has a breakdown, and Jesse decides to use the old truck while waiting for the vehicle to be repaired. Some fuel that was acquired for use in the new truck was instead used in the old truck. Jesse had already claimed a fuel tax credit for this fuel on the assumption it would be used in the new truck.*

29. *Once Jesse becomes aware that the fuel has in fact been used in the old truck, Jesse is required to record an increasing adjustment. This is because the fuel has been used in the old truck at a time when the vehicle no longer satisfied the environmental criteria as the vehicle had not undergone its scheduled maintenance service.*

30. *Jesse is required to include the increasing fuel tax adjustment in her activity statement for the tax period in which she became aware of the change in use of the fuel.<sup>11</sup>*

**Date of effect**

31. *This Determination applies both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10 *Public Rulings*).*

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**Commissioner of Taxation**

11 December 2019

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<sup>11</sup> Section 44-5 provides for increasing and decreasing fuel tax adjustments.

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## References

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*Previous draft:*

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- FTA 2006 110–5
- ITAA 1997 995–1

*Related Rulings/Determinations:*

TR 96/8; TR 2001/7; TR 2006/10

*Cases relied on:*

- Fawcett Properties Ltd v Buckingham County Council [1961] AC 636; [1960] All ER 503; [1960] 3 WLR 831; 59 LGR 69, HL(E)

*Previous interpretative decisions:*ATO ID 2007/65; ATO ID 2007/100;  
ATO ID 2007/120; ATO ID 2007/156*Other references:**Legislative references:*

- FTA 2006 41–25
- FTA 2006 41–25(1)
- FTA 2006 41–25(2)
- FTA 2006 41–25(2)(a)
- FTA 2006 41–25(2)(a)(i)
- FTA 2006 41–25(2)(a)(ii)
- FTA 2006 44–5

- The Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006
- Macmillan Publishers Australia, The Macquarie Dictionary online, [www.macquariedictionary.com.au](http://www.macquariedictionary.com.au)

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**ATO references**

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