FTR 2006/4 - Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'fishing operations' as defined in section 34 of the Energy Grants (Credit) Scheme Act 2003

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This document has changed over time. This is a consolidated version of the ruling which was published on *4 October 2006*

Fuel Tax Ruling

Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'fishing operations' as defined in section 34 of the *Energy Grants (Credit) Scheme Act 2003*

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This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling explains an entity's[1] entitlement to a fuel tax credit under the *Fuel Tax Act 2006* (FT Act) for taxable fuel it acquires or manufactures in, or imports into, Australia to the extent that it does so for use in carrying on an enterprise which involves activities that are within the meaning of 'fishing operations' in section 34 of the *Energy Grants (Credits) Scheme Act 2003* (Energy Grants Act).

2. The Ruling also explains:

- the fuel tax credit system[2] under the FT Act, and the relevant transitional provisions; and

[1] Section 110-5 of the FT Act states that entity has the meaning given by section 184-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
[2] In this Ruling the Commissioner refers to the scheme established under the FT Act as the fuel tax credit system.

- the meaning of 'fishing operations' and related terms in section 34 of the Energy Grants Act. In particular, the Ruling discusses:
  - the definition of 'fish' in subsection 34(2);
  - 'farming of fish' in paragraph 34(1)(b);
  - 'construction of ponds, tanks or other structures to contain fish' in paragraph 34(1)(c);
  - 'pearling operations' in paragraph 34(1)(e); and
  - the operation of the exclusions contained in paragraphs 34(1)(h) and 34(1)(i).

3. Unless otherwise stated, all legislative references in this Ruling are to the Energy Grants Act, and all references to the Energy Grants regulations are to the Energy Grants (Credits) Scheme Regulations 2003.

4. This Ruling does not deal with your entitlement to a fuel tax credit if you acquire, manufacture in, or import into, Australia taxable fuel for use in generating electricity for domestic use. Nor does the Ruling deal with entitlement to a fuel tax credit if you acquire, manufacture in, or import into, Australia taxable fuel for use in a vehicle with a gross vehicle mass of more than 4.5 tonnes travelling on a public road.

Definitions

5. In this Ruling, unless otherwise stated:

- a reference to:
  - fuel or diesel fuel is a reference to off-road diesel fuel as defined in section 4;
  - taxable fuel is a reference to taxable fuel as defined in section 110-5 of the FT Act;
  - alternative fuel is a reference to on-road alternative fuel as defined in section 4;
  - the diesel fuel rebate scheme is a reference to the diesel fuel rebate scheme as provided for in section 164 of the *Customs Act 1901* and section 78A of the *Excise Act 1901*;
  - an eligible activity or eligible activities is a reference to a use that qualifies for the purposes of the Energy Grants Act;
  - 'fishing operations' is a reference to the activities within the meaning of 'fishing operations' in section 34 of the Energy Grants Act;

- 'GST' is a reference to the goods and services tax;
- GST Act is a reference to the *A New Tax System (Goods and Services Tax) Act 1999*;
- 'you' in relation to provisions of the FT Act and the *Fuel Tax (Consequential and Transitional Provisions) Act 2006* applies to entities generally, unless its application is expressly limited;[3]
- The Transitional Act is a reference to the *Fuel Tax (Consequential and Transitional Provisions) Act 2006*;
- the transitional provisions is a reference to the relevant provisions in Schedule 3 of the Transitional Act; and
- acquire taxable fuel or taxable fuel acquired is a reference to 'taxable fuel that you acquire or manufacture in, or import into, Australia';

- it is assumed:
  - that if you are entitled to a fuel tax credit you meet the requirements that entitle you to the credit and are not disentitled by the disentitlement rules[4] in the FT Act;
  - that if you are claiming more than $3 million each financial year in fuel tax credits you meet the requirements of the Greenhouse Challenge Plus Programme or another programme determined, by legislative instrument, by the Environment Minister for the purposes of section 45-5 of the FT Act; and
  - that if an entity is carrying on an enterprise of fishing operations it is carrying on an enterprise in the form of a business[5] which involves the activities that are within the meaning of fishing operations in section 34.

6. In this Ruling, a reference to you being entitled to a fuel tax credit if you acquire taxable fuel for use in an activity that falls within the meaning of 'fishing operations' in section 34 of the Energy Grants Act, assumes that the requirements of either item 10 or 11 of Schedule 3 of the Transitional Act (where relevant) are met.

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[3] See the meaning of 'you' in section 110-5 of the FT Act.
[4] The disentitlement rules are set out in Subdivision 41-B of the FT Act.
[5] An enterprise includes an activity, or a series of activities, done in the form of a 'business' – see Fuel Tax Determination FTD 2006/3 Fuel tax: what is an 'enterprise' for the purposes of the *Fuel Tax Act 2006*?

Class of entities

7. This Ruling applies to the class of entities who acquire or manufacture in, or import into, Australia, taxable fuel for use in carrying on an enterprise which involves activities that are within the meaning of 'fishing operations' in section 34 of the Energy Grants Act.

How to read this Ruling

8. The Ruling section sets out the Commissioner's view on entitlement to a fuel tax credit for taxable fuel acquired or manufactured in, or imported into, Australia for use in carrying on an enterprise that involves activities within the meaning of 'fishing operations'.

9. For a more detailed analysis and explanation of the issues covered in the Rulings section, you should refer to the Explanation section in Appendix 1 of this Ruling.

10. This is followed by the Background section in Appendix 2 of this Ruling which provides an overview of the fuel tax credit system. Appendix 3 of this Ruling sets out a comparison table of the energy grants scheme and fuel tax credit system.

Ruling

General entitlement rules for a fuel tax credit

11. You are entitled to a fuel tax credit for taxable fuel that you acquire or manufacture in, or import into, Australia[6] to the extent that you do so for use in carrying on your enterprise.[7]

12. However, you are only entitled to the fuel tax credit if, at the time you acquire the taxable fuel, you are registered for GST, or required to be registered for GST.[8] This is regardless of your turnover.[9]

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[6] For the purposes of the FT Act, Australia has the meaning given by section 195-1 of the GST Act.
[7] Subsection 41-5(1) of the FT Act, subject to other provisions affecting your entitlement to the credit (see Subdivisions 41-B and 45-A of the FT Act).
[8] Subsection 41-5(2) of the FT Act. Division 23 of the GST Act provides who must be registered and who may be registered for GST.
[9] Under the GST Act, entities with a low annual turnover ($50,000 or less for a business entity or $100,000 or less for a non-profit body) may choose whether or not to register for GST.

13. The fuel tax credit to which you are entitled is taken into account in calculating your net fuel amount. The net fuel amount must be calculated for each tax period. If your net fuel amount is a positive figure, you must pay this amount to the Commissioner. If the net fuel amount is a negative figure, the Commissioner must pay this amount to you.

14. Your net fuel amounts for tax periods ending in a financial year must not take into account more than $3 million of fuel tax credits arising under section 41-5 of the FT Act unless you are a member of the Greenhouse Challenge Plus Programme or another programme determined, by legislative instrument, by the Environment Minister for the purposes of section 45-5 of the FT Act.[10]

15. Taxable fuel means fuel on which customs or excise duty is payable.[11]

16. You must be 'carrying on an enterprise' within the meaning of section 9-20 of the GST Act to be entitled to a fuel tax credit. The expression 'carrying on an enterprise' includes doing anything in the course of the commencement or termination of the enterprise.[12]

17. The words 'to the extent that' in subsection 41-5(1) of the FT Act allows for apportionment between a use that entitles you to a fuel tax credit and one that does not. You can use any fair and reasonable basis for working out the amount of taxable fuel in respect of which you are entitled to a fuel tax credit.[13]

18. The Commissioner's view is that the 'fair and reasonable' principle also applies in determining the extent of your entitlement to a fuel tax credit if the fuel is acquired for a number of uses, some of which qualify for a fuel tax credit and some of which do not.

19. The apportionment method you choose needs to:

- be fair and reasonable;
- reflect the planned use of the taxable fuel if you are claiming a fuel tax credit on the basis of intended uses some of which qualify for the credit; and

[10] See section 45-5 of the FT Act.
[11] Section 110-5 of the FT Act.
[12] The definition of carrying on an enterprise in section 110-5 of the FT Act has the meaning given by section 195-1 of the GST Act. For a detailed discussion on the meaning of 'enterprise' see Miscellaneous Taxation Ruling MT 2000/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN'). Also, see FTD 2006/3.
[13] For a full discussion on meaning of the terms 'to the extent that' and 'fair and reasonable' see Goods and Services Tax Ruling GSTR 2006/3 Goods and services tax: determining the extent of creditable purpose for providers of financial supplies and Goods and Services Tax Ruling GSTR 2006/4 Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.

- be appropriately documented in your individual circumstances.[14]

Fuel tax credits arising between 1 July 2006 and 30 June 2008

20. Under the transitional provisions, if you acquire taxable fuel (namely diesel fuel) between 1 July 2006 and 30 June 2008 for use in carrying on your enterprise, you are entitled to a fuel tax credit under section 41-5 of the FT Act if you would have been entitled to an off-road credit in respect of the fuel.[15]

21. In determining whether you would have been entitled to an off-road credit in respect of the fuel, it is assumed that:

- the references to 'purchase or import into Australia' in the Energy Grants Act were instead references to 'acquire or manufacture in, or import into, Australia'; and
- you had disregarded subsection 51(2), section 52 (registration requirements) and section 55A.[16]

22. Under subsection 65-5(1) of the FT Act, your fuel tax credit is attributable to the same tax period as your input tax credit for the creditable acquisition of the taxable fuel under the GST Act, or the same tax period that an input tax credit would have been attributable under the GST Act if the taxable fuel had been a creditable acquisition or a creditable importation.[17]

23. However, under item 12A of the Transitional Act, you may elect, before 31 December 2006, to receive early payments of fuel tax credits to which you are entitled for taxable fuel acquired between 1 July 2006 and 30 June 2008 (inclusive). If you receive an early payment of your fuel tax credit under these rules, you have an increasing fuel tax adjustment.

24. If you account on a cash basis and you provide part of the consideration for the taxable fuel in a tax period, your increasing fuel tax adjustment for an early payment of your fuel tax credit is attributable to that tax period but only to the extent that you provide the consideration in that tax period. In other cases, the increasing fuel tax adjustment is attributed to the earliest tax period to which your fuel tax credit can be attributed. Paragraphs 87 to 92 of this Ruling provide a detailed explanation of the early payments system.

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[14] For details of the records you need to keep to substantiate your claim for a fuel tax credit see Fuel Tax Determination FTD 2006/2 Fuel tax: what records are required to be kept by taxpayers to substantiate a claim for a fuel tax credit?
[15] Item 10 of Schedule 3 of the Transitional Act.
[16] Paragraph 10(5)(b) of Schedule 3 of the Transitional Act.
[17] Subsection 65-5(4) of the FT Act, provides for a later attribution of the fuel tax credit in certain circumstances.

Example 1 – early payment of fuel tax credits

25. *Rudi carries on a business as a fisher. On 1 September 2006, Rudi elects to receive early payments of fuel tax credits. Prior to 1 July 2006, Rudi was entitled to energy grants for diesel fuel purchased for use in fishing operations. Rudi is a quarterly BAS lodger who accounts for GST on a cash basis.*

26. *On 12 October 2006, Rudi purchases and pays for diesel fuel for use in his fishing operations. Rudi claims an early payment of $1,000 in respect of the taxable fuel he has acquired. The early payment is made to him on 26 October 2006.*

27. *In his BAS for the quarterly tax period ending 31 December 2006, Rudi reports a fuel tax credit of a $1,000. Rudi must also report an increasing fuel tax adjustment of $1,000 for this tax period.*

28. *For the tax period ending 31 December 2006, Rudi has a net fuel amount of nil as his increasing fuel tax adjustment is equal to the amount of his fuel tax credit.*

Example 2 – attribution and the early payment of fuel tax credits

29. *Further to Example 1, Rudi acquires another quantity of diesel fuel for use in fishing operations on 11 December 2006. Rudi pays in full for the fuel on 3 January 2007. However, Rudi does not acquire any fuel from 1 January 2007 to 31 March 2007(inclusive).*

30. *Rudi claims an early payment of another $1,000. The early payment is made to him on 22 December 2006. Rudi receives the early payment in the tax period ending 31 December 2006. However, as he paid for the fuel on 3 January 2007, the increasing fuel tax adjustment for the amount of the early payment is attributed to the tax period ending 31 March 2007 and not to the tax period ending 31 December 2006.*

31. *For the tax period ending 31 March 2007, Rudi has a net fuel amount of nil as his increasing fuel tax adjustment is equal to the amount of his fuel tax credit.*

Fuel tax credits arising between 1 July 2008 and 30 June 2012

32. Under the transitional provisions, if you acquire taxable fuel between 1 July 2008 and 30 June 2012 for use in carrying on your enterprise, you are entitled to a fuel tax credit under section 41-5 of the FT Act if you would have been entitled to an off-road credit in respect of the taxable fuel.[18]

[18] Item 11 of Schedule 3 of the Transitional Act.

33. In determining whether you would have been entitled to an off-road credit in respect of the taxable fuel, it is assumed that:

- the references to 'purchase or import into Australia' in the Energy Grants Act were instead references to 'acquire or manufacture in, or import into, Australia';
- you had disregarded subsection 51(2), section 52 (registration requirements) and section 55A; and
- the references to 'off-road diesel fuel' were instead references to the fuel.[19]

34. From 1 July 2008, eligibility for a fuel tax credit extends to petrol used in off-road qualifying activities that were previously eligible for an off-road credit under section 53 of the Energy Grants Act.

35. From 1 July 2008, you are also entitled to a fuel tax credit for taxable fuel acquired even if you are not entitled to an off-road credit for a qualifying use under section 53 of the Energy Grants Act. However, the amount of the credit is half the amount calculated under Division 43 of the FT Act (half credit).[20]

36. From 1 July 2012, irrespective of whether or not the activity was a qualifying use under section 53, you are entitled to the full amount of the fuel tax credit for taxable fuel acquired, manufactured in or imported into, Australia for use in carrying on your enterprise.

37. From 1 July 2011, coinciding with bringing alternative fuels[21] into the fuel tax system, an entity acquiring, manufacturing in, or importing into, Australia, alternative fuel[22] is entitled to a fuel tax credit for the fuel.[23] This entitlement is to the full amount of that credit.

Entitlement to fuel tax credits for taxable fuel acquired between 1 July 2006 and 30 June 2012 for use 'in fishing operations'

38. If you carry on an enterprise involving fishing operations and you acquire taxable fuel for use in an activity that is within the meaning of 'fishing operations', in paragraphs 34(1)(a) to 34(1)(g) and the activity is not excluded from being a qualifying use by paragraphs 34(1)(h) and 34(1)(i), you are entitled to a fuel tax credit under section 41-5 of the FT Act in respect of diesel fuel that you acquire.

39. For diesel fuel that you acquire between 1 July 2006 and 30 June 2008 (inclusive) for a use in that activity, you are entitled to the full amount of the fuel tax credit.

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[19] Paragraph 11(5)(b) of Schedule 3 of the Transitional Act.
[20] Subitem 11(6) of Schedule 3 of the Transitional Act.
[21] Alternative fuels such as biodiesel, ethanol, methanol, LPG, CNG and LNG begin to incur effective tax from 1 July 2011.
[22] Alternative fuel includes biodiesel, ethanol, LPG, LNG and CNG.
[23] Subitem 11(7) of Schedule 3 of the Transitional Act applies until 30 June 2012.

40. For diesel fuel and petrol that you acquire between 1 July 2008 and 30 June 2012 (inclusive) for a use in that activity, you are entitled to the full amount of the fuel tax credit.

41. For all taxable fuels purchased between 1 July 2008 and 30 June 2012 (inclusive), for use in an activity in fishing operations for which an off-road credit under the energy grants scheme was **not** previously available, you are entitled to a half credit.

42. If, between 1 July 2011 and 30 June 2012 (inclusive), you acquire, manufacture or import into, Australia alternative fuel for use in fishing operations, that is, in an activity that is within the meaning of 'fishing operations' in paragraphs 34(1)(a) to 34(1)(g) and the activity is not excluded from being a qualifying use by paragraphs 34(1)(h) and 34(1)(i), you are entitled to the full amount of the fuel tax credit under section 41-5 of the FT Act.

The form of the definition of 'fishing operations': means, does not include

43. The use of the expressions '*means'* and '*does not include*' in the definition of 'fishing operations' in section 34 means that the definition is an exhaustive definition. Activities that are not within any one of paragraphs 34(1)(a) to 34(1)(g) are not activities in fishing operations.

44. The application of the exclusions contained in paragraphs 34(1)(h) and 34(1)(i) means that an activity that is within paragraphs 34(1)(a) to 34(1)(g) is in fishing operations only if it is conducted for the purposes of a business and is not for business purposes connected with recreation, sport or tourism.

The meaning of 'fish'

45. The Commissioner considers that the definition of 'fish' in subsection 34(2) includes all living organisms of the sea, the sea-bed or of freshwater or the bed below freshwater, which can be utilised as a resource. The inclusion of 'any living resources, whether of the sea or sea-bed or of freshwater or the bed below freshwater' in the definition means that both marine animal and plant life are within the meaning of 'fish' for the purposes of the energy grants scheme.

Farming of fish

46. In paragraph 34(1)(b), the phrase 'farming of fish' means the propagating or raising of stocks of fish for the purpose of a business otherwise than for business purposes connected with recreation, sport or tourism.

Construction of ponds, tanks or other structures to contain fish that are to be farmed

47. For the purposes of paragraph 34(1)(c), the construction of 'ponds, tanks or other structures' qualifies as fishing operations only if the construction is of structures to contain fish for the purpose of their farming.

Pearling operations

48. An activity that is undertaken in the taking or farming of pearl oysters may be within paragraph 34(1)(e) as well as one or more of paragraphs 34(1)(a) to 34(1)(d).

49. The Commissioner takes the view that these activities are to be considered for eligibility firstly under paragraph 34(1)(e). If the activity is not an eligible activity under that paragraph, it can be considered for eligibility under any one or more of paragraphs 34(1)(a) to 34(1)(d).

Activities excluded from fishing operations

50. An entity is not entitled to a fuel tax credit if they acquire taxable fuel for use in an activity that is excluded from the definition of 'fishing operations' by paragraphs 34(1)(h) and 34(1)(i).

51. The exclusion contained in paragraph 34(1)(h) means that an activity mentioned in paragraphs 34(1)(a) to 34(1)(g) is in fishing operations only if the activity is conducted or carried out for the purposes of a business.

52. The exclusion contained in paragraph 34(1)(i) means that an activity mentioned in paragraphs 34(1)(a) to 34(1)(g) is not a qualifying use if it is conducted wholly or in part for business purposes connected with recreation, sport or tourism.

53. The Commissioner considers that, the expression *in whole or in part*, in the exclusion in subsection 34(1), is to be interpreted having regard to the purpose of the provisions of the Energy Grants Act.

54. Under this purposive interpretation approach, where a person conducts activities that are for the purposes of a business as well as for other purposes (for example, private purposes) the Commissioner takes the view that the person conducts separate activities, being those that are for business purposes and those that are not. To the extent to which they are for business purposes they are eligible activities. To the extent to which activities are otherwise than for business purposes, they are separate activities that are excluded from being in fishing operations by paragraph 34(1)(h).

55. The Commissioner takes a similar approach to the exclusion contained in paragraph 34(1)(i). Where a person conducts activities mentioned in paragraphs 34(1)(a) to 34(1)(g) for business purposes not connected with recreation or tourism as well as for business purposes that have that connection, the person conducts separate activities. To the extent that the activities are not so connected they are eligible activities. To the extent to which the activities are for business purposes connected with recreation, sport or tourism, they are separate activities that are excluded from being in fishing operations by paragraph 34(1)(i).

56. In the context of the exclusion contained in paragraph 34(1)(i), a business purpose is connected with recreation, sport or tourism if there is a substantial and discernible association between the purpose and any one of recreation, sport or tourism.

Example 3 – a fish farming business engaged in the propagation of fish for commercial sale and conducts activities for business purposes connected with recreation, sport or tourism

57. *Trout About Pty Ltd (Trout About) operates a trout farm as a business. They propagate and raise trout. Mature trout are processed and sold as fresh or smoked trout. They also sell immature trout as live fingerlings.*

58. *Trout About also provides, for a set fee, facilities for recreational anglers and tourists to catch trout from the farm dams.*

59. *Trout About carries on activities on its farm that are partly in carrying on a business of farming of fish and partly for business purposes connected with recreation and tourism.*

60. *Trout About needs to distinguish between activities conducted in the farming of fish and activities conducted for business purposes connected with recreational fishing and tourism.*

61. *Trout About was entitled to an off-road credit for diesel fuel that it acquired for use in the activities conducted in the farming of fish. These activities, mentioned in paragraph 34(1)(c) are not excluded from being in fishing operations by paragraph 34(1)(i). As Trout About was entitled to an off-road credit for these activities, Trout About is entitled to a fuel tax credit for diesel fuel that it acquires on or after 1 July 2006 for use in these eligible activities.*

62. *However, Trout About was not entitled to an off-road credit for diesel fuel acquired for use in providing and maintaining facilities for recreational angling and tourists. These activities are conducted for business purposes connected with recreation or tourism and are excluded from being in fishing operations by paragraph 34(1)(i).*

63. *Trout About is therefore not entitled to a fuel tax credit for diesel fuel acquired between 1 July 2006 and 30 June 2008 inclusive for use in these activities. However, from 1 July 2008 to 30 June 2012 inclusive, Trout About has an entitlement to 50% of the fuel tax credit for taxable fuel acquired for use in providing and maintaining facilities for recreational angling and tourists*.[24]

Date of effect

64. This Ruling applies from 1 July 2006.

65. However, the Ruling does 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 the Ruling (see paragraphs 75 to 77 of Taxation Ruling TR 2006/10 Income tax, fringe benefits tax and product grants and benefits: Public Rulings).

Withdrawal

66. This Ruling is withdrawn and ceases to have effect on 1 July 2012. The Ruling continues to apply, in respect of the fuel tax law ruled upon, to all taxpayers within the specified class who acquire, manufacture in, or import into, Australia, taxable fuel before 1 July 2012. Thus, the Ruling continues to apply to those taxpayers, even following its withdrawal, who acquire taxable fuel prior to the withdrawal of the Ruling (see paragraph 46 of TR 2006/10).

Commissioner of Taxation
4 October 2006

[24] See paragraphs 32 to 37 and 93 to 98 of this Ruling for a discussion on fuel tax credits arising between 1 July 2008 and 30 June 2012 (inclusive).

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

67. The fuel tax credit system commenced on 1 July 2006. Prior to the commencement of the fuel tax credit system, claims for an energy grant for off-road credits for diesel fuel purchased for the qualifying use of primary production (the definition of which in section 21 includes fishing operations) were made under the energy grants scheme.

General entitlement rules for a fuel tax credit

68. You are entitled to a fuel tax credit[25] for 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.[26]

69. However, you are only entitled to the fuel tax credit if, at the time you acquire the taxable fuel, you are registered for GST, or required to be registered for GST.[27] This is regardless of your turnover.

70. You must be 'carrying on an enterprise' within the meaning of section 9-20 of the GST Act to be able to claim a fuel tax credit. The expression 'carrying on an enterprise' includes doing anything in the course of the commencement or termination of the enterprise.

71. The expressions 'fuel tax', 'taxable fuel', 'acquire or manufacture in', and for 'use in carrying on your enterprise' are concepts that differ to terms used in the Energy Grants Act.

72. Fuel tax[28] means duty that is payable on fuel under the *Excise Act 1901* or the *Customs Act 1901* and the respective Tariff Acts,[29] other than any duty that is expressed as a percentage of the value of fuel for the purposes of section 9 of the *Customs Tariff Act 1995*.

73. Taxable fuel means fuel on which customs or excise duty is payable.[30]

74. You will not be considered to have used the taxable fuel if you sell the taxable fuel to another entity.[31]

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[25] The amount of your fuel tax credit is worked out under Division 43 of the FT Act.
[26] Subsection 41-5(1) of the FT Act. Subject to other provisions affecting your entitlement to the credit (see Subdivisions 41-B and 45-A of the FT Act).
[27] Subsection 41-5(2) of the FT Act.
[28] See section 110-5 of the FT Act and note the exceptions – that is, fuels specifically excluded from the definition of taxable fuel in section 110-5.
[29] *Excise Tariff Act 1921* and *Customs Tariff Act 1995*.
[30] Section 110-5 of the FT Act.
[31] The meaning of the term 'use' is explained in paragraphs 2.33 to 2.37 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006.

75. You only need to acquire taxable fuel with the intention of using it for an eligible purpose to be entitled to a fuel tax credit. It is not necessary for the taxable fuel to have been actually used by you for an eligible purpose at the time you make the claim for your fuel tax credit. However, if you acquire the taxable fuel with the intention of using it for a particular purpose but subsequently use the taxable fuel for a different purpose and the amount of your fuel tax credit, worked out on the basis of the intended use is different from the amount to which you are actually entitled to worked out on the basis of actual use you will have a fuel tax adjustment.[32]

76. Under the FT Act, you are required to calculate your net fuel amount[33] for each tax period.[34] Your net fuel amount is worked out using the formula[35] set out in subsection 60-5(1) of the FT Act. The net fuel amount is claimed on your Business Activity Statement (BAS). If the net fuel amount is positive, you must pay that amount to the Commissioner. If the net fuel amount is negative, the Commissioner must pay that amount to you. The attribution rules in Division 65 of the FT Act determine the tax period to which your fuel tax credit is attributed.[36]

77. Your net fuel amounts for tax periods ending in a financial year must not take into account more than $3 million of fuel tax credits arising under section 41-5 of the FT Act unless you are a member of the Greenhouse Challenge Plus Programme or another programme determined, by legislative instrument, by the Environment Minister for the purposes of section 45-5 of the FT Act.[37]

General principles of apportionment

78. The words 'to the extent that'[38] in subsection 41-5(1) of the FT Act allows for apportionment between a use that qualifies and one that does not. You can use any reasonable basis for apportionment to work out your entitlement to a fuel tax credit if you acquire taxable fuel that you use for qualifying and non-qualifying uses.

79. An apportionment can be made on the basis of an intended use even if precise quantification cannot be made at the time that the taxable fuel is acquired.

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[32] Division 44 of the FT Act.
[33] See Division 60 of the FT Act. The net fuel amount reflects how much you or the Commissioner must pay.
[34] See sections 61-15 and 61-20 of the FT Act.
[35] Under the formula, Net fuel amount = Total fuel tax – Total fuel tax credits + Total increasing fuel tax adjustments – Total decreasing fuel tax adjustments where the total fuel tax is zero.
[36] See subsections 65-5(1) to 65-5(3) of the FT Act for the primary attribution rules for fuel tax credits. In some circumstances, you can claim a fuel tax credit in the tax period in which the fuel is used - see subsection 65-5(4) of the FT Act.
[37] See section 45-5 of the FT Act.
[38] See GSTR 2006/3 and GSTR 2006/4 for a full discussion on meaning of the terms 'to the extent that' and 'fair and reasonable'.

80. In *Collector of Customs v. Pozzolanic Enterprises Pty Limited,*[39] in relation to the facts of that case, the Court stated:

> The fact that only a proportion of the fuel so purchased was intended for that use and the fact that it might not be precisely quantified at the point of sale does not take the purchase outside the rebate provisions. So long as there is some means of establishing that a proportion of the fuel is to be used for an exempt purpose, the precise quantification can await the actual use.[40]

81. If you acquire taxable fuel partly for use in carrying on your enterprise of fishing operations, apportionment of the fuel tax credit referable to that acquisition is required. In practice, this will usually involve an initial decision about whether the acquisition of the fuel is 'solely' for a particular purpose (in which case apportionment will not be required).

82. The principles to be applied in identifying situations where apportionment is appropriate in an income tax context, and the method to be employed where apportionment is required, were considered by the High Court in *Ronpibon Tin NL v. FC of T.*[41] In that case, the High Court considered what part of management and administrative expenses incurred by a taxpayer (whose principal business activity had been interrupted by World War II), were referable to gaining or producing assessable income. The High Court considered both the allocation of distinct expenditure to specific activities, and also apportionment, and said:

> In applying the foregoing test or standard separate and distinct items of expenditure should be dealt with specifically. To begin with there are the payments by Ronpibon Tin No Liability to the dependants of members of that company's Eastern staff. …from the point of view of the income-tax law they could not be regarded as business expenditure…
>
> In the next place the cost incurred by the same company in cables and other communications with reference to the buffer stock scheme cannot be deducted. … Sufficient details do not appear to say what other distinct and severable items are wholly incapable of reference to the gaining of assessable income.

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[39] *Collector of Customs v. Pozzolanic Enterprises Pty Limited* (1993) 43 FCR 280; (1993) 115 ALR 1.
[40] *Collector of Customs v. Pozzolanic Enterprises Pty Limited* (1993) 43 FCR 280 at 290; (1993) 115 ALR 1 at 12.
[41] *Ronpibon Tin NL v. Federal Commissioner of Taxation* (1949) 78 CLR 47.

> The charges for management and the directors' fees are entire sums which probably cannot be dissected. But the provision contained in s.51(1) [of the ITAA 1936], as has already been said, contemplates apportionment. The question what expenditure is incurred in gaining or producing assessable income is reduced to a question of fact when once the legal standard or criterion is ascertained and understood. This is particularly true when the problem is to apportion outgoings which have a double aspect, outgoings that are in part attributable to the gaining of assessable income and in part to some other end or activity. It is perhaps desirable to remark that there are at least two kinds of items of expenditure that require apportionment. One kind consists in undivided items of expenditure in respect of things or services of which distinct and severable parts are devoted to gaining or producing assessable income and distinct and severable parts to some other cause. In such cases it may be possible to divide the expenditure in accordance with the applications which have been made of the things or services. The other kind of apportionable items consists in those involving a single outlay or charge which serves both objects indifferently. Of this directors' fees may be an example. With the latter kind there must be some fair and reasonable assessment of the extent of the relation of the outlay to assessable income. It is an indiscriminate sum apportionable, but hardly capable of arithmetical or rateable division because it is common to both objects. [42]

83. The High Court therefore emphasised the necessity of considering the facts of individual cases. Where items of expenditure ('acquire, manufacture in or import into, Australia' in the context of the FT Act) are not referable to a particular object, then apportionment is required using a method which results in a fair and reasonable reflection of the relation of the expenditure to assessable income.

84. Following the principles set out by the High Court, the method you choose to apportion the taxable fuel that you acquire between a qualifying use and a non-qualifying use needs to:

- be fair and reasonable;
- reflect the planned use of the taxable fuel if you are claiming on the basis of intended use; and
- be appropriately documented in your individual circumstances.

Fuel tax credits arising between 1 July 2006 and 30 June 2008

85. Under the transitional provisions, if you acquire taxable fuel, (namely diesel fuel), between 1 July 2006 and 30 June 2008 (inclusive) for use in carrying on your enterprise, you are entitled to a fuel tax credit under section 41-5 of the FT Act if you would have been entitled to an off-road credit under the energy grants scheme in respect of the fuel.[43]

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[42] *Ronpibon Tin NL v. Federal Commissioner of Taxation* (1949) 78 CLR 47 at 58-59.
[43] Item 10 of Schedule 3 of the Transitional Act.

86. In determining whether or not you would have been entitled to an off-road credit in respect of the fuel, it is assumed that:

- the references to 'purchase or import into Australia' in the Energy Grants Act were instead references to 'acquire or manufacture in, or import into, Australia'; and
- you had disregarded subsection 51(2), section 52 (registration requirements) and section 55A.[44]

Early payments of fuel tax credits

87. Under the transitional provisions, you may elect to receive an early payment of fuel tax credit for taxable fuel acquired between 1 July 2006 and 30 June 2008.[45]

88. The Commissioner must make an early payment[46] to you, if:

- you elect before 31 December 2006 (in the approved form) to receive early payments of the fuel tax credit;
- you were previously entitled an energy grant under the Energy Grants Act;
- you acquire taxable fuel between 1 July 2006 and 30 June 2008 (inclusive);
- you are entitled to a fuel tax credit under section 41-5 of the FT Act as affected by the Transitional Act;
- the fuel tax credit or part of the fuel tax credit is attributable to:
  - if you account for GST on a cash basis – the tax period in which the claim for the early payment is made or a later tax period;[47]
  - if you do not account for the GST on a cash basis – the tax period in which the claim for early payment is made;[48] and
- you have not previously received an early payment of the fuel tax credit for the taxable fuel.[49]

89. The amount of the early payment is the amount of the fuel tax credit to which you are entitled.[50]

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[44] Paragraph 10(5)(b) of Schedule 3 of the Transitional Act.
[45] Item 12A of Schedule 3 of the Transitional Act.
[46] Subparagraph 12A(1)(c)(i) of Schedule 3 of the Transitional Act. The entity or another member of the GST group for which the entity is the representative member or another participant in a GST joint venture for which the entity is the joint venture operator must have been entitled to an energy grant.
[47] Subparagraph 12A(1)(e)(i) of Schedule 3 of the Transitional Act.
[48] Subparagraph 12A(1)(e)(ii) of Schedule 3 of the Transitional Act.
[49] Paragraph 12A(1)(f) of Schedule 3 of the Transitional Act.
[50] Subitem 12A(2) of Schedule 3 of the Transitional Act.

90. If you:

- receive an early payment;
- account on a cash basis; and
- in a tax period provide part of the consideration for the taxable fuel,

you have an increasing fuel tax adjustment for the amount of the early payment, but only to the extent that you provide the consideration in that tax period. The increasing fuel tax adjustment is attributable to that tax period.[51]

91. If you:

- receive an early payment; and
- account on a non-cash basis,

you have an increasing fuel tax adjustment for the amount of the early payment. The increasing fuel tax adjustment is attributable to the earliest tax period to which the credit can be attributed.[52]

92. If you have elected to receive early payments you are not obliged to claim all your fuel tax credits as an early payment. Fuel tax credits not claimed as any early payment can be claimed on the BAS in the relevant tax period.

Fuel tax credits arising between 1 July 2008 and 30 June 2012

93. Under the transitional provisions, if you acquire taxable fuel between 1 July 2008 and 30 June 2012 (inclusive) for use in carrying on your enterprise, you are entitled to a fuel tax credit under section 41-5 of the FT Act if you would have been entitled to an off-road credit for a qualifying use under section 53 in respect of the taxable fuel.[53]

94. From 1 July 2008, eligibility for a fuel tax credit also extends to petrol used in off-road qualifying activities that were previously eligible for an off-road credit under the Energy Grants Act.

95. In determining whether or not you would have been entitled to an off-road credit in respect of the taxable fuel, it is assumed that:

- the references to 'purchase or import into Australia' in the Energy Grants Act were instead references to 'acquire or manufacture in, or import into, Australia' and references to 'off-road diesel fuel' were instead references to taxable fuel;
- you had disregarded subsection 51(2), section 52 (registration requirements) and section 55A; and

[51] Paragraph 12A(3)(a) of Schedule 3 of the Transitional Act.
[52] Paragraph 12A(3)(b) of Schedule 3 of the Transitional Act.
[53] Item 11 of Schedule 3 of the Transitional Act.

- the references to 'off-road diesel fuel' were instead references to the fuel.[54]

96. From 1 July 2008, under the transitional provisions, if you are not entitled to an off-road credit for a qualifying use under section 53, you are entitled to a fuel tax credit for taxable fuel (includes diesel and petrol) under section 41-5 of the FT Act. However, your entitlement is limited to a half credit.[55]

97. From 1 July 2012, irrespective of whether or not the activity was a qualifying use under the Energy Grants Act, you will be entitled to the full amount of the fuel tax credit for taxable fuel acquired, manufactured in or imported into, Australia for use in carrying on your enterprise.

98. From 1 July 2011, coinciding with bringing alternative fuels[56] into the fuel tax system, if you acquire, manufacture in, or import into Australia alternative fuel[57] for use that is off-road you are eligible for a fuel tax credit.[58]

Entitlement to fuel tax credits for taxable fuel acquired between 1 July 2006 and 30 June 2012 for use in 'fishing operations'

99. You are entitled to a fuel tax credit for taxable fuel you acquire for use or used 'in primary production'. Fishing operations is included in the definition of 'primary production' in section 21. The expression 'fishing operations' is defined in subsection 34(1).

100. In the context of the phrase 'in primary production' in subsection 53(2), the preposition 'in' means 'in the course of' or 'in the process or act of'. Therefore, if an activity can be said to have taken place 'in the course of' primary production, whether that primary production is agriculture, fishing operations or forestry, it can be concluded that it takes place 'in' primary production. As 'fishing operations' is included in the definition of primary production, to be entitled for a fuel tax credit under fishing operations, your activities must take place 'in' fishing operations.

101. In *Chief Executive Officer of Customs v. WMC Resources Ltd (as agent for East Spar Alliance),*[59] Nicholson J, stated:

> The word 'in' as it appears in para (a) of the definition of 'mining operations' is to be understood in this context as 'inclusion within, or occurrence during the course of…'

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[54] Paragraph 11(5)(b) of Schedule 3 of the Transitional Act.
[55] Under subitem 11(6) of Schedule 3 of the Transitional Act the amount of your credit is half the amount worked out under Division 43 of the FT Act.
[56] Alternative fuels such as biodiesel, ethanol, methanol, LPG, CNG and LNG begin to incur effective fuel tax from 1 July 2011.
[57] On-road alternative fuel includes biodiesel, ethanol, LPG, LNG and CNG.
[58] Subitem 11(7) of Schedule 3 of the Transitional Act applies until 30 June 2012.
[59] *Chief Executive Officer of Customs v. WMC Resources Ltd (as agent for East Spar Alliance)* (1998) 87 FCR 482 at 501; (1998) 158 ALR 241 at 259. See also *Re Wandoo Alliance Pty Ltd v. Chief Executive Officer of Customs* [2001] AATA 801 paragraph 9; (2001) 34 AAR 98 at 114.

102. The Commissioner considers that the following three criteria may be relevant in determining if an activity takes place 'in the course of' fishing operations.[60] These are:

- a **causal** link exists – in other words, a certain activity is *functionally integrated* with fishing operations, thereby forming an essential part of it;
- a **spatial** link exists – meaning that an activity takes place in an area set aside or utilised for fishing operations; and
- a **temporal** link exists – the activity takes place in a timely fashion, not prior to, or after the completion of, the fishing operations.

103. The relevance or weighting afforded to these criteria will vary depending on the facts in each case.

104. Accordingly, the meaning of 'in fishing operations' is not restricted to merely the physical acts of fishing. In determining whether an activity takes place 'in the course of' fishing operations, the three criteria above should be applied.

The form of the definition of 'fishing operations': means, does not include

105. The definition of 'fishing operations' in subsection 34(1) consists of two parts:

- Paragraphs 34(1)(a) to 34(1)(g): 'fishing operations' means …
- Paragraphs 34(1)(h) and 34(1)(i): 'fishing operations' does not include ...

106. The use of the form 'means ... does not include', denotes that the definition of 'fishing operations' is exhaustive. Only those activities that fall within any one or more of paragraphs 34(1)(a) to 34(1)(g) and which are not excluded by paragraphs 34(1)(h) or 34(1)(i) are eligible activities under 'fishing operations'.

[60] In *Federal Commissioner of Taxation v. Payne* (2001) HCA 3; 46 ATR 228; 2001 ATC 4027; (2001) 202 CLR 93; (2001) 177 ALR 270; (2001) 75 ALJR 442, *Chief Executive Officer of Customs v. WMC Resources Ltd (as agent for East Spar Alliance)* (1998) 87 FCR 482; 158 ALR 241, *Re Wandoo Alliance Pty Ltd and Chief Executive Officer of Customs* (2001) 34 AAR 98; [2001] AATA 801, amongst others, it was deemed pertinent to consider one or all of these factors when determining whether an activity or activities were undertaken 'in the course of' something.

107. Paragraphs 34(1)(h) and 34(1)(i) serve to further restrict the definition of fishing operations. Regardless of whether or not taxable fuel is acquired for use in an activity described in paragraphs 34(1)(a) to 34(1)(g), you are not entitled to a fuel tax credit if the activity is excluded from being in fishing operations by the operation of paragraph 34(1)(h) or 34(1)(i).

108. The manner in which the definition of fishing operations is structured means that the activities set out in paragraph 34(1)(a) to 34(1)(g) are 'in fishing operations'. However, paragraph 34(1)(h) has the effect of excluding all the activities set out in paragraphs 34(1)(a) to 34(1)(g) from being within the definition of fishing operations unless those activities are carried out for the purposes of a business.

109. Paragraph 34(1)(i) has the effect of excluding any activity referred to in paragraphs 34(1)(a) to 34(1)(g) that is carried out for business purposes connected with recreation, sport or tourism. An activity mentioned in paragraphs 34(1)(a) to 34(1)(g) may be conducted for the purposes of a business (and, therefore, not excluded by paragraph 34(1)(h)), but would be excluded under paragraph 34(1)(i) if it is conducted for business purposes connected with recreation, sport or tourism.

110. An activity does not have to be mentioned in paragraphs 34(1)(h) or 34(1)(i) to be excluded from the definition of 'fishing operations'. These paragraphs serve merely to exclude particular activities from the definition of 'fishing operations', while other activities will be excluded because they do not fall within the meaning of paragraphs 34(1)(a) to 34(1)(g).

111. As no entitlement to an off-road credit exists under the qualifying use of 'fishing operations' for those activities, from 1 July 2006 to 30 June 2008 (inclusive) no entitlement to a fuel tax credit arises for taxable fuel acquired for use in those activities.

112. From 1 July 2008 to 30 June 2012 (inclusive), an entitlement to half credit would arise and from 1 July 2012, an entitlement for the full fuel tax credit would arise for taxable fuel you acquire for use in those activities.

113. The form of the definition of '**fishing operations**': ***means***, ***does not include*** is substantially the same form of the definition of fishing operations as existed in the diesel fuel rebate scheme. Decisions of the Courts and the AAT in relation to the diesel fuel rebate provisions are, in the Commissioner's view, relevant to the interpretation of section 34.

Status of contractors and subcontractors

114. For the purposes of the energy grants scheme, activity determines eligibility, rather than whether the entity's principal business is fishing operations.[61]

115. The specific inclusion of contractors and subcontractors in paragraph 34(1)(c) is for clarification and in recognition that the construction of the kind mentioned in the paragraph is often carried out by contractors or subcontractors rather than by the entity who carries on a business of farming of fish. Unlike the other activities listed in subsection 34(1), it would not be immediately evident that a contractor or subcontractor engaged to build a tank or excavate a pond is engaged in an activity that is essential to the carrying on of a business involving the farming of fish. The specific inclusion of the construction by contractors and subcontractors of ponds, tanks or other structures to contain fish that are to be farmed as an eligible activity puts the issue beyond any doubt.

The meaning of 'fish'

116. A central concept of the meaning of 'fishing operations' is the definition of fish.

117. Subsection 34(2) defines 'fish' as meaning:

> freshwater or salt-water fish, and includes crustacea, molluscs or any other living resources, whether of the sea or sea-bed or of freshwater or the bed below freshwater.

118. The noun 'fish' is defined by the Macquarie Dictionary[62] as meaning:

> **1.** any of various cold-blooded, completely aquatic vertebrates, having gills, fins, and typically an elongated body usually covered with scales', or '**2.** any of various other aquatic animals.

119. The definition provided by subsection 34(2), is an exhaustive definition that adopts the ordinary meaning of the noun 'fish' and extends that meaning by including crustacea, molluscs or any other living resources of the sea or sea-bed or of freshwater or the bed below freshwater.

120. The expression 'any other living resources' in the definition of fish extends the ordinary meaning of fish to cover all living things, including animal and plant life, of the sea or sea-bed or of freshwater or the bed below freshwater, that can be utilised as a resource.

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[61] *Australian National Railways Commission v. Collector of Customs SA* (1985) 8 FCR 264; (1985) 69 ALR 367.
[62] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

121. The Commissioner considers that the *ejusdem generis* rule of statutory interpretation does not apply to the meaning of the expression 'any other living resources' in the definition of 'fish' in subsection 34(2). The application of this rule would have meant that the words 'any other living resources' are restricted to the same class of things as freshwater or salt-water fish, crustacea and molluscs. These specific things are all descriptions of marine or aquatic animal life. This would have meant that the term 'fish' is limited to animal life and does not include marine plant life.

122. The *ejusdem generis* rule of statutory interpretation was discussed in *Canwan Coals Pty Ltd v. Federal Commissioner of Taxation*[63] in which the Court dealt with the scope of the words 'a railway, road, pipe-line or other facility'. Sheppard J referred to the decision of Latham CJ in *R v. Regos*[64] in which, in relation to the *ejusdem generis* rule, he said:

> The rule is that general words may be restricted to the same *genus* as the specific words that precede them … Before the rule can be applied it is obviously necessary to identify some *genus* which comprehends the specific cases for which provision is made. … where it is sought to apply the rule to a case where an enumeration of specific things is followed by general words it must appear that the specified things 'possess some common and dominant feature' so that they can be described as constituting a *genus* distinguished by that feature.[65]

123. The Commissioner considers that the primary and natural significance of the words 'any other living resources whether of the sea or sea-bed or of freshwater or the bed below freshwater' clearly includes marine plants within the scope of that general expression.

124. The construction of the definition of fish using the terms 'means'… and 'includes' indicates that the normal and ordinary meaning of 'fish' is expanded to 'include' other living things that are not normally or ordinarily considered to be fish. Those additional 'included' things are crustacea, molluscs or *any* other living resources whether of the sea or sea-bed or of freshwater or the bed below freshwater. The use of the word '*any'* indicates a legislative intent that the expression 'other living resources' is not to be read restrictively, and that the natural and ordinary meaning of 'fish' is expanded to include living resources both plant and animal.

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[63] *Canwan Coals Pty Ltd v. Federal Commissioner of Taxation* (1974) 4 ALR 223 at 228; (1974) 1 NSWLR 728 at 734; (1974) 4 ATR 669 at 673; 74 ATC 4231 at 4235. See also *Attorney-General v. Brown* [1920] 1 K.B. 773 and *Re Latham (Dec)* [1962] Ch 616 for further discussion on the application of the *ejusdem generis* rule.

[64] *R v. Regos and Morgan* (1947) 74 CLR 613; (1947) 21 ALJ 110.

[65] *R v. Regos and Morgan* (1947) 74 CLR 613, Latham CJ, at 623-624; (1947) 21 ALJ 110 at 111-112.

125. The meaning of 'fish' encompasses a wide range of aquatic organisms, including (but not limited to):

- all species of bony fish, sharks and rays;
- octopuses, cuttlefish and squid;
- lobsters, crabs, prawns, scallops, abalone, mussels, and oysters;
- sponges, worms and living coral;
- all fresh-water fish, yabbies and marron;
- the eggs, spat or spawn, or the body, or part of the body (including the shell) of marine and fresh-water organisms; and
- seagrasses, kelp and fresh-water aquatic plants.

126. The sea-bed includes intertidal areas that are covered by the sea at high tide.

127. The meaning of fish is not restricted to fish ordinarily used for human consumption. For example, ornamental fish are also included in the definition.

Activities that are 'fishing operations'

128. The Commissioner considers that the meaning of each of the activities mentioned in paragraphs 34(1)(a), 34(1)(d), 34(1)(f) and 34(1)(g) are clear. This Ruling, therefore, does not discuss those paragraphs.

Farming of fish

129. The definition of 'fishing operations' in subsection 34(1) states in part:

> The expression ***fishing operations*** means:
>
> (b) the farming of fish

130. The term 'farming of fish' is not defined in the Energy Grants Act. Therefore, the term takes its ordinary meaning.

131. The Macquarie Dictionary[66] defines 'farming' to mean:

> **1.** the business of operating a farm'. It defines 'farm' to mean '**1.** a tract of land devoted to agriculture; or '**2.** a tract of land or water devoted to some other industry, especially the raising of livestock, fish, etc: *a chicken farm; an oyster farm*.

[66] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.

132. The Commissioner takes the view that, in the context of the definition of 'fishing operations', farming of fish means the propagating, breeding or raising of stocks of fish for the purpose of a business.

133. The term 'farming of fish' within the definition of fishing operations was introduced in an amendment to the diesel fuel rebate scheme in 1989. The Explanatory Memorandum to that amendment stated:

> …paragraph 5(1)(e) provides that outward voyages by dedicated mother ships, gear trials, voyages to and from a port and fish farming i.e. operations pertinent to the operation of fishing as a primary industry, are uses that attract rebate of customs duty under the DFRS.[67]

134. In *Re City of Nunawading and Comptroller General of Customs*[68] the AAT stated:

> Clearly, the activities must be for the purposes of a business if they are to be regarded as fishing operations. Apart from this, we do not wish to attempt a comprehensive interpretation of 'fishing operations' but it does seem to us that it is concerned with gathering a product. Broadly speaking, it is concerned with the gathering of pearls or with the gathering fish either by taking them from the water where they have bred naturally or by farming them.[69]

135. Taxable fuel acquired for use in the farming of fish does not qualify for a fuel tax credit unless the activity is undertaken for the purpose of obtaining primary produce, that is, to obtain fish for sale or trade.

136. Where fish farming for research purposes is undertaken within a business involving the farming of fish to produce fish for sale or trade, an entitlement to a fuel tax credit arises in respect of taxable fuel acquired for use in that research activity. The Commissioner considers that the research activity in this case is an activity conducted 'in the course of' the farming of fish. It is, therefore, 'in' fishing operations.

137. However, no entitlement to a fuel tax credit arises in respect of taxable fuel acquired for use in fish farming undertaken within a research or educational institution, where the purpose of that activity is research or education rather than producing fish for sale or trade. This activity is not within the meaning of 'fishing operations' in subsection 34(1). The research activity in this case is not in 'primary production'.

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[67] Explanatory Memorandum to the Customs and Excise Legislation Amendment Bill (No. 3) 1989 page 2.
[68] *Re City of Nunawading and Comptroller General of Customs* No. V93/540 AAT No. 9758; (1994) 36 ALD 628.
[69] *Re City of Nunawading and Comptroller General of Customs* No. V93/540 AAT No. 9758 at paragraph 87; (1994) 36 ALD 628 at 643.

138. It is a question of fact whether the sale of fish is incidental to research, or a joint objective with research, or whether the research is merely part of the business of farming fish to obtain produce for sale.

139. Farming of fish includes the propagation, raising and harvesting of:

- fish eggs;
- spat of oyster or similar shellfish;
- oysters;
- prawns, marron or other crustaceans;
- tuna, kingfish or other edible species; or
- ornamental fish such as goldfish and carp,

for sale or trade.

140. The Commissioner takes the view that the catching and transporting of live fish (for example, tuna) from the wild for stocking fish farms is an activity that falls within paragraph 34(1)(a). An entitlement to a fuel tax credit arises in respect of taxable fuel acquired for use in carrying on this activity as part of your enterprise.

141. Activities that are considered to be 'farming of fish' include:

- cleaning, maintenance of, and repairs or modifications to ponds, tanks or other structures that contain fish;
- pumping and filtering of water; and
- aeration of ponds, tanks or other structures containing fish.

142. The transportation of personnel, equipment and other materials by vessel to or from fish farms located at sea is an eligible activity under paragraph 34(1)(b) if the personnel, equipment or other materials are for the purposes of carrying out the farming activities.

143. There is no requirement that a fish farm be located in a particular place. It can be located in the sea, a river, a lake, a dam, or comprise artificially constructed ponds, tanks or other structures containing fish.

144. The Commissioner considers that the farming of fish ceases when the fish are finally removed from the seawater or fresh water or the pond, tank or other structures containing fish at the farm for processing or sale. Therefore, further processing of fish[70] on a fish farm is not 'fishing operations' under paragraph 34(1)(b).

[70] Subsection 34(4) defines the term 'processing' in relation to fish. Processing of fish on board vessels is a qualifying activity under paragraph 34(1)(d). From 1 July 2008, petrol acquired for use in the processing of fish on board a vessel is eligible for a full fuel tax credit.

Construction of ponds, tanks or other structures to contain fish that are to be farmed

145. The definition of 'fishing operations' in section 34(1) states in part:

> (c) the construction of ponds, tanks or other structures to contain fish that are to be farmed, where construction is carried out by:
>
> (i) the person who will do the farming; or
>
> (ii) a person contracted by that person to undertake the construction; or
>
> (iii) a subcontractor of a person so contracted

146. The Commissioner takes the view that the words 'other structures to contain fish that are to be farmed' are restricted to the same class of the words as ponds or tanks.[71] It is considered that these specific words are all descriptions of the types of enclosures excavated or built to keep in fish for the purpose of propagating or rearing of fish. The type of enclosure used is dependent on the type of fish to be farmed, physical factors of the site and size of the operation.

147. Examples of 'other structures to contain fish that are to be farmed' include:

- sea cage pens for use in finfish (for example, tuna and kingfish) aquaculture;
- a permanent system of uprights and a net or nets stretched across a river, stream or creek to contain fish;
- intertidal racks and baskets; and
- intertidal long-lines and bags.

148. However, the expression 'other structures to contain fish that are to be farmed' does not include structures such as open racks and lines or predator control nets for sharks and seals. These structures are not constructed to contain fish that are to be farmed.

149. Where the farming of fish is to be carried out in ponds, tanks or other structures constructed on land, the construction of 'ponds, tanks or other structures' commences when any vegetation and soil are removed in order to provide a flat bench and root-free site at which:

- excavation can commence; and/or
- footings can be prepared,

for the construction of a structure to contain fish.

150. Where structures to contain fish are constructed or pre-fabricated at a site other than the place where the farming of fish is or will be carried

[71] See paragraphs 121 to 123 of this Ruling for a discussion on the *ejusdem generis* rule.

on, taxable fuel acquired for use in that construction or pre-fabrication qualifies for a fuel tax credit.

151. The Commissioner takes the view that the term 'construction of ponds, tanks or other structures' does not include the transportation of the constructed structure. Construction ordinarily refers to the activities in building, erecting or putting together of the particular structure. The Commissioner considers the transport of such structures from a site where they are constructed or pre-fabricated to a site where they are to be used for the farming of fish is not eligible activity under fishing operations.

152. The transportation of materials and equipment used in the construction of ponds, tanks or other structures to contain fish to the place where the farming of fish will be carried on, is also not an eligible activity under paragraph 34(1)(c).

Pearling operations

153. The definition of 'fishing operations' in subsection 34(1) states in part:

> The expression ***fishing operations*** means:
>
> (e) pearling operations

154. The expression 'pearling operations' is defined in subsection 34(3) to mean:

> (a) the taking of pearl shell; or
>
> (b) the culture of pearls or pearl shell;
>
> and includes the taking or capturing of trochus, beche-de-mer or green snails.

155. The use of the form 'means ... and includes', denotes that the definition of 'pearling operations' is exhaustive.

156. Pearl oysters are molluscs, and are within the definition of 'fish' in subsection 34(2). Activities undertaken in the taking or farming of pearl oysters, may be activities within fishing operations under paragraphs 34(1)(a) to 34(1)(d). This includes the gathering of pearl shell and the growing and maintaining of pearl oysters. Some of these activities are within the definition of 'pearling operations' in subsection 34(3) and may be eligible activities under paragraph 34(1)(e).

157. An activity undertaken in the course of taking or farming of pearl oysters is to be considered for eligibility, firstly, under the qualifying criteria for pearling operations under paragraph 34(1)(e). If the activity does not qualify as pearling operations under paragraph 34(1)(e), it can be considered for eligibility under paragraphs 34(1)(a) to 34(1)(d).

Activities excluded from 'fishing operations'

158. Certain activities are excluded from the definition of 'fishing operations' by paragraph 34(1)(h) or 34(1)(i).

159. The exclusions are for any activity referred to in paragraphs 34(1)(a) to 34(1)(g) that is conducted in whole or in part:

(a) otherwise than for the purposes of a business (paragraph 34(1)(h)); or

(b) for business purposes connected with recreation, sport or tourism (paragraph 34(1)(i)).

In whole or in part

160. The exclusion contained in subsection 34(1) states that fishing operations does not include any activity referred to in any of paragraphs 34(1)(a) to 34(1)(g) conducted, '*in whole or in part*' otherwise than for the purposes of a business or for business purposes connected with recreation, sport or tourism.

161. In some instances, an entity that carries on a business that involves activities in fishing operations may conduct some activities that are for the purposes of recreation or involve the provision of facilities for tourists. For example, an entity that carries on a business of farming of fish may permit, for a fee, tourists to visit the farm and, as part of that, allow them to undertake some recreational angling and to take their catch with them.

162. The words '*in whole or in part*' in the exclusion in subsection 34(1), if interpreted strictly would mean that an entity would not be entitled to a fuel tax credit for taxable fuel acquired for use in an activity mentioned in any one of paragraph 34(1)(a) to 34(1)(g) if the activity was conducted principally for the purposes of a business but also conducted for business purposes connected with recreation, sport or tourism.

163. The Commissioner considers that, the expression *in whole or in part*, in the exclusion in subsection 34(1), is to be interpreted having regard to the purpose of the provisions of the Energy Grants Act.

164. Under this purposive interpretation approach, where a person conducts activities that are for the purposes of a business as well as for other purposes (for example, private purposes) the Commissioner takes the view that the person conducts separate activities, being those that are for business purposes and those that are not. To the extent to which they are for business purposes they are eligible activities. To the extent to which activities are otherwise than for business purposes, they are separate activities that are excluded from being in fishing operations by paragraph 34(1)(h).

165. The Commissioner takes a similar approach to the exclusion contained in paragraph 34(1)(i). Where an entity conducts activities mentioned in paragraphs 34(1)(a) to 34(1)(g) for business purposes not connected with recreation or tourism as well as for business purposes that have that connection, the entity conducts separate activities. The entity needs to determine the extent to which the activities have business purposes not connected with recreation, sport or tourism. To the extent that the activities are not so connected, they are eligible activities. To the extent to which the activities are for business purposes connected with recreation, sport or tourism, they are separate activities that are excluded from being in fishing operations by paragraph 34(1)(i).

Activities conducted otherwise than for the purposes of a business

166. The use of the word 'business' denotes a commercial concern carried on with the aim of making a profit.

167. In determining whether a business is carried on, no one factor is conclusive. Each case must turn on its own particular facts and be determined after weighing up of a combination of factors in the context of the facts of each case. Factors that may be taken into account include whether:

- the activity has a significant commercial purpose or character;
- the person has more than a mere intention to engage in business;
- there is an intention to make a profit from the activity or a genuine belief that profit will be made;
- the activity is planned, organised and carried on in business-like manner;
- the activity is profitable or is likely to be profitable;
- the activity is repetitive and regular;
- the activity is carried on in a manner similar to others who engage in the same trade;
- the size and scale of the activity; or
- the activity is better described as a hobby, a form of recreation or a sporting activity.[72]

[72] Taxation Ruling TR 97/11 and TR 97/11ER Income tax: am I carrying on a business of primary production?

168. In some cases, it has been held that an entity's activities do not amount to carrying on a primary production business but are merely preparatory to engaging in such a business. For example, in *Dalton v. Deputy Federal Commissioner of Taxation*[73] steps taken by a person to clear weeds and put the land into a state of readiness were held to be no more than preparatory to establishing an orchard. On the other hand, in *Ferguson v. Federal Commissioner of Taxation* (Ferguson)[74] it was held that the person's preliminary activities in building up a herd of cattle through a leasing arrangement had sufficient commercial character to amount to a business.

169. In Ferguson, Fisher J said:

> It is necessary to give consideration to the essential nature of the activity, and the question whether it has the characteristics of a business is primarily a matter of general impression and degree.[75]

170. The principles mentioned in these cases are equally relevant to the determination of whether the activities mentioned in paragraphs 34(1)(a) to 34(1)(g) are carried out for the purposes of a business and, therefore, are eligible activities.

Activities conducted for business purposes connected with recreation, sport or tourism

171. The definition of 'fishing operations' in subsection 34(1) provides that the expression fishing operations does not include:

> ... any activity referred to in any of the preceding paragraphs that is conducted, in whole or in part:
>
> (i) for business purposes connected with recreation, sport or tourism.

172. Where an activity mentioned in paragraphs 34(1)(a) to 34(1)(g) is conducted wholly for business purposes connected with recreation, sport or tourism, the activity is not in fishing operations for the purposes of the energy grants scheme.

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[73] *Dalton v. Deputy Federal Commissioner of Taxation* AAT Case 12,533; (1998) 98 ATC 2025; (1998) 37 ATR 1243.
[74] *Ferguson v. Federal Commissioner of Taxation* (1979) 79 ATC 4261; (1979) 9 ATR 873; (1979) 26 ALR 307.
[75] *Ferguson v. Federal Commissioner of Taxation* (1979) 79 ATC 4261 at 4271; (1979) 9 ATR 873 at 884; (1979) 26 ALR 307 at 320.

173. The expression 'connected with'[76] has a wide meaning and refers to any activity that has a real, substantial and discernible association or involvement with something else. In the context of the exclusion contained in paragraph 34(1)(i), a business purpose is connected with recreation, sport or tourism if there is a substantial and discernible association between the purpose and any one of recreation, sport or tourism.

[76] See *Collector of Customs v. Cliffs Robe River Iron Associates* (1985) 7 FCR 271; (1985) 7 ALN N269a, *Collector of Customs v. Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280; 115 ALR 1, *District Council of Coober Pedy and Cowell Electric Supply Company Ltd v. Collector of Customs* (1993) 42 FCR 127; (1993) 17 AAR 369, *Collector of Customs v. The Western Australian Government Railways Commission (Westrail)* (1995) 39 ALD 21, amongst others for the meaning of 'connected with'. The Courts have found that to be 'connected with' an activity must be *'bound up with and involved'* or *'real and substantial and not tenuous and remote.'*

Appendix 2 – Background

This Appendix is provided as information to help you understand the fuel tax credit system. It does not form part of the binding public ruling.

Fuel tax credit system

174. The fuel tax credit system commenced on 1 July 2006. The table below depicts how the fuel tax credit available for different fuel uses will be phased in between 1 July 2006 and 1 July 2012 (inclusive).

Fuel use	***1 July 2006***	***1 July 2008***	***1 July 2011***	***1 July 2012***
On-road use in vehicles with a gross vehicle mass over 4.5 tonnes	All fuels, including petrol – a credit to the extent that the fuel tax paid on the fuel exceeds the road-user charge	Continuing		
In burner applications	All fuels effectively fuel tax-free	Continuing		
Use of fuel other than as fuel	All fuels effectively fuel tax-free	Continuing		
Activities that were previously entitled to an off-road credit under the Energy Grants Scheme	Diesel, and diesel-like fuels – a full credit of the effective fuel tax paid on the fuel	Petrol – a full credit of the effective fuel tax paid on the fuel	Continuing	
Commercial and household electricity generation	All fuels, including petrol — full credit of the effective fuel tax paid on the fuel	Continuing		
All other off-road use	Nil	All fuels – including petrol – 50% of the effective fuel tax paid on the fuel	Biodiesel, ethanol, liquefied petroleum gas, liquefied natural gas and compressed natural gas – full credit of the effective fuel tax paid on the fuel[77]	All fuels – full credit of the effective fuel tax paid on the fuel

[77] From 1 July 2011, the FT Act will provide the framework for the taxation of gaseous fuels (LPG, LNG and CNG).

175. From 1 July 2006, fuel tax credits are claimable by businesses via the BAS. Special transitional arrangements allow certain eligible entities to make a claim for an early payment of fuel tax credits without having to wait for the lodgment of a BAS.[78]

176. Separate claiming arrangements apply to non-business claimants for the generation of electricity for domestic use.

177. Even though the FT Act is a taxing Act,[79] many provisions of the fuel tax credit system and the transitional provisions are beneficial in that they confer benefits on entities that acquire taxable fuel for use in carrying on an enterprise. Having regard to this policy intent, a purposive interpretive approach will be taken in the interpretation of these provisions.

Energy grants claimed under the Fuel Tax Act

178. Entitlement to an energy grant for off-road diesel fuel is limited to fuel purchased or imported between 1 July 2003 and 30 June 2006 inclusive.[80] Entities entitled to an energy grant will have 12 months after that date to claim an energy grant under the *Product Grants and Benefits Administration Act 2000* (PGBA Act) if they were entitled to an off-road credit under the Energy Grants Act. This means that the claim must be made before the earlier of 1 July 2007 and the end of three years after the start of the claim period.[81]

179. Alternatively, a claim for such grants (where off-road diesel fuel is purchased or imported between 1 July 2003 and 30 June 2006) can be made under the FT Act by way of a 'decreasing fuel tax adjustment'.[82]

180. You are not entitled to an energy grant for an off-road credit for diesel fuel, if you have already given the Commissioner a return for a tax period or a fuel tax return period which takes into account a decreasing fuel tax adjustment that relates to the fuel.[83]

181. The transitional provisions allow you to claim a 'decreasing fuel tax adjustment' on your BAS if the adjustment is attributable to the tax period or fuel tax return period that you choose that ends before 1 July 2009.[84] The amount of the adjustment is equal to the amount of off-road credit that you were entitled to under the Energy Grants Act.

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[78] Certain entities may elect for an early payment of a fuel tax credit for taxable fuel acquired between 1 July 2006 and 30 June 2008. See paragraphs 20 to 31 and paragraphs 87 to 92 of this Ruling for a full explanation of the early payment of the fuel tax credits.
[79] Paragraph 1.66 of the Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006.
[80] Subsection 51(2).
[81] See subsection 51(2) (and the Note), and paragraph 15(2)(db) of the *Product Grants and Benefits Administration Act 2000* (PGBA Act).
[82] Item 9 of Schedule 3 of the Transitional Act.
[83] Subsection 15(2A) of the PGBA Act.
[84] Subitem 9(3) of Schedule 3 of the Transitional Act.

182. A 'decreasing fuel tax adjustment' decreases an entity's 'net fuel amount'.[85] That is, a 'decreasing fuel tax adjustment' increases the amount of fuel tax credit an entity is otherwise entitled to.[86]

Energy Grants Scheme

183. For the Commissioner's views in relation to the operation of the energy grants credits scheme in general and the off-road credit entitlements for the qualifying use of 'fishing operations' in particular, see Product Grants and Benefits Ruling PGBR 2004/1 Energy Grants: off-road credits for fishing operations.

184. Appendix 3 of this Ruling provides a comparison of the energy grants scheme and the fuel tax credit system.

[85] An entity's net fuel amount is worked out using the formula in section 60-5 of the FT Act.
[86] Subsection 44-5(3) of the FT Act.

Appendix 3 – Comparison table

This Appendix is provided as information to help you understand the differences between the energy grants scheme and the fuel tax credit system. It does not form part of the binding public ruling.

185. The following table is a comparison of the energy grants scheme and the fuel tax credit system. The comparison is only in relation to taxable fuel acquired for use in carrying on an enterprise other than in a vehicle, with a GVM of more than 4.5 tonnes, travelling on a public road.

	Energy Grants Scheme	**Fuel Tax Credit System**
Application of the legislation	Repealed on 1 July 2012	Applies from 1 July 2006 Transitional provisions apply for: • Energy grants arising before 1 July 2006; and • Fuel tax credits arising between 1 July 2006 and 30 June 2012 (phasing out period for the Energy Grants Act).
Description of the claimant	Reference to 'you' or 'person'. In the following Rulings the Commissioner uses the term 'person' to describe the claimant of an energy grant: • PGBR 2004/1 Energy grants: off-road credits for fishing operations; • PGBR 2005/1 Energy grants: off-road credits for forestry; • PGBR 2005/2 Energy grants: off-road credits for mining operations; and • PGBR 2005/3 Energy grants: off-road credits for agriculture.	Reference to 'you' or 'entity' or 'taxpayer'. Note 'you' is not used in provisions that apply only to entities that are not individuals. In this Ruling the Commissioner uses the term 'you' or 'entity' to describe the claimant of a fuel tax credit.
Requirement for registration	A person must be registered for energy grants under section 9 of the PGBA Act.	An entity carrying on an enterprise must be registered for GST or required to be registered for GST.

	Energy Grants Scheme	Fuel Tax Credit System
Method of claiming	Claiming by phone. Submitting a paper claim form to the Tax Office. Claiming via the internet. Claiming using eGrant – through your fuel supplier or fuel card provider. Claim submitted for client by their tax agent.	Claimed by entities carrying on an enterprise on their BAS. Non-business taxpayer's will claim fuel tax credits in a form approved by the Tax Office. Early payment of the fuel tax credit available to certain entities for taxable fuel acquired between 1 July 2006 and 30 June 2008.
Timing and method of claim for fuel 'purchased or imported' before 1 July 2006.	For energy grants relating to fuel purchased or imported before 1 July 2006, the claim must be made before the earlier of 1 July 2007 and the end of 3 years after the start of the claim period. *Alternatively*, a claim may be made under the transitional provisions of the FT Act.	Transitional provisions allow energy grants to be claimed on the BAS as a 'decreasing fuel tax adjustment' for off-road diesel fuel purchased or imported between 1 July 2003 and 30 June 2006 (inclusive).
Terminology in relation to the fuel	Under subsection 53(1) Energy Grants Act you are entitled to an off-road credit if you **'purchase or import'** into Australia off-road diesel fuel for a use by you that qualifies. The phrase 'purchase or import' only applies for credits arising for fuel purchased or imported before 1 July 2006.	Under section 41-5 of the FT Act you are entitled to a fuel tax credit for taxable fuel that you '**acquire, or manufacture in, or import into,** Australia…' Note: in determining whether the transitional provisions apply from 1 July 2006 to 30 June 2012 in relation to the phasing-in of credit entitlements under the Transitional Act, the provisions assume that references in the Energy Grants Act to 'purchase or import into Australia' were instead references to 'acquire or manufacture in, or import into, Australia'.

	Energy Grants Scheme	Fuel Tax Credit System
Use of fuel	Under section 53 Energy Grants Act you are entitled to an off road credit…for a use by you that qualifies. For example, for use in: • mining operations; • primary production (including agriculture, forestry and fishing); • rail transport; and • marine transport.	Under section 41-5 of the FT Act you are entitled to a fuel tax credit for taxable fuel …to the extent that you do so **for use in carrying on your enterprise**. Carrying on an enterprise has the meaning given by section 195-1 of the GST Act. Transitional provisions phase out the existing grants under the Energy Grants Act between 1 July 2006 and 1 July 2012.
Type of fuel	Entitlement to an off-road credit, and therefore entitlement to an energy grant is for '**off-road diesel fuel**'. No credits provided for the use of petrol.	Fuel tax credit is for '**taxable fuel**' From 1 July 2008 eligibility for a fuel tax credit extends to petrol used in qualifying activities that were previously eligible for an off-road credit under the Energy Grants Act (or from 1 July 2008 until 1 July 2012 at the rate of half the credit where the entity was not previously eligible for an off-road credit under the Energy Grants Act). From 1 July 2012 a full entitlement is allowed under the FT Act.
Fuel used other than a fuel	For energy grants prior to 1 July 2006: entitlement arose under subsection 53(6) Energy Grants Act, where the use is: • as a solvent; • as a mould agent; • in road construction; or • any other use specified in the regulations.	From 1 July 2006 fuel tax credits can be claimed under section 41-5 of the FT Act. Note: fuel is taken to have been used if it is blended as specified in a determination made under section 95-5 of the FT Act.
Fuel used other than in an internal combustion engine (eg burner applications)	For energy grants prior to 1 July 2006: entitlement arose under subsection 53(7) Energy Grants Act.	From 1 July 2006 fuel tax credits can be claimed for fuel used other than in an internal combustion engine under section 41-5 of the FT Act.

	Energy Grants Scheme	Fuel Tax Credit System
Terminology in relation to vehicles	Subsection 53(2) excludes an off-road credit for diesel fuel if the use is for the purpose of '**propelling any vehicle**' on a public road (for mining operations), or 'for **propelling a road vehicle**' on a public road (for primary production). Subsection 53(3) excludes an off-road credit for diesel fuel if the use is for the purpose of '**propelling a road vehicle**' on a public road (for rail transport).	Transitional provisions for credits arising between 1 July 2006 and 30 June 2012 excludes fuel for use in '**a vehicle travelling**' on a public road. No reference to 'road' vehicle.
Treatment of alternative fuels	No entitlement for off-road use.	From **1 July 2011 to 30 June 2012** transitional provisions apply to allow a fuel tax credit for acquiring or manufacture in, or importing into, Australia alternative fuel for off-road business use. From 1 July 2012 a fuel tax credit is available under section 41-5 of the FT Act.

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186. The following is a detailed contents list for this Ruling:

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PGBR 2005/1; PGBR 2005/2;
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TR 97/11ER; TR 2006/10

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- acquire
- acquire, or manufacture in, or import into, Australia
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- primary production
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- tax period
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