

FTR 2007/1A - Addendum - Fuel tax: the meaning of 'acquire', 'manufacture' and 'import' in the expression 'taxable fuel that you acquire or manufacture in, or import into, Australia to the extent that you do so for use in carrying on your enterprise' in the Fuel Tax Act 2006

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Addendum

Fuel Tax Ruling

Fuel tax: the meaning of 'acquire', 'manufacture' and 'import' in the expression 'taxable fuel that you acquire or manufacture in, or import into, Australia to the extent that you do so for use in carrying on your enterprise' in the *Fuel Tax Act 2006*

This Addendum amends Fuel Tax Ruling FTR 2007/1 to incorporate minor changes as a result of the appeal in *Colby Corporation Pty Ltd v. Commissioner of Taxation* [2008] FCAFC 10 since the Ruling was issued.

FTR 2007/1 is amended as follows:

1. Footnote 59

Omit 'Note the taxpayer has lodged an appeal to the Federal Court.'; substitute 'The appeal against the decision of the AAT was dismissed by the Full Federal Court. See *Colby Corporation Pty Ltd v. Commissioner of Taxation* [2008] FCAFC 10.'

2. Footnote 60

Omit 'Note the taxpayer has lodged an appeal to the Federal Court.'

3. Footnote 68

Omit 'Note the taxpayer has lodged an appeal to the Federal Court.'

4. Footnote 69

Omit 'Note the taxpayer has lodged an appeal to the Federal Court.'

5. Footnote 70

Omit 'Note the taxpayer has lodged an appeal to the Federal Court.'

6. Paragraph 163

After the paragraph insert:

163A. The Full Federal Court has affirmed the AAT's decision in *Colby Corporation Pty Ltd v. Commissioner of Taxation* [2008] FCAFC 10. The Court discussed at paragraph 25, the elements necessary to establish that fuel had been 'purchased' for the purposes of section 53 of the EGCSA:

By using 'purchase', s 53(1) distinguishes the acquisition of the off-road diesel fuel to which it applies from acquisition by, for instance, gift or theft. The requirement for 'money or its equivalent' is one necessary element of a purchase. The other stems from the concept of acquisition. It is understood, and the dictionary meaning of 'acquire' supports this, that it is 'property' which is acquired by purchase. In the circumstances, therefore, to establish that it 'purchased' the fuel, the applicant had to show:

- (a) pursuant to the mutual intention of the parties expressed or implied in the contracts it acquired property in the fuel (the 'intention requirement'); and
- (b) that it did so by the payment of money or its equivalent or, put another way, that it gave consideration for the fuel (the 'payment requirement').

163B. The Full Federal Court in *Colby Corporation Pty Ltd v. Commissioner of Taxation* also rejected the applicant's submission that the right to consume must entail a proprietary interest in the fuel. The Court stated at paragraph 51 that:

There is no legal reason why a person may not permit another to use, even to the point of destruction or consumption, that person's property.

7. Footnote 71

Omit 'Note the taxpayer has lodged an appeal to the Federal Court.'

8. Legislation references

Insert:

- EGCSA 2003 53

9. Case references

Insert:

- *Colby Corporation Pty Ltd v. Commissioner of Taxation* [2008] FCAFC 10

This Addendum applies on and from 1 July 2006.

Commissioner of Taxation

27 August 2008

ATO references

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