


FTR 2008/1A6 - Addendum - Fuel tax: vehicle's travel on a public road that is incidental to the vehicle's main use and the road user charge

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Addendum

Fuel Tax Ruling

Fuel tax: vehicle's travel on a public road that is incidental to the vehicle's main use and the road user charge

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Fuel Tax Ruling FTR 2008/1 to reflect the Commissioner's view on the meaning of a public road.

FTR 2008/1 is amended as follows:

1. Paragraph 46

Omit the paragraph; substitute:

46. The following are examples of roads that are not public roads for the purposes of subsections 43-10(3) and 43-10(4):

- a road constructed or maintained under a statutory regime by a public authority that is not an authority responsible for the provision of road transport infrastructure, in circumstances where the statutory regime provides that public use of, or access to, the road is subordinate to the primary objects of the statutory regime;
- forestry roads;
- private access roads for use in mining operations; or
- a road that has not been dedicated as a public road over privately owned land.

2. Footnote 31

Omit the footnote.

3. Paragraph 123

After the paragraph; insert:

123A. The Commissioner considers, that having regard to the road user charge system,^{32A} a public road for the purposes of subsections 43-10(3) and (4) includes any shoulder of the road and auxiliary lanes, for example emergency lanes.

4. Paragraph 124

Omit the paragraph; substitute:

124. If a road is not under the control and management of a state or territory authority which is responsible for the provision of road infrastructure to the public, it may nevertheless have been opened, declared or dedicated as a public road under a statute.

5. Paragraph 125

(a) Before the first sentence; insert:

A road may also be dedicated a 'public road' by virtue of common law.

(b) After the paragraph; insert:

125A. To establish whether a land owner has dedicated a road as a public road under the common law, some of the matters to be considered are:

- whether there has been a declaration of an intention to dedicate;
- delineation on maps or plans of roads set apart for public use;
- use by the public;
- whether vehicles must be registered to use the road and state or territory traffic laws are applicable while the vehicles use the road; or
- the expenditure of money by public bodies in forming or maintaining the land as a road.

^{32A} Road expenditure is used to calculate the road user charge and it includes road shoulder maintenance: pages 5 and 6 of the NRTC, *Updating Heavy Vehicle Charges: Draft Policy Paper*, August 1998.

6. Paragraph 126

Omit the paragraph; substitute:

126. When considered with all the relevant evidence, the above matters may amount to an unequivocal indication of the intention of the owner of the land to dedicate it to the public as a road. Where the public has accepted this dedication (as evidenced by their use of the road as a public road), the road is a public road.

7. Footnotes 34 and 35

Omit the footnotes.

8. Paragraph 127

After the paragraph; insert:

Roads managed by statutory authority not having responsibility for highways, main roads and local roads

127A. If a statutory scheme confers a limited right of public access, which is subordinate to the main objects of the statute, then members of the public have a lesser entitlement to that access than the entitlement they have to use public highways, main roads, local roads and suburban streets. The Commissioner considers that where the public does not have a plenary (unqualified) right of access and use, a road cannot be characterised as a public road.

127B. Whilst members of the public may use these roads, their use is subordinate to the use of the authority, which may deny, without any notice, access to the road by members of the public.

Forestry roads

9. Paragraph 128

(a) Omit the last sentence from footnote 37.

(b) After the paragraph; insert:

128A. The Commissioner takes the view that forestry roads are not public roads even if public access is allowed. The use of forestry roads for purposes not related to the primary objects of forestry management and the production and harvesting of timber does not make these roads public roads.

128B. On occasions, responsibility for a forestry road is formally passed from the forestry authority to a local government authority or to a state or territory authority having responsibility for highways and main roads. In such cases, the affected road will thereafter be a public road even if, after the transfer, it is formally declared by the state or territory main road authority or local government authority to be a 'forest road'. The transfer of control and management of the road to the authority having responsibility for highways and main roads results in the road being declared or dedicated as a public road.

Private access roads for mining operations

10. Paragraph 129

- (a) Omit last sentence from footnote 38.
- (b) After the paragraph; insert:

129A. On occasions, responsibility for a mining road is formally passed from the mining operator to a local government authority or a state or territory authority having responsibility for highways and main roads. In such cases, the affected road will thereafter be a public road even if, after the transfer, it is formally declared by the state or territory main road authority or local government authority to be a 'mining road'. The transfer of control and management of the road to the authority having responsibility for highways and main roads results in the road being declared or dedicated as a public road.

Road that has not been dedicated as a public road over privately owned land

129B. For roads over privately owned property an owner may permit members of the public to pass over the property. A person may lawfully enter private land where the person has an express or implied invitation, licence, permission, lawful authority or consent of the person in possession of the land.^{38A}

129C. The use of a road over private land by members of the public does not create a public road, notwithstanding that the owner of the land does not hinder the use of the road by the public. Private land cannot become a public road without an effective act of dedication by the owner.^{38B}

^{38A} Lincoln Hunt Australia Pty Ltd v. Willesee (1986) 4 NSWLR 457.

^{38B} Cowell v. Rosehill Racecourse Co Ltd (1937) 56 CLR 605; [1937] ALR 273; (1937) 11 ALJR 32 - HCA - 22/04/1937; Barker v. R (1983) 153 CLR 338; (1983) 47 ALR 1; (1983) 57 ALJR 426.

11. Detailed contents list

Insert:

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| <i>Roads managed by statutory authority not having responsibility for highways, main roads and local roads</i> | 127A |
| <i>Forestry roads</i> | 128 |
| <i>Private access roads for mining operations</i> | 129 |
| <i>Road that has not been dedicated as a public road over privately owned land</i> | 129B |

12. Case references

(a) Omit:

- Linfox Pty Ltd v. Commissioner of Taxation [2012] AATA 517

(b) Insert::

- Barker v. R (1983) 153 CLR 338; (1983) 47 ALR 1; (1983) 57 ALJR 426
- Cowell v. Rosehill Racecourse Co Ltd (1937) 56 CLR 605; [1937] ALR 273; (1937) 11 ALJR 32
- Lincoln Hunt Australia Pty Ltd v. Willesee (1986) 4 NSWLR 457
- Linfox Pty Ltd v. Commissioner of Taxation [2012] AATA 517

This Addendum applies on and from 17 December 2014.

Commissioner of Taxation17 December 2014

ATO references

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