FTD 2010/1EC - Compendium

Ruling Compendium – FTD 2010/1

This is a compendium of responses to the issues raised by external parties to draft FTD 2010/D1 – Fuel tax: is apportionment used when determining total fuel tax credits in calculating the net fuel amount under section 60-5 of the *Fuel Tax Act 2006*?

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1.	We disagree with the requirement that an entity needs to establish separate percentages. We recommend a further review to include specific examples to address the possibility that separate percentages may not always be required.	We consider that the following explanation in the final Determination addresses the issue. You are generally required to perform separate calculations so that you are applying a fair and reasonable basis of apportionment where there is: • one type of taxable fuel in multiple activities that either attract no fuel tax credit, a full fuel tax credit, a half fuel tax credit, or the amount of your fuel tax credit entitlement may be reduced by a cleaner fuel grant or the road user charge • more than one type of taxable fuel in the same activity, or • more than one type of taxable fuel for multiple activities that either attracts no fuel tax credit, a full fuel tax credit, a half fuel tax credit, or the amount of your fuel tax credit entitlement may be reduced by a cleaner fuel grant or the road user charge.

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1.		Notwithstanding, you may find it fair and reasonable in your circumstances to perform a single calculation. For example, if the same type of equipment uses two types of taxable fuel and has the same average hourly consumption for both types of taxable fuel, or if the same type of equipment uses two types of taxable fuel and is used for the same activity, the same apportionment method can be applied to the quantities of both taxable fuels acquired for use in the equipment. This alerts the reader to the fact that they are not limited to separate calculations and provides an example. The aim of the product is to set out the principle that is relevant with an accompanying example to illustrate the principle. Due to the difficulty in capturing all possible scenarios present in industry, the primary objective of the advice is to explain the underlying principles so that under self-assessment, the reader can apply those principles to their factual situation. If there is doubt, the user can apply for a private binding ruling to specifically address the peculiarities of their enterprise.

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2.	**Constructive and Deductive methods** FTD 2010/D1 should include a brief reference to the constructive and deductive approaches to apportionment. Many industries/claimants lobbied via the ATO Fuel Schemes Advisory Forum (FSAF) for the right to use either the constructive or deductive method leading up to the introduction of the Energy Grants (Credits) Scheme in 2003. Prior to this time there was significant resistance to deductive claim methods being utilised, even at remote sites where the vast majority of fuel was to be used in eligible activities. Given the historical and practical significance of the concept we feel a brief reference to these two main methods of apportionment is justified and hence we recommend that inclusion of the methods within paragraph 7 or 8 of the draft Determination is warranted – that is, after 'method' in either paragraph 7 or 8, add '(including, but not limited to, the constructive or deductive methods)'.	Based on the approach taken, it is not appropriate to refer to the methods that may be used in the final Determination. The FTD explains that an entity can use any apportionment method that is fair and reasonable in its circumstances. The complementary LAPS refers to the common methods of apportionment and explains how they may be fair and reasonable in an entity's circumstances. The levels of protection to taxpayers: LAPS Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the way explained below. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it. FTD 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. The level of protection does not affect an entity's decision to apply an apportionment method as it is a question of fact, that is, the entity must be able to demonstrate that the apportionment method is fair and reasonable in the entity's circumstances.

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2.	We acknowledge that FTD 2010/D1 does for the most part restrict itself to the question of whether apportionment is contemplated by the FT Act, however paragraphs 9 to 17 of the Detemination do add some commentary on how the apportionment exercise should be conducted. We therefore feel a brief reference to the constructive and deductive approaches to claiming should also be included. The reference could be phrased in very simple terms leaving the detail to be discussed in PS LA 2010/3, for example, 'the constructive method of apportionment sums all eligible uses of fuel to arrive at a total fuel tax credit claim, whereas the deductive method subtracts ineligible uses of fuel from a total quantity of fuel'. We also acknowledge that there is reference to the deductive and constructive methods within paragraph 23 of the Appendix of FTD 2010/D1, however the Appendix clearly outlines that these sections are *'provided as information to help you understand how the Commissioner's preliminary view has been reached'* and that *'it does not form part of the proposed binding public ruling.'* Therefore the reference to these approved methods should be clearly outlined in the body of the draft Determination, not just within the Appendix. These methods are clearly accepted by the ATO and outlined in the current FTD 2006/1 (paragraphs 4 to 7) however this is being withdrawn with effect from the date of issue of FTD 2010/D1. Hence replacement of the methods solely within the Appendix and the PS LA 2010/3 appear to provide less protection for claimants on the basis that there is a possibility they may not be considered fair and reasonable under PS LA 2010/3, as compared to the Commissioners views expressed in FTD 2006/1. We seek confirmation that the protection provided by PS LA 2010/3 with regard to the approved constructive and deductive methods will be the same as that provided in FTD 2006/1.	If a taxpayer relied in good faith upon an apportionment method set out in PS LA 2010/3 to calculate its entitlements, the ATO's practice would be to not assess the taxpayer's entitlement at audit on a contrary basis.

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3.	**Separate Percentages** We have previously raised concern regarding the requirement to establish different percentages for vehicles which conduct similar activities which are eligible to the same rate. Paragraph 11 of FTD 2010/D1 attempts to address the issue, however Examples 1 and 2 of the draft Determination are both examples of when separate calculations ARE needed. This issue could be resolved if an example is included in the final Determination that clearly demonstrates when separate calculations ARE NOT required, such as the following: A mine site may have both petrol and diesel light vehicles that are used for the same purposes. These vehicles are grouped together for survey purposes and the same eligible off-road versus on-road percentage can be applied. Even if the fuel consumption of the petrol vehicles are different to the diesel vehicles, the portion of off-road versus on-road use can still be the same, and hence the same off-road percentage of eligible fuel can be applied to the distinct diesel and petrol volumes purchased. (For example, the diesel and petrol vehicles travel 1,000 km in total over 4 week period, 10% on public road – hence 90% of petrol purchased and 90% of diesel purchased can be claimed at the half rate). Note that perhaps the clarity of this issue is misunderstood considering the separate percentages are not with reference to the total eligible percentage relevant to the whole site, but is in relation to a second layer of percentages being that of off-road versus on-road percentage split.	A further example has been added to paragraph 11 of the final Determination and new Example 3 included reflecting the suggestion.