

# ***FTR 2008/1DA4 - Draft 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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This document has been finalised.

! There is a Compendium for this document: **FR 2008/1A4EC** .

! View an illustrative document containing FTR 2008/1 that incorporates the proposed changes in this draft addendum.

! View the consolidated version for this notice.



## Draft Addendum

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### 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 Draft Addendum, when finalised, will amend Fuel Tax Ruling FTR 2008/1. It amends Fuel Tax Ruling FTR 2008/1 to reflect the Commissioner's view on when taxable fuel is acquired to use, in a vehicle, for travelling on a public road.

#### **FTR 2008/1 is amended as follows:**

##### **1. Paragraph 4**

Omit the paragraph; substitute:

4. However, under subsection 43-10(3) of the FT Act, the amount of the fuel tax credit to which you are entitled is reduced by the road user charge. Subsection 43-10(3) of the FT Act provides:

To the extent that you acquire, manufacture or import taxable fuel to use, in a vehicle, for travelling on a public road, the amount of your fuel tax credit for the fuel is reduced by the amount of the road user charge for the fuel.

**Note:** only certain motor vehicles whose gross vehicle mass is more than 4.5 tonnes are entitled to any credit (see sections 41-20 and 41-25).

##### **2. Paragraph 7**

Omit:

- 'incidental use' is a reference to incidental use as defined in section 8 of the Energy Grants Act;

##### **3. Paragraphs 16 and 17**

Omit the paragraphs; substitute:

16. Travel or travelling on a public road includes all the ordinary incidents of a journey undertaken by a vehicle, including stopping and idling while stationary in the course of a journey.

#### 4. Footnotes 9A to 9C

Omit 'of the FT Act'.

#### 5. Paragraph 23

After the paragraph; insert:

***Meaning of 'taxable fuel to use, in a vehicle, for travelling on a public road'***

23A. The expression 'for travelling' in subsection 43-10(3) refers to the purpose for which taxable fuel is acquired. The amount of fuel tax credit for taxable fuel that is acquired to use, in a vehicle, for travelling on a public road, is reduced by the amount of road user charge.

23B. Fuel to use 'for travelling', in the context of subsection 43-10(3), encompasses not only fuel for propulsion, but also fuel for aspects of the vehicle's function and operation that are for the purpose of travelling on a public road. Fuel for travelling would include fuel used for stopping and idling while stationary in the course of a journey as well as the use of lights, brakes, power-steering, windscreen wipers and aiding passenger comfort through heating and air-conditioning systems.

23C. Determining whether an aspect of the vehicle's function or operation has this character requires a practical assessment of its connection with travelling, as distinct from some other function of the vehicle.

23D. In assessing this connection, where the relevant machinery or source of the fuel is located is not determinative. Similarly, the design of the engine is not determinative of the connection between the vehicle's function or operation and travel.

23E. The expression 'for travelling' does not include fuel used for a purpose unrelated to a vehicle's movement on a public road.

#### 6. Paragraph 30 and paragraph 31

Omit the paragraphs; substitute:

30. *A garbage truck collects rubbish from rubbish bins along a public road. The garbage truck moves along the road to a bin, momentarily stops to empty the contents of the bin into its enclosed rubbish container using an automated side lift, and then moves to the next bin. A compacting mechanism compacts the rubbish inside the enclosed rubbish container. The garbage truck deposits the collected rubbish at a council landfill site. The garbage truck is using the public road to collect rubbish and transport the rubbish collected to a landfill site.*

31. *The garbage truck's travel begins when it leaves its depot and ends when it arrives back at the depot. The fuel used for the vehicle to travel along the public road is subject to the road user charge. The fuel used to operate the bin lift and the compacting mechanism is unrelated to the vehicle's movement along the public road. Hence, the fuel used to operate the bin lift and the compacting mechanism is not subject to the road user charge.*

#### **7. Paragraph 43**

After the paragraph; insert:

*Example 9A: fuel that is not 'for travel' on a public road*

43A. *A refrigerated truck transports temperature sensitive goods and travels on a public road. The goods are cooled by a refrigeration unit that is powered by fuel stored in a tank separate to that which supplies the main engine. The fuel that powers the refrigeration unit is not 'for travelling'. The fuel is used for the purpose of refrigeration. The location of the fuel in itself is not determinative.*

#### **8. Paragraph 79**

Omit 'paragraphs 75 to 77 of Taxation Ruling TR 2006/10 Income tax, fringe benefits tax and product grants and benefits: Public Rulings'; substitute 'paragraphs 75 to 76 of Taxation Ruling TR 2006/10'.

#### **9. Paragraph 105**

Omit 'or standing'; substitute 'and idling while stationary'.

#### **10. Paragraphs 109 to 116**

Omit the paragraphs, including the heading.

#### **11. Paragraph 120**

After the paragraph; insert:

***Meaning of 'taxable fuel to use, in a vehicle, for travelling on a public road'***

120A. The expression 'for travelling' in subsection 43-10(3) refers to the purpose for which taxable fuel is acquired. The amount of fuel tax credit for taxable fuel that is acquired to use, in a vehicle, for travelling on a public road, is reduced by the amount of road user charge. Therefore, the purpose for which fuel is acquired determines whether the amount of fuel tax credit is reduced by the road user charge.

120B. The term 'travelling' has particular application in subsection 43-10(3).

120C. In *Linfox Pty Ltd v. Commissioner of Taxation*<sup>30A</sup> the Administrative Appeals Tribunal considered the meaning of the phrase 'to use, in a vehicle, for travelling on a public road'. It said:

...[A]s the provision is expressed, it is clear that two conditions must be satisfied before s 43-10(3) is triggered: first, the fuel must be acquired to use in a vehicle; and second, the fuel must be acquired to use for travelling on a public road.

...

...[W]e consider that the only circumstance in which the second condition is s 43-10(3) is met, is the circumstance where fuel is acquired to use for the purpose of travelling on a public road.

120D. Fuel in a vehicle can be said to serve a number of purposes, such as powering mechanical propulsion, auxiliary equipment and air-conditioning. Travelling, in the context of fuel use in subsection 43-10(3), encompasses all aspects of vehicle function and operation that are for to the purpose of travelling on a public road. Fuel for travelling would include fuel used for stopping and idling while stationary in the course of a journey as well as the use of lights, brakes, power-steering, windscreen wipers and aiding passenger comfort through heating and air-conditioning systems.

120E. Determining whether an aspect of the vehicle's function or operation has this character requires a practical assessment of its connection with travelling, as distinct from some other function of the vehicle.

120F. The location of the relevant machinery or source of the fuel associated with a vehicle's function or operation is not determinative of whether fuel is for use in travel. The design of the engine, or how the vehicle operates, is also not determinative of this. Provided fuel directly or indirectly powers machinery sufficiently connected with travel, the fuel is to use, in a vehicle, for travelling.

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<sup>30A</sup> *Linfox Australia Pty Ltd v. Commissioner of Taxation* [2012] AATA 517 at 31 and 34.

**12. Footnote 37**

Omit the footnote; substitute:

<sup>37</sup> See Revised EM, paragraph 2.52. For a more detailed explanation of the meaning of 'forestry roads' see paragraphs 219 to 230 of Fuel Tax Ruling FTR 2012/D2 *Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'forestry' as defined in section 43-75 of the Fuel Tax Act 2006.*

**13. Footnote 38**

Omit the footnote; substitute:

<sup>38</sup> See Revised EM, paragraph 2.53. For examples of private access roads for use in mining operations see paragraphs 139 to 149 of FTR 2006/2 *Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'mining operations' as defined in section 11 of the Energy Grants (Credit) Scheme Act 2003.*

**14. Detailed contents list**

(a) Omit:

*'Incidental use' of fuel in a vehicle travelling on a public road* 109

(b) Insert:

*Meaning of 'taxable fuel to use, in a vehicle, for travelling on a public road'* 23A

*Example 9A: fuel that is not 'for travel'* 43A

*Meaning of 'taxable fuel to use, in a vehicle, for travelling on a public road'* 120A

**15. Related Rulings/Determination**

(a) Omit 'FTR 2006/3'.

(b) Insert 'FTR 2008/1DA4; FTR 2012/D1; FTR 2012/D2;'

**16. Legislative references**

(a) Omit:

- Road Charges Legislation Repeal and Amendment Act 2008

(b) Insert:

- FTA 2006 Div 43

- TAA 1953

## 17. Case references

Insert:

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

This draft Addendum is intended to reflect the law as enacted at the time of issue.

## Your comments

You are invited to comment on this draft Addendum. Please forward your comments to the contact officer by the due date.

A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Australian Taxation Office website at [www.ato.gov.au](http://www.ato.gov.au).

Please advise if you do not want your comments included in the edited version of the compendium.

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**Commissioner of Taxation**9 January 2013

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ATO references

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