EXC 2006/19 - Explanatory statement -

Australian Government
Australian Taxation Office

Australian Taxation Office Legislative Instrument
Instrument ID: 2006/EXC/FB03

Explanatory Statement

Fuel Tax Act 2006

Fuel Tax (Fuel blends) Determination 2006 (No. 3)

Revocation and replacement of previous instrument

1. *Fuel Tax (Fuel blends) Determination 2006 (No. 3*) revokes and replaces *Fuel Tax (Fuel Blends) Determination 2006 (No. 1*) (the original instrument).

2. The original instrument contained an error at paragraph 7 that gave rise to ambiguity around the way the criteria for a blend could be applied. This determination corrects the error but otherwise has the same effect as the original instrument.

General outline

3. The determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is made under section 95-5 of the *Fuel Tax Act 2006* (Fuel Tax Act).

4. The determination contains a test that, if satisfied, provides that a blend of a taxable fuel with another product does not constitute a fuel for the purposes of the fuel tax law. This means that the producer of such a blend may be entitled to claim fuel tax credits on taxable fuel used in the production of the blend. It also has implications for excise, as such blends are taken not to be excisable under subsection 77G(1) of the *Excise Act 1901* (Excise Act).

Date of effect

5. The determination commences on the day following registration. The original instrument commenced on 1 July 2006. It is considered that there is no sufficient reason to make this determination apply retrospectively to 1 July 2006.

Effect of the instrument

6. According to section 41-5 of the Fuel Tax Act, an entity that is registered for goods and services tax (GST) or required to be registered for GST, or an entity that is a non-profit body that satisfies subsection 41-5(3) of the Fuel Tax Act, is entitled to a fuel tax credit for taxable fuel acquired, manufactured in or imported into Australia for use in carrying on its enterprise.

7. Section 110-5 of the Fuel Tax Act defines an enterprise to have the same meaning as in the *A New Tax System (Goods and Services) Act 1999* (GST Act).

8. The term ‘use’ in the Fuel Tax Act takes its ordinary meaning provided the fuel is used in carrying on an enterprise. Fuel is ‘used’ if it ceases to exist after an action to use it, which includes fuel used in the production of another product.

9. However in some circumstances it is not clear that a fuel is used when producing another product (a blend). To provide certainty the fuel tax law gives a further power to the Commissioner to determine whether a blend constitutes a fuel.

10. Under section 95-5 of the Fuel Tax Act the Commissioner of Taxation (the Commissioner) can make a legislative instrument that a blend of a fuel and another product (not a taxable fuel) does not constitute a fuel for the purposes of a fuel tax law.

11. Section 95-5 of the Fuel Tax Act requires that the Commissioner consider a number of matters when making the legislative instrument. These matters include:

(a) the physical and chemical properties of the blend

(b) whether the blend can be used in an internal combustion engine

(c) whether the fuel is marketed and distributed as fuel

(d) whether there is a risk that the blend might be used as a fuel and the risk and financial impact to the Commonwealth If the blend were used as a fuel

(e) any other relevant matter.

The Commissioner must give the greatest weight to the matter mentioned in paragraph (d).

12. The types of blends covered by this determination are not limited. However, it is considered that the determination will be most relevant to producers of solvents.

13. Blends often contain several components, with a large number of final products resulting from slight variations in components. Therefore, it is difficult to produce a conclusive list of all blends that would meet the test as set out in subsection 95-5(3) of the Fuel Tax Act.

14. To ease the compliance burden on clients, the Commissioner has determined that, when a specified product is added to a taxable fuel at a minimum level and the blend is not marketed or sold for use as a fuel in an internal combustion engine, the resulting blend does not constitute a fuel for the purposes of a fuel tax law. The minimum level may be determined by reference to a single specified product at a specified concentration, or to a combination of specified products at a cumulative concentration.

15. The Schedule to the legislative instrument provides a list of specified products which may be blended with fuel so that the resultant blend (provided it is not marketed or sold as fuel for use in an internal combustion engine) will not constitute a fuel for the purposes of the fuel tax law. The list sets out the following:

- item number for identification purposes
- the product to be blended with taxable fuel
- the chemical abstracts service (CAS) number for the product (where applicable)
- the minimum amount by volume of the product that must be present in the final blend if no other products specified in the list are present.

16. Where there is more than one specified product, the minimum level is determined cumulatively at 10% by volume.

17. The manufacturer must be able to demonstrate that the minimum level of a specified product or specified products is present.

Impact of the instrument

18. The instrument provides certainty to producers of blends in relation to their entitlement to claim fuel tax credits on taxable fuel included in the blend. It also has implications for fuel excise in determining whether certain blending processes constitute excise manufacture and the blends are exempt blends, due to the reference in paragraph 77H(1)(b) of the Excise Act.

Consultation

19. On 1 June 2006 the Tax Office initiated a 2-week public consultation process on the legislative instruments arising from the Review, with the Assistant Treasurer approving the consultation prior to the related legislation being passed by Parliament.

20. The instruments and explanatory statements were published on the ATO website www.ato.gov.au in the form of drafts for consultation. The determination, together with this explanatory statement, was included in that process.

21. Selected parties in industry were contacted and invited to comment on the content, form and language of the determination and explanatory statement.

22. On 15 June 2006, Tax Office staff met with representatives from the solvent manufacturing sector in Melbourne to consult on the instruments relevant to fuel blending.

Commissioner of Taxation
[21 August 2006]

Previous draft:

Related Rulings/Determinations:
Excise (Blending exemptions) Determination 2006 (No. 1)

Subject references:
Blending determination
Excise manufacture
Excise tariff
Exempt blend
FTC determination
Fuel blending
Fuel tax
Fuel tax credits

Legislative references:
Excise Act 1901 subsection 77H(1)
Excise Tariff Act 1921, the Schedule, subitems 10.25, 10.26, 10.27 and 10.28
Fuel Tax Act 2006 section 41-5
Fuel Tax Act 2006 section 95-5
Fuel Tax Act 2006 section 110-5

Other references:
Explanatory Memorandum to the Fuel Tax Bill 2006

ATO references
NO:
ISSN: