

***PS LA 2013/4 (GA) - Fuel tax credits - Road user charge - apportioning taxable fuel used in a vehicle for powering the auxiliary equipment of the vehicle.***

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⚠ This document has changed over time. This version was published on *23 December 2013*



# Practice Statement Law Administration (General Administration)

**PS LA 2013/4 (GA)**

This law administration practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement [PS LA 1998/1](#). ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

Taxpayers can rely on this law administration 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 law administration 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.

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| <b>SUBJECT:</b> | <b>Fuel tax credits – Road user charge – apportioning taxable fuel used in a vehicle for powering the auxiliary equipment of the vehicle.</b>  |
| <b>PURPOSE:</b> | <b>To set out the percentage of taxable fuel that the Commissioner accepts as a fair and reasonable apportionment of the fuel used in a vehicle for powering the auxiliary equipment of the vehicle.</b> |

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## SCOPE

1. This practice statement applies to an entity<sup>1</sup> that, under section 41-5 of the *Fuel Tax Act 2006*, has an entitlement to a fuel tax credit for taxable fuel<sup>2</sup> for use in powering the auxiliary equipment of a heavy vehicle.<sup>3</sup>
2. This practice statement does not apply where the auxiliary equipment is of a vehicle with a gross vehicle mass of 4.5 tonnes or less travelling on a public road.<sup>4</sup>
3. This practice statement applies irrespective of the source of the taxable fuel that powers or operates the auxiliary equipment of a heavy vehicle.
4. All subsequent legislative references in this practice statement are to the Fuel Tax Act unless otherwise indicated.

## Date of effect

5. This practice statement applies to tax periods and fuel tax return periods commencing both before and after its date of issue.

## BACKGROUND

6. Subsection 43-10(3) stipulates that, to the extent an entity acquires, manufactures or imports taxable fuel to use, in a vehicle, for travelling on a public road, the amount of the fuel tax credit for the fuel is reduced by the amount of the road user charge for the fuel.
7. Section 41-20 operates to deny a fuel tax credit for taxable fuel acquired for use in a vehicle with a gross vehicle mass of 4.5 tonnes or less. Therefore subsection 43-10(3) applies to taxable fuel used in a vehicle with a gross vehicle mass more than 4.5 tonnes, for travelling on a public road.<sup>5</sup>
8. The phrase, 'to the extent' contemplates that it is only the taxable fuel used in the vehicle 'for travelling' that is subject to the road user charge. Paragraph 23B of FTR 2008/1<sup>6</sup> explains when fuel is used for travelling as:

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 and windscreen wipers.
9. Fuel may be used in a heavy vehicle for propelling and operating the vehicle, for travelling on a public road, and, for powering the auxiliary equipment of the vehicle, for example, the mixing barrel of a concrete transit vehicle. To apply the road user charge only to the fuel used in the vehicle for travelling, an apportionment of the fuel between the different uses will be required.

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<sup>1</sup> 'Entity' has the meaning given in section 110-5 of the *Fuel Tax Act 2006*.

<sup>2</sup> 'Taxable fuel' has the meaning given under section 110-5 of the Fuel Tax Act.

<sup>3</sup> Reference to a heavy vehicle is a vehicle with a gross vehicle mass of gross of more than 4.5 tonnes or exactly 4.5 tonnes if the vehicle was acquired before 1 July 2006.

<sup>4</sup> Unless the vehicle has a gross vehicle mass of 4.5 tonnes and was acquired before 1 July 2006.

<sup>5</sup> Fuel in vehicles with a gross vehicle mass of 4.5 tonnes and acquired before 1 July 2006 for travelling on a public road is also captured under subsection 43-10(3). Refer Item 12 of Part 4 of Schedule 3 to the *Fuel Tax (Consequential and Transitional Provisions) Act 2006*

<sup>6</sup> Fuel Tax Ruling FTR 2008/1: *Fuel Tax: vehicle's travel on a public road that is incidental to the vehicle's main use and the road user charge.*

## STATEMENT

10. The Commissioner accepts the percentage mentioned in column 3 for the relevant vehicle mentioned in column 2 in the **Auxiliary Equipment Apportionment Table** is a fair and reasonable apportionment of the taxable fuel used to power the auxiliary equipment of the vehicle and therefore not subject to the road user charge.

### Auxiliary Equipment Apportionment Table

| Item | Vehicle                                     | %  | Comment   |
|------|---|----|---|
| 1    | Concrete transit vehicle                    | 30 | Includes the mixing barrel and all mechanism used in loading, unloading and transporting the concrete.  |
| 2    | Commercial bus or coaches                   | 5  | Air conditioning for passenger comfort. All taxable fuel types.   |
| 3    | Refrigerated vehicle                        | 10 | Refers to refrigeration unit of a vehicle transporting temperature sensitive goods.<br><br>Includes fuel sourced from a separate or the same fuel tank as that which fuels the main engine.   |
| 4    | Waste management collection                 | 15 | Equipment of a vehicle used to lift the bin to deposit contents into the vehicle's hopper and to compact the contents of the tray. Includes all configurations of bin lifting equipment.<br><br>Does not include pumping in relation to waste management, this equipment relates to item 5. |
| 5    | All other vehicles with auxiliary equipment | 5  | For example, elevated work platforms, truck mounted loader cranes and pumping equipment for loading and unloading.  |

## EXPLANATION

### Auxiliary equipment

11. Auxiliary equipment is a mechanism or apparatus of a vehicle that does not propel or operate the aspects of the vehicle that are for the purpose of travelling. Auxiliary equipment includes, but is not limited to:<sup>7</sup>
- the mechanisms for loading and unloading goods transported (including pumps for bulk haulage vehicles, tipper mechanisms of dump trucks)
  - the mixing barrel and associated loading and unloading mechanism of a concrete transit vehicle
  - the bin lift and compacting mechanism of a waste compactor (including side, front and rear loading)

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<sup>7</sup> Refer to paragraphs 133 to 138 of Law Administration Practice Statement PS LA 2010/3: *Apportionment for the purposes of the Fuel Tax Act 2006.*

- the waste jetter and vacuum system of vehicles used in the cleaning of drains
- the pump of a gas or liquid tanker
- winches and towing equipment of a tow truck
- air conditioning of commercial buses and coaches for passenger comfort
- the refrigeration unit of a refrigerated vehicle
- truck loading crane
- elevated platforms (buckets) and snorkels; and
- truck mounted drilling equipment.

***Auxiliary equipment used in dual purpose vehicles***

12. Auxiliary equipment may be of a type that is fitted to a vehicle that travels on a public road to the point where the equipment is to be used, for example, a truck mounted drill or an elevated work platform. The vehicle is then stationary for some time while an activity during which the auxiliary equipment is utilised is undertaken. At the completion of the activity the vehicle may travel on a public road to another location where the auxiliary equipment is again used in the activity.
13. For the purpose of applying the road user charge only to the taxable fuel used in the vehicle for travelling on the public road, an apportionment of the fuel used in the vehicle between powering the vehicle and powering the auxiliary equipment will be required.

*Example – taxable fuel used in auxiliary equipment of a dual use vehicle*

14. *Billboard Advertising erects and maintains advertising billboards. The billboards are placed in prominent positions either near a public road or on the street front of large buildings. Billboard Advertising operates heavy vehicles with auxiliary equipment in this activity. The auxiliary equipment includes a truck mounted drill, a mounted mobile crane and an elevated work platform.*
15. *The vehicles travel on public roads to the place where the billboards are to be erected. The auxiliary equipment of the vehicle is utilised in erecting the billboard.*
16. *Fuel is used in the vehicle for travelling on the public road. The auxiliary equipment is powered through a power take off unit which draws power from the engine while the vehicle is idling and as such fuel is used in the vehicle to operate the auxiliary equipment.*
17. *Billboard Advertising apportions the fuel between the use in a heavy vehicle for travelling on a public road and for use in the auxiliary equipment by reference to item 5 in the **Auxiliary Equipment Apportionment Table**. Thus they deduct the road user charge from the fuel tax credit for 95% of the fuel used in the vehicle.*

### ***Auxiliary equipment used in vehicles maintaining public roads***

18. A vehicle is not travelling when engaged in the construction, repair or maintenance of a public road.<sup>8</sup> As the movement of the vehicle in this activity does not constitute travelling, the fuel tax credit for the taxable fuel used in powering the vehicle is not reduced by the amount of the road user charge. Where the vehicle has auxiliary equipment which is used in the road maintenance activity, for example the brushing and vacuuming mechanism of a street sweeper, apportionment between the taxable fuel used to power the vehicle and to power the auxiliary equipment is not required.

### **Fair and reasonable apportionment**

19. In FTD 2010/1<sup>9</sup> the Commissioner considers that an entity can use any apportionment method that is fair and reasonable in its circumstances to calculate its fuel tax credit entitlement. In PSLA 2010/3 the Commissioner explains how an entity may meet the 'fair and reasonable' apportionment requirements if an entity uses its own methodology.
20. In recognition of the practical difficulties encountered by entities in apportioning taxable fuel used in a heavy vehicle travelling on a public road, the Commissioner has set out in the **Auxiliary Equipment Apportionment Table** the percentage that is a reasonable apportionment of fuel used in a vehicle to power the auxiliary equipment of the vehicle. These percentages have been established on the best available information; however, entities are not obliged to use them.
21. For the purposes of meeting the requirement of an apportionment that is fair and reasonable, the Commissioner accepts that, where an entity chooses to apply the percentage stipulated in the relevant item in the **Auxiliary Equipment Apportionment Table**, the apportionment of the taxable fuel is fair and reasonable.
22. An entity may choose to apply the percentage stated in the **Auxiliary Equipment Apportionment Table** for the relevant vehicle. Where an entity applies the percentage stipulated they must substantiate the acquisition of the taxable fuel for which the entity claims a fuel tax credit and that the fuel was used in the relevant type of heavy vehicle travelling on a public road.
23. Alternatively, an entity may choose to apply the percentage they have determined under an apportionment methodology that is fair and reasonable in the entity's circumstance. How an entity can meet the fair and reasonable requirement is explained in PSLA 2010/3: *apportionment for the purposes of the Fuel Tax Act 2006*.
24. Where an entity chooses to apply the percentage determined under an apportionment methodology that is fair and reasonable, the entity must substantiate that the apportionment methodology is fair and reasonable in their circumstance. The entity must also substantiate the acquisition of the taxable fuel for which the entity claims a fuel tax credit and that the fuel was used in the relevant type of heavy vehicle travelling on a public road.

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<sup>8</sup> Refer to paragraphs 21 to 23 of Fuel Tax Ruling FTR 2008/1: *Fuel tax: vehicle's travel on a public road that is incidental to the vehicle's main use and the road user charge*.

<sup>9</sup> Fuel Tax Determination FTD 2010/1: *Fuel tax: is apportionment used when determining the total fuel tax credits in calculating the net fuel amount under section 60-5 of the Fuel Tax Act 2006?*

## Applying an alternate fair and reasonable apportionment

25. At paragraph 18 of PSLA 2010/3 the Commissioner discusses the use of different methods of apportionment and states:

The entity may choose any method that is fair and reasonable. If the circumstances of the entity allows for more than one fair and reasonable method, but the methods produce different results, the entity may nevertheless choose any method that is fair and reasonable.
26. Effectively, this Practice Statement provides for more than one fair and reasonable method of apportionment. That is, an entity may choose to apply the percentage set out in the **Auxiliary Equipment Apportionment Table** above or apply a different methodology for determining a fair and reasonable apportionment, for example conducting fuel testing trials.
27. Therefore, where an entity has chosen to apply the fair and reasonable apportionment set out in the **Auxiliary Equipment Apportionment Table**, and another fair and reasonable apportionment gives a different result, the entity may then apply the other apportionment.
28. Similarly, where an entity has chosen to apply a fair and reasonable apportionment, but the **Auxiliary Equipment Apportionment Table** sets out an apportionment that gives a different result, the entity may then apply the apportionment stated in the table.
29. The alternate apportionment may be applied retrospectively within the time limits for making claims for fuel tax credits.<sup>10</sup>

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<sup>10</sup> The entity is required to make this request for fuel tax credit entitlements, in relation to the alternate apportionment, within period of review stipulated in section 155-35 of Schedule 1 to the TAA. For fuel tax credit entitlements that arose before 1 July 2012, the entity is required to make the request for fuel tax credit entitlements, in relation to the alternate apportionment, within four years after the end of the tax period in which the original claim was made under section 105-55 of Schedule 1 to the TAA.

### **Amendment History**

| <b>Date</b>      | <b>Part</b>  | <b>Comment</b>         |
|------------------|--------------|------------------------|
| 23 December 2013 | Paragraph 17 | Corrected for clarity. |



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|--------------------------------|--|
| Subject references             | fuel use<br>FTC fuel<br>FTC taxable fuel<br>gross vehicle mass   |
| Legislative references         | Fuel Tax Act 2006<br>FTA 2006 41-5<br>FTA 2006 41-20<br>FTA 2006 43-10(3)<br>FTA 2006 110-5<br>Fuel Tax (Consequential and Transitional Provisions) Act 2006<br>Pt 4 Sch 3 Item 12<br>Taxation Administration Act 1953<br>TAA 1953 Sch 1 section 105-55<br>TAA 1953 Sch 1 section 155-35 |
| Related public rulings         | FTD 2010/1<br>FTR 2008/1   |
| Related practice statements    | PS LA 1998/1<br>PS LA 2010/3   |
| Case references                |  |
| Other references               |  |
| File references                | 1-4TWR61I  |
| Date issued                    | 19 December 2013   |
| Date of effect                 | 1 July 2006  |
| Other Business Lines consulted | Tax Practitioner and Lodgement Strategy<br>Risk Intelligence & Reporting<br>Small Business and Individual Taxpayers<br>Operational Policy, Assurance and Law<br>Serious Non-Compliance<br>ATO Corporate<br>Tax Counsel Network   |