



# ***PS LA 2010/3 - Apportionment for the purposes of the Fuel Tax Act 2006***

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# Practice Statement Law Administration

**PS LA 2010/3**

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**FOI status: may be released**

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*This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs tax officers must follow their business line's escalation process.*

*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.*

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**SUBJECT:** Apportionment for the purposes of the *Fuel Tax Act 2006*

**PURPOSE:** To provide guidance to tax officers by explaining when and how an entity can satisfy the 'fair and reasonable' requirement in determining the extent to which it is entitled to a fuel tax credit

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## TERMS USED IN THIS PRACTICE STATEMENT

1. The following terms are used in this document:

Term	Explanation
'acquire'	'acquire' is a reference to 'acquire, manufacture in, or import into Australia' in Divisions 41, 42 and 43 of the <i>Fuel Tax Act 2006</i> (FT Act) and to 'acquire manufacture or import taxable fuel' in Items 10 and 11 of Schedule 3 to the <i>Fuel Tax (Consequential and Transitional Provisions) Act 2006</i> .
'eligible activity'	'eligible activity' means an activity conducted in the course of carrying on an enterprise, making a taxable supply of or packaging taxable fuel, or generating electricity for domestic use, for which an entity has an entitlement to a fuel tax credit.
'Energy Grants Act'	'Energy Grants Act' is a reference to the <i>Energy Grants (Credits) Scheme Act 2003</i> .
'FT Act'	'FT Act' is a reference to the <i>Fuel Tax Act 2006</i> .
'enterprise'	'enterprise' is a reference to 'enterprise' as defined in section 110-5 of the FT Act. <sup>1</sup>

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<sup>1</sup> Section 110-5 of the FT Act provides that enterprise has the meaning given by section 9-20 of *A New Tax System (Goods and Services Tax) Act 1999*. For a full explanation of the meaning of enterprise for the purposes of the FT Act see Fuel Tax Determination FTD 2006/3 Fuel tax: what is an 'enterprise' for the purposes of the *Fuel Tax Act 2006*?

'for use in eligible activity' or 'used in an eligible activity'	<p>'for use in eligible activity' or 'used in an eligible activity' covers taxable fuel that an entity acquires:</p> <ul style="list-style-type: none"> <li>• for use in carrying on its enterprise for the purposes of section 41-5 of the FT Act</li> <li>• to make a taxable supply or package in accordance with the requirements of section 41-10 of the FT Act, or</li> <li>• for use in generating electricity for domestic use under Division 42 of the FT Act.</li> </ul> <p>It includes taking into account the requirements of Divisions 41, 42 and 43 of the FT Act and Items 10 and 11 of Schedule 3 to the <i>Fuel Tax (Consequential and Transitional Provisions) Act 2006</i>.</p>
'planned use'	'planned use' is a reference to 'acquired for use' and 'intended for use'.
'taxable fuel'	'taxable fuel' is a reference to 'taxable fuel' as defined in section 110-5 of the FT Act which means fuel in respect of which excise duty or customs duty is payable <sup>2</sup> not including fuel covered by items 15, 20 or 21 of the Schedule to the <i>Excise Tariff Act 1921</i> or any imported goods that would be classified to item 15 of the Schedule to the <i>Excise Tariff Act 1921</i> if the goods had been manufactured in Australia.
'tax period'	<p>'tax period' is to be read in context to cover:</p> <ul style="list-style-type: none"> <li>• tax period for taxable fuel acquired for use in carrying on an enterprise or to make a taxable supply of, or package, or</li> <li>• fuel tax return period for taxable fuel acquired for generating electricity for domestic use.</li> </ul>
'Transitional Act'	'Transitional Act' is a reference to the <i>Fuel Tax (Consequential and Transitional Provisions) Act 2006</i> .

## BACKGROUND

2. The FT Act provides that an entity is entitled to a fuel tax credit for taxable fuel to the extent that it is acquired for use in an eligible activity. The amount of the fuel tax credit entitlement may be reduced to the extent that fuel tax imposed on the fuel is to fund the cleaner fuel grant or is reduced by the road user charge to the extent that fuel is acquired for use in a vehicle for travelling on a public road.
3. Fuel Tax Determination FTD 2010/1 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*?, sets out the Commissioner's view. The Commissioner considers that the use of the phrase 'to the extent that', in the context of determining fuel tax credit entitlements, contemplates apportionment.
4. In FTD 2010/1, 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.

<sup>2</sup> Under the *Excise Act 1901* and the *Excise Tariff Act 1921* or the *Customs Act 1901* and the *Customs Tariff Act 1995*.

## **SCOPE**

5. This practice statement provides guidance to tax officers in determining whether a method of apportionment used to calculate an entity's fuel tax credit entitlement is fair and reasonable in the entity's circumstances.
6. Whilst this practice statement discusses commonly used methods, an entity is not limited to the particular methods set out. Reference has been made to these commonly used methods to illustrate to tax officers the 'fair and reasonable' principle in assessing the apportionment methods applied by an entity.

## **STATEMENT**

7. In this practice statement, unless otherwise stated all legislative references are to the FT Act.
8. Tax officers must read this practice statement in conjunction with FTD 2010/1.
9. With any provision of advice or guidance, or compliance activity, tax officers need to examine whether an apportionment method applied by an entity is fair and reasonable in its circumstances.
10. An entity's decision to apply an apportionment method discussed in this practice statement does not remove the need to consider if the application of that apportionment method is fair and reasonable in the entity's circumstances.
11. A method of apportionment not discussed in this practice statement may be used, provided the method is fair and reasonable in the entity's circumstances.

## **Consistency of apportionment method(s)**

12. Tax officers should note that the apportionment method used by an entity in a tax period must be applied consistently. Inconsistent methods used by an entity in the same tax period are likely to make the quantities of fuel worked out under them unreliable in calculating the fuel tax credit entitlement of the entity for the period. If, in the course of carrying on an enterprise,<sup>3</sup> or generating electricity for domestic use, an entity acquires one or more types of fuel for use in multiple activities, it may apply a different calculation method to different activities and fuel types.<sup>4</sup>
13. To ensure that the method of apportionment gives a fair and reasonable reflection of the entity's fuel use, tax officers should review whether the method of apportionment excluded factors which may distort the results in the calculation, or modify them such that the inclusion of those factors is fair and reasonable. These factors may include extraordinary acquisitions or uses, for example a substantial acquisition of taxable fuel for a one-off contract, or a one-off increase in the use of taxable fuel for off-road use when the vehicle is generally used for transporting goods using public roads.

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<sup>3</sup> Including making a taxable supply, or packaging of taxable fuel in accordance with section 41-20.

<sup>4</sup> This does not mean that an entity cannot change the method or methods that it uses. For example, an entity may determine that another method, which also provides a fair and reasonable result, is now more appropriate in its circumstances. It can reassess its apportionment method for the whole of the relevant tax period or use a new method for a subsequent tax period. Where a change in method occurs during a tax period, the tax officer must check that the entity has taken into account the differences in the calculation of entitlements and that adequate records have been kept by the entity.

### **Examples of commonly used methods and measures that may provide a fair and reasonable basis for working out an entity's fuel tax credit entitlement**

14. The Commissioner's primary concern is that the method an entity chooses for apportioning taxable fuel for the purposes of claiming fuel tax credits is fair and reasonable in its circumstances.
15. The following methods are examples of commonly used methods to assist in explaining what is a fair and reasonable basis for apportionment. There may be other methods or variations to the methods below that will be a fair and reasonable basis for apportionment, depending on the entity's circumstances.
16. The methods discussed below are:
  - the constructive methods (actual use or planned use)
  - the deductive methods (actual use or planned use)
  - the percentage use method,<sup>5</sup> and
  - the estimate use method.

### **Approaches to apportionment<sup>6</sup>**

17. Whilst apportionment for the purpose of working out an entitlement and calculating the amount of the entitlement are distinct phases, tax officers are to accept that in working out a fuel tax credit entitlement, an entity can either:
  - undertake all the necessary apportionment (for example, with reference to section 41-5 and subsection 43-10(3)) as a single step process that encompasses working out the entitlement as well as the calculation of a fuel tax credit amount, or
  - undertake apportionment as discrete steps, for example:
    - apportionment takes place in working out entitlement to a fuel tax credit (for example with reference to section 41-5) and then in calculating the fuel tax credit amount (for example with reference to subsection 43-10(3)), or
    - apportionment takes place in working out the amount of fuel used in particular equipment or in a group of equipment and then apportioning the uses of fuel in relation to that equipment or group of equipment to calculate the fuel tax credit amount.
18. The amount of the entitlement calculated should be the same whether a single step process or a discrete step calculation is performed.

### ***Constructive method – actual use***

19. This constructive method requires an entity to add up the quantity of taxable fuel that it actually used in an eligible activity in a tax period.

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<sup>5</sup> This incorporates the alternative percentage use method.

<sup>6</sup> See Attachment A of this practice statement, for a flowchart and example that explain these approaches to apportionment.

*Example 1 – constructive method for actual eligible and ineligible use that is a fair and reasonable basis*

20. *Ella Company operates a delivery business and acquires diesel fuel in bulk for use in vehicles with a gross vehicle mass (GVM) of more than 4.5 tonnes (heavy vehicles) and vehicles with a GVM of less than 4.5 tonnes (light vehicles). Ella Company is entitled to a partial fuel tax credit for diesel fuel used in the heavy vehicles, and has no entitlement to a fuel tax credit for diesel fuel used in the light vehicles for travelling on public roads.*<sup>7</sup>
21. *Each time it refuels a vehicle, Ella Company records the date, the vehicle, and quantity of fuel taken. As Ella Company is a monthly Business Activity Statement (BAS) lodger, once a month it adds up the number of litres of taxable fuel used in the heavy vehicles to calculate the amount of taxable fuel for which it is entitled to a fuel tax credit.*

*Example 2 – constructive method for actual use with different rates that is a fair and reasonable basis*

22. *IM Company supplies gravel to road construction companies. It transports gravel from its depot to road construction sites. Before 1 July 2012, IM Company acquires petrol in bulk for use in tip trucks with a GVM of more than 4.5 tonnes (heavy vehicles).*<sup>8</sup> *IM Company is entitled to a partial fuel tax credit for petrol used in the tip trucks for travel on public roads, and to a half fuel tax credit for petrol used in the tip trucks for movement on the portion of road that is under construction.*<sup>9</sup>
23. *Each time it refuels a vehicle, IM Company records the date, the vehicle, and quantity of fuel taken, and each time it uses the vehicle, IM Company records the date, the distance travelled on public roads and the distance of the movement on the portion of road that is under construction. As IM Company is a monthly BAS lodger, once a month it adds up the number of litres of petrol used in the heavy vehicles for travel on public roads to calculate the amount of petrol for which it is entitled to a partial fuel tax credit and the number of litres of petrol used in the heavy vehicles on movement on the portion of road that is under construction to calculate the amount of petrol for which it is entitled to a half fuel tax credit.*

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<sup>7</sup> This example is based on the vehicles travelling on public roads only. For the period 1 July 2006 to 30 June 2012, see Items 10 and 11 of Schedule 3 to the Transitional Act to determine entitlement for fuel acquired for use in light or heavy vehicles for travel off public roads. There will be a full fuel tax credit entitlement for fuel acquired from 1 July 2012 for use in light and heavy vehicles for travel off public roads.

<sup>8</sup> An entity will be entitled to a full fuel tax credit for taxable fuel acquired from 1 July 2012 for use in business applications, other than for use in vehicles for travelling on public roads (for which they may be entitled to a partial credit or no credit based on the vehicle). As such, depending on the business use of fuel, the need to apportion fuel between uses may be reduced or eliminated for fuel acquired from 1 July 2012.

<sup>9</sup> The movement of a vehicle engaged in the construction, repair or maintenance of a road, for example, a grader, bulldozer, or water cart which occurs on the road or portion of the road that is under construction, repair or maintenance is not 'travelling' for the purposes of subsection 43-10(3). If the movement of the vehicle on a public road does not constitute 'travelling on a public road' and there would not have been an entitlement to an on-road credit under the Energy Grants Act for the fuel acquired for this movement, entities are entitled to a half fuel tax credit from 1 July 2008 to 30 June 2012 and the full fuel tax credit from 1 July 2012. However, if the movement of the vehicle on a public road does not constitute 'travelling on a public road' and there would have been an entitlement to an on-road credit under the Energy Grants Act for the fuel acquired for this movement, entities are entitled to a partial fuel tax credit from 1 July 2008 to 30 June 2012 and the full fuel tax credit from 1 July 2012. In this example, the IM Company would not have been entitled to an on-road credit under the Energy Grants Act for the fuel acquired for this movement.

*Example 3 – constructive method for actual use with different rates applicable that is not a fair and reasonable basis*

24. *Following on from Example 1 in this practice statement, Ella Company's records relating to taxable fuel used in its heavy vehicles were partly destroyed by fire. However, records relating to taxable fuel used in the period in its light vehicles survived.*
25. *To continue to use the constructive method in these circumstances would not be a fair and reasonable basis for calculating fuel used in the heavy vehicles. Ella Company should use a different method to calculate fuel used in the heavy vehicles. For example, the deductive method may enable Ella Company to calculate 'by deduction' the fuel used in the heavy vehicles.*

**Constructive method – planned use<sup>10</sup>**

26. This constructive method requires an entity to add up the quantity of taxable fuel that it acquired for use (intended to use) in an eligible activity in a tax period.

*Example 4 – constructive method for planned use with different rates that is a fair and reasonable basis*

27. *Allegra Company runs a wet hire<sup>11</sup> business and uses front end loaders of a similar make and model with a GVM greater than 4.5 tonnes in carrying out work in agricultural and road construction activities. The front end loaders do not travel on public roads.*
28. *Before 1 July 2012, Allegra Company acquires diesel fuel in bulk for use in carrying on its enterprise, including for use in its front end loaders.<sup>12</sup> It is entitled to a full fuel tax credit for diesel fuel acquired for use in agricultural activities, and to a half fuel tax credit for diesel fuel acquired for use in road construction activities.<sup>13</sup>*
29. *Allegra Company is a monthly BAS lodger and at the start of the month plans the operating hours for the front end loaders in agricultural and road construction activities. This is done by reference to their scheduled work activity for the month.*
30. *Allegra Company adds up the number of litres of diesel fuel acquired for use in each activity to apportion its fuel tax credit entitlement for the month.*

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<sup>10</sup> Also referred to as the constructive method – acquired for use.

<sup>11</sup> The reference to wet hire here is a reference to an arrangement that covers the supply of equipment, driver and fuel, and charging the customer an hourly fee for the supply.

<sup>12</sup> An entity will be entitled to a full fuel tax credit for taxable fuel acquired from 1 July 2012 for use in business applications, other than for use in vehicles for travelling on public roads (for which they may be entitled to a partial credit or no credit based on the vehicle). As such, depending on the business use of fuel, the need to apportion fuel between uses may be reduced or eliminated for fuel acquired from 1 July 2012.

<sup>13</sup> In this example, Allegra Company is entitled to a full fuel tax credit for fuel acquired for use in its front end loaders in agricultural activities as it was (or would have been) previously entitled to an off-road credit for the fuel acquired for these agricultural activities under the Energy Grants Act. An entitlement to a half fuel tax credit for fuel acquired for use in the road construction activities is the result of Allegra Company not being (or would not have been) entitled to an off-road credit for the fuel acquired for these activities under the Energy Grants Act.

### ***Deductive method – actual use***

31. The deductive method may provide a fair and reasonable basis for apportioning the following:
- eligible and ineligible fuel and/or purposes, and/or
  - multiple purposes, these being ineligible uses or eligible uses that either attract a full fuel tax credit, half fuel tax credit, or where the amount of the fuel tax credit entitlement may be reduced by the cleaner fuel grant or the road user charge.<sup>14</sup>

### ***Using the deductive method to apportion between eligible and ineligible fuel and/or uses***

32. The deductive method of working out the quantity of taxable fuel that an entity actually used in an eligible activity in a tax period is:

the total quantity of fuel used less the quantity of disqualified fuel

where:

***total quantity of fuel used*** is the total quantity of fuel that an entity actually used in the tax period

***quantity of disqualified fuel*** is:

- the quantity of taxable fuel that was actually used for a purpose for which there is no entitlement to a fuel tax credit in the tax period, and/or
- the quantity of fuel that is not taxable fuel.<sup>15</sup>

### ***Using the deductive method to apportion between multiple uses***

33. Depending on the entity's circumstances, the deductive method may be used to apportion between multiple uses, these being, ineligible uses and eligible uses attracting different rates by applying the method to each type of taxable fuel and use of that taxable fuel.

### ***Example 5 – deductive method for actual use where part of the taxable fuel is not eligible that is a fair and reasonable basis***

34. *Following on from Example 3 in this practice statement, each time it refuels a vehicle, Ella Company records the date, the vehicle and quantity of taxable fuel taken. As Ella Company is a monthly BAS lodger, once a month it adds up the number of litres of taxable fuel used in the light vehicles to calculate the amount of taxable fuel for which it is not entitled to a fuel tax credit and subtracts this amount from the total amount of taxable fuel acquired for the month to calculate the amount of taxable fuel for which it is entitled to a fuel tax credit.*<sup>16</sup>

<sup>14</sup> In accordance with the requirements of Division 43.

<sup>15</sup> Fuel can be disqualified fuel on the basis that it is not taxable fuel or that it is used for an ineligible purpose – see for example the disqualification rules in Subdivision 41-B.

<sup>16</sup> See Example 3 in this practice statement for circumstances where the deductive method will provide a fairer and more reasonable basis for apportionment relative to the constructive method.

*Example 6 – deductive method for actual use for different taxable fuels and rates that is a fair and reasonable basis*

35. Jackson Company operates a forestry business. From 1 July 2008, it acquires diesel fuel in bulk for use in trucks with a GVM of more than 4.5 tonnes (heavy vehicles) and less than 4.5 tonnes (light vehicles) to transport planks from the sawmill to customers using public roads. It also acquires petrol in bulk for use in forklifts to move timber during the processing of timber into planks, to move the planks to the dispatch bay, and to load the planks onto the trucks at the dispatch bay.<sup>17</sup> Jackson Company is entitled to a partial fuel tax credit for diesel fuel used in the heavy vehicles, and has no entitlement to a fuel tax credit for diesel fuel used in the light vehicles for travelling on public roads. From 1 July 2006 to 30 June 2012, it is entitled to a full fuel tax credit for petrol used in the forklifts for moving timber during the processing of timber into planks and moving the planks to the dispatch bay (Activity A), and a half fuel tax credit for petrol used in the forklifts for loading the planks onto the trucks at the dispatch bay (Activity B).<sup>18</sup>
36. Jackson Company decides to use the deductive method to calculate the quantity of diesel fuel and petrol that it acquired for use in each activity in a tax period to establish its fuel tax credit entitlement for diesel fuel and petrol use in eligible activities.
37. Jackson Company applies the deductive method to the diesel fuel. Each time it refuels a truck, Jackson Company records the date, the vehicle, and quantity of diesel fuel taken. As Jackson Company is a monthly BAS lodger, once a month it adds up the number of litres of diesel fuel used in the light vehicles to calculate the amount of diesel fuel for which it is not entitled to a fuel tax credit and subtracts this amount from the total amount of diesel fuel acquired for the month to calculate the amount of diesel fuel for which it is entitled to a fuel tax credit.
38. Jackson Company applies the deductive method to the petrol. Each time it refuels a forklift, Jackson Company records the date, the vehicle, and quantity of petrol taken, and each time it uses a forklift it logs the operating time for Activity B. As Jackson Company is a monthly BAS lodger, once a month it adds up the number of litres of petrol used in Activity B to calculate the amount of petrol used in Activity A and Activity B. It subtracts the amount used in Activity B from the total amount of petrol acquired for the month to calculate the amount of petrol for which it is entitled to a full fuel tax credit.

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<sup>17</sup> An entity will be entitled to a full fuel tax credit for taxable fuel acquired from 1 July 2012 for use in business applications, other than for use in vehicles for travelling on public roads (for which they may be entitled to a partial fuel tax credit or no fuel tax credit based on the vehicle). As such, depending on the business use of fuel, the need to apportion fuel between uses may be reduced or eliminated for fuel acquired from 1 July 2012.

<sup>18</sup> In this example, from 1 July 2006 to 30 June 2012, Jackson Company is entitled to a full fuel tax credit for petrol acquired for use in its forklifts in forestry activities as it was (or would have been) previously entitled to an off-road credit for the fuel acquired for these forestry activities under the Energy Grants Act. An entitlement to a half fuel tax credit for fuel acquired for use in the forklift for loading activities is the result of Jackson Company not being (or would not have been) entitled to an off-road credit for the fuel acquired for these activities under the Energy Grants Act. From 1 July 2012, Jackson Company will need to consider carbon emission charge consequences under Division 43 of the FT Act in working out its fuel tax credit entitlement amount.

### ***Deductive method – planned use***<sup>19</sup>

39. The deductive method may provide a fair and reasonable basis for apportioning the following:

- eligible and ineligible fuel and/or purposes, and/or
- multiple purposes, these being ineligible uses or eligible uses that either attract a full fuel tax credit, half fuel tax credit, or where the amount of the fuel tax credit entitlement may be reduced by the cleaner fuel grant or the road user charge.<sup>20</sup>

### ***Using the deductive method to apportion between eligible and ineligible fuel and/or uses***

40. The deductive method of working out the quantity of taxable fuel that an entity acquires for use in an eligible activity in a tax period is:

the total quantity of fuel acquired less the proposed quantity of disqualified fuel

where

***total quantity of fuel acquired*** is the total quantity of fuel that an entity acquired in the tax period.

***proposed quantity of disqualified fuel*** is:

- the quantity of taxable fuel that was acquired for use for a purpose for which there is no entitlement to a fuel tax credit in the tax period or; and/or
- the quantity of fuel that is not taxable fuel.<sup>21</sup>

### ***Using the deductive method to apportion between multiple uses***

41. Depending on the entity's circumstances, the deductive method may be used to apportion between multiple uses, these being ineligible uses and eligible uses attracting different rates by applying the method to each type of taxable fuel and use of that taxable fuel.

### ***Example 7 - deductive method for planned use where part of the fuel is not eligible that is a fair and reasonable basis***

42. *Nugget runs a farm and acquires diesel fuel in bulk for use in agricultural activities and in a four wheel drive (4WD) vehicle with a GVM of less than 4.5 tonnes (light vehicle). Nugget is entitled to a full fuel tax credit for diesel fuel acquired for agricultural activities as he was (or would have been) previously entitled to an off-road credit for the diesel fuel acquired for these agricultural activities under the Energy Grants Act, and has no entitlement to a fuel tax credit for diesel fuel used in the light vehicle for travelling on public roads. Nugget chose the deductive method to calculate the amount of taxable fuel used in the light vehicle for which he is not entitled to a fuel tax credit.*

<sup>19</sup> Also referred to as the deductive method – acquired for use.

<sup>20</sup> In accordance with the requirements of Division 43.

<sup>21</sup> Fuel can be disqualified fuel on the basis that it is not taxable fuel or that it is used for an ineligible purpose— see for example the disqualification rules in Subdivision 41-B.

43. *Nugget uses the light vehicle solely to collect provisions from town twice a week. He has worked out using odometer readings that each trip uses 5 litres of diesel fuel. As Nugget claims his fuel tax credit entitlement on a monthly basis, he works out the number of litres of fuel acquired for use (planned use) in the light vehicle to calculate the amount of taxable fuel for which he is not entitled to a fuel tax credit (that is, 8 trips x 5 litres per trip = 40 litres) and subtracts this amount from the total amount of fuel he acquires for the month to calculate the amount of taxable fuel for which he is entitled to a fuel tax credit.*

### **Percentage use method**

44. Where an entity's taxable fuel usage between activities is fairly constant over tax periods, the percentage use method may provide a fair and reasonable basis for apportioning the following taxable fuel uses in subsequent periods:
- eligible and ineligible purposes, and/or
  - multiple eligible purposes that either attract a full fuel tax credit, half fuel tax credit, or where the amount of the fuel tax credit entitlement may be reduced by the cleaner fuel grant or the road user charge.<sup>22</sup>
45. By using this method, the amount of taxable fuel that an entity acquires for use in an eligible activity is expressed as a percentage of the total quantity of taxable fuel that it acquires.<sup>23</sup>
46. If an entity acquires one or more types of taxable fuel for use in one or more activities it should establish a separate percentage for each taxable fuel type and each activity for which they are not entitled to a fuel tax credit, entitled to a fuel tax credit and/or a different amount of fuel tax credit.
47. If an entity's operations or fuel usage is variable, for example, subject to seasonal fluctuations, it may be difficult for the entity to establish a percentage that is representative of its taxable fuel usage over a number of tax periods. In these circumstances, the percentage use method may not be a fair and reasonable basis for calculating a fuel tax credit entitlement.

### *How to calculate percentages*

48. To calculate the percentage of different taxable fuel uses, an entity must keep detailed records of its taxable fuel usage over a sample period that it chooses depending on its circumstances (for example, if the pattern of use is regular, a four week sample period may be appropriate).
49. The quantity of taxable fuel actually used in an eligible activity in the sample period may be worked out from the entity's taxable fuel usage records using one of the basic calculation methods (constructive or deductive method).
50. An entity's taxable fuel usage pattern in the sample period must be representative of its taxable fuel usage in an eligible activity.

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<sup>22</sup> In accordance with the requirements of Division 43.

<sup>23</sup> If an entity's operations or fuel usage is not constant, the percentage use method may not be suitable for calculating its entitlement to a fuel tax credit.

51. The percentage is then calculated using the following formula:

$$\text{Percentage rate} = \frac{\text{Taxable fuel used in an activity}}{\text{Total taxable fuel used}} \times \frac{100}{1}$$

where:

**taxable fuel used in an activity** is the quantity of taxable fuel used in an activity during the sample period.

Depending on the purpose of the calculation, the activity may be:

- an eligible or ineligible taxable fuel use
- multiple eligible purposes attracting different rates of fuel tax credit,<sup>24</sup> and/or
- multiple activities that attract the same rate of fuel tax credit

**total taxable fuel used** is the total quantity of taxable fuel used (comprising all uses of taxable fuel) during the sample period.

52. Depending on the size of the fleet of vehicles/equipment, an entity may find it expedient to employ statistical sampling in calculating the relevant percentage of taxable fuel used in an activity.<sup>25</sup>

*Example 8 – percentage use method applied to more than one activity that is a fair and reasonable basis*

53. *Raj Heavy Enterprises runs a delivery business for a major distributor. It is on a long term contract to deliver goods to a fixed number of outlets three times a week. It uses 10 trucks each with a GVM greater than 4.5 tonnes and five 4WD vehicles with a gross vehicle mass of less than 4.5 tonnes (light vehicles) in operating this business. The vehicles only travel on public roads.*
54. *Raj Heavy Enterprises purchases diesel fuel which is stored in a bulk fuel tank for use in the trucks and the light vehicles. The diesel fuel used in the trucks for travel on public roads attracts a partial fuel tax credit and there is no entitlement to a fuel tax credit for fuel used in the light vehicles. Raj Heavy Enterprises only needs to apportion between eligible and ineligible fuel use.*
55. *Raj Heavy Enterprises needs to show that the diesel fuel usage for which it will claim fuel tax credits is in the same proportion as diesel fuel used in the trucks, compared to the total amount of diesel fuel that it acquires. To do this, it uses maintenance records to verify equipment usage and establish fuel consumption rates for its vehicles. It also keeps a record of the number and type of vehicles as well as the journeys for which the vehicles are used.*
56. *Raj Heavy Enterprises decides that since it has a reasonably steady diesel fuel usage pattern, between its trucks and light vehicles, based on its fixed long term contract, it will establish a percentage for the diesel fuel used in the trucks and use that percentage in future to work out the amount of diesel fuel for which it is entitled to a fuel tax credit.*
57. *Raj Heavy Enterprises purchases 5,000 litres of diesel fuel and records all fuel usage for a six week period, as Raj Heavy Enterprises considers that a six week sample period represents its pattern of fuel use.*

<sup>24</sup> Please note that there will be a different percentage for each activity or where activities are grouped a different percentage for each fuel tax credit rate.

<sup>25</sup> Please refer to paragraphs 101 to 125 of this practice statement for an explanation on the use of statistical sampling in this context.

58. The records for the six week period showed that Raj Heavy Enterprises used 4000 litres for eligible use.
59. The percentage is calculated as follows:

$$\begin{aligned}\text{Percentage rate} &= \frac{\text{Taxable fuel used in an activity}}{\text{Total taxable fuel used}} \times \frac{100}{1} \\ \text{Percentage rate} &= \frac{4000}{5000} \times \frac{100}{1} \\ &= 80\%\end{aligned}$$

Where the **taxable fuel used in an activity** is the quantity of taxable fuel used in Raj Heavy Enterprises' trucks and the **total taxable fuel used** is the total quantity of diesel fuel used during the six week sample period.

60. Raj Heavy Enterprises calculates its eligible taxable fuel use to be 80% of the total taxable fuel usage. When Raj Heavy Enterprises make future bulk purchases of diesel fuel, it is entitled to a partial fuel tax credit for 80% of the diesel fuel that it purchases, provided that this percentage continues to provide a fair and reasonable basis of apportionment.

*Example 9 – percentage use method applied to more than one activity that is a fair and reasonable basis*

61. George runs a dairy farm on which he uses equipment to milk cows and the milk is sold to distributors. George also runs a road transport business from an adjoining property in which he uses four trucks each with a GVM greater than 4.5 tonnes. George acquires diesel fuel for use in both of his businesses. The diesel fuel is stored in a bulk fuel tank on his farm.
62. George needs to show that the diesel fuel usage for which he will claim fuel tax credits is in the same proportion as the diesel fuel usage in the activities he carries out in running his farm and his road transport businesses, compared to the total amount of diesel fuel he acquires. As George was previously entitled to an off-road credit for agriculture under the Energy Grants Act, from 1 July 2006 to 30 June 2012 he is entitled to a full fuel tax credit for diesel fuel acquired for use on his farm. He is also entitled to a partial fuel tax credit for diesel fuel used in his road transport business. George should therefore calculate a percentage rate for each eligible activity representing the proportion of diesel fuel used in each activity relative to total diesel fuel used.<sup>25A</sup>
63. George acquires 50,000 litres of diesel fuel. Taking into account his business operations and regular pattern on fuel usage, George decides to use a five week sample period. He records all usage of the diesel fuel in each activity for five weeks. As he is entitled to both a full and a partial fuel tax credit for the respective activities, he calculates a separate percentage rate for diesel fuel used in each eligible activity.
64. Using the percentage use method, George determines that 80% of the total diesel fuel he has acquired is used in his road transport business and 20% is used on his farm. When George makes future bulk acquisitions of diesel fuel he is entitled to claim a partial credit for 80% of the diesel fuel and a full fuel tax credit for the remaining 20% provided that those percentages continue to

<sup>25A</sup> From 1 July 2012, George will need to consider carbon emission charge consequences under Division 43 of the FT Act in working out his fuel tax credit entitlement amount.

*provide a fair and reasonable basis of apportionment in the tax period to which George is attributing the claim.*

*Example 10 – percentage use method applied to more than one activity that is not a fair and reasonable basis*

65. *Roger Company runs a wet hire<sup>26</sup> business and provides bobcat services for various activities in a rural area, in landscaping, agricultural and construction activities. The bobcats are only used off-road.*
66. *Before 1 July 2012, Roger Company acquires diesel fuel in bulk for use in carrying on its enterprise, for use in the bobcats.<sup>27</sup> From 1 July 2006, to 30 June 2012, it is entitled to a full fuel tax credit for diesel fuel for use in the agricultural activities, and to a half fuel tax credit for fuel for use in the landscaping and construction activities.<sup>27</sup>*
67. *The use of the vehicles in the various activities is variable as it depends on the flow of work and type of work in which Roger Company is engaged to provide its wet hire services.*
68. *Roger Company decides to apply the percentage use method to calculate the amount of diesel fuel it acquires for use in carrying on its enterprise. Roger Company chooses a 12 week sample period and usage of the diesel fuel in each activity is recorded for 12 weeks. As it is entitled to a full and to a half fuel tax credit for the respective activities, it calculates a separate percentage rate for diesel fuel used in each activity. It determines that in that 12 week period 50% of the total diesel fuel it has acquired is used in agricultural activities, 25% in landscaping activities, and 25% in construction activities. This equates to a full fuel tax credit for 50% of the diesel fuel (used in agricultural activities) and a half fuel tax credit for the remaining 50% (used in landscaping and construction activities).*
69. *Due to the variable pattern of use of the bobcats in various activities, the percentage use method would not be considered a fair and reasonable basis to apportion diesel fuel between different activities to calculate Roger Company's entitlement to a fuel tax credit in relation to fuel acquired for use in the various activities. This is because the fuel usage pattern in the sample period is not representative of fuel usage between activities over tax periods due to the variable nature of the flow of work.*

### ***Estimate use method***

70. The estimate use method may provide a fair and reasonable basis for apportioning the following uses:
  - eligible and ineligible purposes, and/or

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<sup>26</sup> The reference to wet hire here is a reference to an arrangement that covers the supply of equipment, driver and fuel, and charging the customer an hourly fee for the supply.

<sup>27</sup> In this example, Roger Company is entitled to a full fuel tax credit for diesel fuel acquired for use in the bobcats in agricultural activities as it was (or would have been) previously entitled to an off-road credit for the diesel fuel acquired for these agricultural activities under the Energy Grants Act, and to a half fuel tax credit for diesel fuel acquired for use in the bobcats in landscaping and construction activities as it was not (or would not have been) entitled to an off-road credit for the diesel fuel acquired for these activities under the Energy Grants Act. From 1 July 2012, Roger Company will need to consider carbon emission charge consequences under Division 43 of the FT Act in working out its fuel tax credit entitlement amount.

- multiple eligible purposes that either attract a full fuel tax credit, half fuel tax credit, or where the amount of the fuel tax credit entitlement may be reduced by the cleaner fuel grant or the road user charge.<sup>28</sup>
71. The estimate use method of working out the quantity of taxable fuel that an entity acquires for use in an eligible activity in a tax period requires the entity to make a fair and reasonable estimate of the quantity of taxable fuel it acquires for use or actually uses in a tax period.

*Example 11 – estimate use method that is a fair and reasonable basis*

72. *David and Grace run a small potato farm 15km from Manjimup. They contract out the transport of their crop and their only diesel road vehicle is a 4WD utility. The utility is used on the farm for various farm activities and on average is used eight times per month to travel to Manjimup for groceries, social and recreational activities.*
73. *David and Grace are aware that diesel fuel acquired for use in making the journeys to Manjimup is not eligible for a fuel tax credit. Based on the vehicle's fuel consumption, they estimate that each of these journeys uses three litres of diesel fuel. Their fuel supplier delivers four 200 litre drums of fuel each month. Some of this diesel fuel is used to fuel their vehicle and the rest in agricultural activities.*
74. *David and Grace are registered for Goods and Services Tax and have elected to lodge their BAS on a monthly basis. As they are billed monthly David and Grace calculate and claim their fuel tax credits monthly. Their monthly fuel quantities are calculated as follows:*
- total diesel fuel purchased (200 litres × 4 drums per month) = 800 litres*
- *fuel used on road (2 trips per week × 4 weeks = 8 trips)*
  - *8 trips × 3 litres per trip = 24 litres*
  - *fuel used in agriculture = 800 litres less 24 litres = 776 litres*
75. *Using the estimate use method, David and Grace determine they are entitled to a fuel tax credit each month in respect of 776 litres of fuel.*

*Example 12 – estimate use method that is a fair and reasonable basis*

76. *Attilo Enterprises operates a construction business. Before 1 July 2012,<sup>29</sup> Attilo Enterprises acquires diesel fuel in bulk for use in its fleet of vehicles comprising 10 graders, 10 bobcats, 10 front end loaders, and 10 4WD vehicles with a GVM of less than 4.5 tonnes for travelling on public roads (light vehicles). Each type of vehicle is of a similar make and model.*
77. *Based on the nature of its operations, Attilo Enterprises is entitled to a half fuel tax credit for fuel used in the graders, bobcats, and front end loaders in off-road construction activities, a partial fuel tax credit for fuel used in the graders, bobcats, and front end loaders in travelling on public roads to get to and from worksites, and has no entitlement to a fuel tax credit for fuel used in the light vehicles for travelling on public roads.*

<sup>28</sup> In accordance with the requirements of Division 43.

<sup>29</sup> An entity will be entitled to a full fuel tax credit for taxable fuel acquired after 30 June 2012 for use in business applications, other than for use in vehicles for travelling on public roads (for which it may be entitled to a partial credit or no credit depending on the vehicle). As such, depending on the business use of fuel, the need to apportion fuel between uses may be reduced or eliminated for fuel acquired from 1 July 2012.

78. *The use of the vehicles in the construction activities across tax periods is variable as it depends on the flow of work. Accordingly, Attilo Enterprises decides to use the estimate use method to calculate its fuel tax credit entitlement.*
79. *Attilo Enterprises has established the average hourly fuel consumption for each type of vehicle. To apportion diesel fuel between a half fuel tax credit, partial fuel tax credit and no fuel tax credit, Attilo Enterprises uses the relevant average hourly fuel consumption<sup>30</sup> to work out the quantity of diesel fuel acquired for use in each activity based on its planned activities for the tax period.*

### **Measures**

80. A measure can be used as part of an apportionment method (for example, the percentage use method).<sup>31</sup>
81. The Commissioner accepts that an entity can use any appropriate reliable measure as the basis for calculating the amount of taxable fuel that it acquires for use in an eligible activity. Examples of known reliable measures include:
- odometer readings of kilometres actually travelled
  - route distances if a vehicle operates on fixed routes
  - kilowatt hours of electricity generated
  - hours of operation of vehicle or equipment, or
  - average hourly fuel consumption of vehicle or equipment.<sup>32</sup>
82. Although these are commonly used measures, because of the diverse range of eligible activities, this is not an exhaustive list and there may be other measures that are appropriate in an entity's circumstances.

*Example 13 – average hourly fuel consumption of vehicle or equipment that is a fair and reasonable basis*

83. *Following on from Example 4 of this practice statement,<sup>33</sup> Allegra Company uses its sales invoices itemising actual hours of work completed by each front end loader over two separate four week periods (one in summer and one in winter) and the quantity of fuel actually used in the same periods to determine an average hourly fuel consumption of the front end loaders in carrying out work in the agricultural and road construction activities. Allegra Company establishes that the front end loaders have different average hourly fuel consumption figures for each activity.*
84. *To apportion fuel between a full fuel tax credit and a half fuel tax credit, Allegra Company works out the quantity of diesel fuel acquired for use in each activity by multiplying the front end loaders' total operating hours for each activity by the respective average hourly fuel consumption figure.*
85. *The apportionment of fuel by reference to the average hourly fuel consumption of a front end loader in various working and climatic conditions would be considered a fair and reasonable basis for calculating Allegra*

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<sup>30</sup> See paragraphs 80 to 100 of this practice statement for a discussion on reliable measures.

<sup>31</sup> As explained at paragraphs 44 to 69 of this practice statement.

<sup>32</sup> For example, from job sheet records.

<sup>33</sup> Please see paragraphs 27 to 30 of this practice statement.

*Company's entitlement to a fuel tax credit in relation to its front end loaders for diesel fuel for use in agricultural and road construction activities.*

*Use of manufacturer's specifications*

86. If an entity uses the manufacturer's specifications to calculate its fuel consumption, it should determine if it is suitable in its circumstances.
87. The appropriateness of the manufacturer's specifications is a question of fact, to be decided on the facts and circumstances of each case by considering relevant factors including:
  - whether the entity's use of the vehicle/equipment aligns with the use of the vehicle/equipment on which the manufacturer has based the fuel consumption indications
  - the age of the entity's vehicle/equipment with reference to the manufacturer's specifications
  - the maintenance history of the vehicle/equipment, or
  - an assessment of the nature of the entity's use with reference to manufacturer's general indicators of light, medium or heavy use.
88. Where an entity's fuel consumption for a particular vehicle/equipment is greater than the manufacturer's figures, the entity may decide that a different measure is appropriate, but it will need to demonstrate the basis on which the variation occurs.
89. It is accepted that in some cases an entity may choose to rely on the manufacturer specifications, notwithstanding that it may generate a lower fuel consumption (than its actual fuel consumption) in order to reduce its compliance costs.

*Example 14 – use of manufacturer's specifications when actual use is greater than amount specified in manufacturer's specifications that is a fair and reasonable basis*

90. *Jack runs a farm on which he operates two tractors in carrying out agricultural activities. He also uses a 4WD vehicle with a GVM of less than 4.5 tonnes solely for travel on public roads for private use.*
91. *Jack acquires diesel fuel in bulk for use in the tractors and the 4WD. He is entitled to a full fuel tax credit for the fuel used in the tractors, and has no entitlement to a fuel tax credit for the fuel used in the 4WD for travelling on public roads.*
92. *Jack is therefore required to apportion the taxable fuel between eligible use for fuel acquired for use in the two tractors and ineligible use for fuel acquired for use in the 4WD.*
93. *In order to determine a fair and reasonable basis of apportionment, Jack decides to calculate his fuel consumption based on an appropriate assessment of his use of the tractors against the manufacturer's specifications for the tractors. The manufacturer's specifications for his tractors provide the hourly fuel consumption based on a light, medium and heavy load factor.*
94. *One of the tractors has been modified for a particular use and as a result its actual fuel consumption per hour is higher than the amount provided for in the manufacturer's specifications for a heavy load factor.*

95. *Jack decides to use the manufacturer's specifications to calculate the fuel consumption of the tractors.*

*Example 15 – use of manufacturer's specifications where actual use is less than amount prescribed in the manufacturer's specifications that is not a fair and reasonable basis*

96. *Guilia Pty Ltd runs a wet hire<sup>34</sup> business and operates 10 mobile cranes. Guilia Pty Ltd provides its services in agricultural and construction activities. The mobile cranes do not travel on public roads.*
97. *Before 1 July 2012, Guilia Pty Ltd acquires diesel fuel in bulk for use in the mobile cranes.<sup>35</sup> It is entitled to a full fuel tax credit for diesel fuel for use in the agricultural activities, and to a half fuel tax credit for diesel fuel for use in the construction activities.<sup>36</sup>*
98. *The manufacturer's specifications for the mobile cranes provide the hourly fuel consumption based on a light, medium and heavy load factor. Guilia Pty Ltd uses the cranes for different activities under various conditions. These elements affect the load factor. In these circumstances, the fuel consumed per hour for a mobile crane should be determined with reference to the relevant load factor in the manufacturer's specification. In Guilia Pty Ltd's case, the load factor is high for agricultural activities and medium for construction activities. However, Guilia Pty Ltd decides to use a high load factor to calculate its fuel use in the mobile cranes.*
99. *In these circumstances, Guilia Pty Ltd's assessment of the nature of use of the mobile cranes in construction activities is incorrect. Accordingly, Guilia Pty Ltd's apportionment of fuel used between agricultural and construction activities based on the mobile cranes being used under a high load factor would not be on a fair and reasonable basis.*
100. *Guilia Pty Ltd should instead calculate its claim by applying the manufacturer's specifications against the correct load factor in each activity. This will allow the calculation of the diesel fuel used in the mobile cranes to be based on the correct consumption per hour. This would result in a fair and reasonable basis of apportionment between the diesel fuel used in the mobile cranes between the different activities.*

### **Statistical sampling**

101. *An entity may use acceptable statistical sampling as part of any method that it uses.*
102. *This means that if an entity has a number of the same or similar vehicles or equipment that are used in the same or similar way:*

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<sup>34</sup> The reference to wet hire here is a reference to an arrangement that covers the supply of equipment, driver and fuel, and charging the customer an hourly fee for the supply.

<sup>35</sup> An entity will be entitled to a full fuel tax credit for taxable fuel acquired after 30 June 2012 for use in business applications, other than for use in vehicles for travelling on public roads (for which it may be entitled to a partial credit or no credit based on the vehicle). As such, depending on the business use of fuel, the need to apportion fuel between uses may be reduced or eliminated for fuel acquired from 1 July 2012.

<sup>36</sup> In this example, Guilia Pty Ltd is entitled to a full fuel tax credit for fuel acquired for use in the mobile cranes in agricultural activities as it was (or would have been) previously entitled to an off-road credit for the fuel acquired for these agricultural activities under the Energy Grants Act, and to a half fuel tax credit for fuel acquired for use in the mobile cranes in construction activities as it was not (or would not have been) entitled to an off-road credit for the fuel acquired for these activities under the Energy Grants Act.

- it may use statistical sampling to work out the relevant method or measure (for example, percentage use, average hourly fuel consumption) for some of the vehicles or equipment, and
  - the sample result may be applied to the other same or similar vehicles or equipment.
103. The appropriateness of statistical sampling is determined by consideration of the circumstances of each particular case.
104. The Commissioner considers that appropriate statistical sampling will occur where:
- an adequate statistical sampling design has been employed (for example, stratified sampling where an entity has a fleet of different types of vehicles or equipment and they are sampling different types of vehicles or equipment, which requires grouping vehicles or equipment into relatively homogenous groups and sampling each group)
  - the sample size is determined on an appropriate confidence interval and tolerable error<sup>37</sup>
  - the sample is a random and representative sample of the population from which it has been drawn, and
  - the data obtained from the sample is correct.<sup>38</sup>
105. The Commissioner will accept, in all circumstances a sample size determined on a maximum confidence interval of 95% and a tolerable error of 10%.<sup>39</sup> However, this does not mean that an entity cannot select a higher or lesser confidence interval or tolerable error. If an entity chooses a lower confidence interval and/or higher tolerable error than the accepted maximum level, it must be able to demonstrate that the parameters chosen are fair and reasonable in its circumstances.
106. An entity must be able to substantiate the reasonableness of applying the sample result to a fleet or group of vehicles or a number of pieces of equipment.

*Example 16 – percentage use and statistical sampling that is a fair and reasonable basis*

107. *Bunji Company Pty Ltd runs a mining operation. It acquires diesel fuel in bulk for use in a fleet of heavy vehicles, equipment and a large number of 4WD vehicles of a similar make and model with a GVM of less than 4.5 tonnes (light vehicles). It is entitled to a half fuel tax credit for diesel fuel used in the light vehicles in eligible off-road activities,<sup>40</sup> and has no entitlement to a fuel tax credit for diesel fuel used in the light vehicles for travelling on public roads.*

<sup>37</sup> Confidence interval is the reliability you would like the sample to generate. Tolerable error is the error in a population (sample size) that you are prepared to accept.

<sup>38</sup> See the Audit statistical sampling guidelines on Australian Taxation Office (ATO) website at [www.ato.gov.au](http://www.ato.gov.au) for more information.

<sup>39</sup> A tolerable error of 10% is the same as a tolerable error of +/- 5%. For example the tolerable error range is 90% – 100%. See *Keeping records and calculating eligible litres* on the ATO website at [www.ato.gov.au](http://www.ato.gov.au) (Alternative percentage use method) for an example of a sampling table which provides a 95% confidence level and a tolerable error of 10%.

<sup>40</sup> In this example, Bunji Company Pty Ltd is entitled to a half fuel tax credit as it was not (or would not have been) previously entitled to an off-road credit for the fuel acquired for use in the light vehicles in the off-road mining activities under the Energy Grants Act. It would be entitled to a full fuel tax credit if it was (or would have been) previously entitled to an off-road credit for the fuel acquired for use in the light vehicles in the off-road mining activities under the Energy Grants Act.

108. *As its fuel usage is fairly constant, Bunji Company Pty Ltd decides to use the percentage use method to calculate the amount of taxable fuel for which it is entitled to a fuel tax credit.*
109. *Based on the high number of light vehicles in the fleet and their pattern of use, Bunji Company Pty Ltd uses statistical sampling to establish the quantity of diesel fuel used in the light vehicles in eligible off-road activities and for travelling on a public road. The sample size is determined using a 95% confidence level and a tolerable error of 10%, and a random but representative selection of its light vehicles.*
110. *Using the representative sample of its light vehicles and respective log book records, Bunji Company Pty Ltd works out the quantity of diesel fuel acquired for use in the light vehicles for a sample period of four weeks to apportion taxable fuel between eligible and ineligible use. It uses this to calculate the percentage rate for diesel fuel used in its light vehicles for eligible activities and uses that rate to calculate its entitlement to a half fuel tax credit.*

*Example 17 – average hourly fuel consumption and statistical sampling that is a fair and reasonable basis*

111. *Hay Walker Pty Ltd runs a wet hire<sup>41</sup> business and uses 25 harvesters of a same or similar make and model with a GVM greater than 4.5 tonnes in carrying out agricultural activities.*
112. *Before 1 July 2012, Hay Walker Pty Ltd acquires diesel fuel in bulk for use in carrying on its enterprise, including for use in its harvesters.<sup>42</sup> From 1 July 2006, to 30 June 2012, it is entitled to a full fuel tax credit for fuel acquired for use in the harvesters in agricultural activities.<sup>43</sup>*
113. *Based on the number of harvesters, Hay Walker Pty Ltd decides to use statistical sampling to establish the average hourly fuel consumption of the harvesters in agricultural activities.*
114. *Provided Hay Walker Pty Ltd uses the appropriate statistical sampling technique in its circumstances, the use of statistical sampling to establish the average hourly fuel consumption of the harvesters can provide a fair and reasonable basis for calculating the amount of taxable fuel acquired for use in the harvesters in agricultural activities.*

*Example 18 – statistical sampling that is a fair and reasonable basis*

115. *Whelan Enterprises Ltd acquires diesel fuel, petrol and liquefied petroleum gas (LPG) (a non-taxable fuel) between 1 July 2008 and 30 June 2011<sup>44</sup> for use in its generators to generate electricity, in its forklifts to load goods onto*

<sup>41</sup> The reference to wet hire here is a reference to an arrangement that covers the supply of equipment, driver and fuel, and charging the customer an hourly fee for the supply.

<sup>42</sup> An entity will be entitled to a full fuel tax credit for taxable fuel acquired from 1 July 2012 for use in business applications, other than for use in vehicles for travelling on public roads (for which it may be entitled to a partial credit or no credit depending on the vehicle). As such, depending on the business use of fuel, the need to apportion fuel between uses may be reduced or eliminated for fuel acquired from 1 July 2012.

<sup>43</sup> In this example, Hay Walker Pty Ltd is entitled to a full tax credit for fuel acquired for use in its harvesters in agricultural activities as it was (or would have been) previously entitled to an off-road credit for the fuel acquired for these agricultural activities under the Energy Grants Act. From 1 July 2012, Hay Walker Pty Ltd will need to consider carbon emission charge consequences under Division 43 of the FT Act in working out its fuel tax credit entitlement amount.

<sup>44</sup> An entity will be entitled to a fuel tax credit for alternative fuels acquired from 1 July 2011. As such, an entity may need to reassess its entitlement from 1 July 2011.

*the trucks in the warehouse, and in its trucks with a GVM of more than 4.5 tonnes to deliver goods.*

116. *Whelan Enterprises Ltd is not entitled to a fuel tax credit for the LPG acquired for use in the vehicles and equipment. It is entitled to a full fuel tax credit for taxable fuels acquired for use in the generators, a half fuel tax credit for taxable fuels acquired for use in the forklifts, and a partial fuel tax credit for taxable fuels acquired for use in the trucks.*
117. *In the circumstance, a fair and reasonable method to calculate the fuel tax credit entitlement will exclude ineligible fuels and apportion eligible taxable fuels to determine what proportion of eligible fuel use applies to a particular rate.*
118. *To achieve this outcome, Whelan Enterprises Ltd decides to proceed with discrete steps using the statistical sampling method with the measure<sup>45</sup> being hourly consumption.*
119. *As a preceding step to statistical sampling, Whelan Enterprises Ltd excludes vehicles/equipment that run on LPG from those vehicles/equipment that run on taxable fuel (that is, diesel fuel or petrol) as non-taxable fuel (LPG) is non-eligible fuel.*
120. *Whelan Enterprises Ltd then groups its vehicles and equipment according to the type and use of fuel, that is, a group being generators that use diesel fuel, generators that use petrol, forklifts that use diesel fuel, forklifts that use petrol, trucks that use diesel fuel and trucks that use petrol. By taking a statistically valid sample from these groups based on hourly consumption (the measure), Whelan Enterprises Ltd will be able to determine a fair and reasonable apportionment between the different types and rates of fuel tax credits.*
121. *If Whelan Enterprises Ltd did not isolate those vehicles/equipment that run on non-taxable fuel from those vehicles/equipment that run on taxable fuel the apportionment of taxable fuel would not be on a fair and reasonable basis.*

*Example 19 - percentage use and statistical sampling that is not a fair and reasonable basis*

122. *Setzer Mining Company runs a mining operation. Before 1 July 2012,<sup>46</sup> Setzer Mining Company acquires diesel fuel in bulk for use in its fleet of vehicles comprising 50 forklifts, 25 front end loaders, 25 graders and 100 4WD vehicles with a GVM of less than 4.5 tonnes for travelling on public roads (light vehicles). Based on the nature of its operations, Setzer Mining Company is entitled to a full or half fuel tax credit for diesel fuel used in the forklifts, front end loaders, graders (heavy vehicles), and has no entitlement to a fuel tax credit for diesel fuel used in the light vehicles for travelling on public roads.*
123. *Setzer Mining Company decides to use the percentage use method to calculate its fuel tax credit entitlement. Based on the high number of each type of vehicle in the fleet it decides to use statistical sampling to establish the quantity of fuel used in the vehicles. The sample size is determined using a 95% confidence level and a tolerable error of 10% and a random selection of vehicles from the total fleet of 200.*

<sup>45</sup> See paragraphs 80 to 100 of this practice statement for the discussion on measures.

<sup>46</sup> An entity will be entitled to a full fuel tax credit for taxable fuel acquired after 30 June 2012 for use in business applications, other than for use in vehicles for travelling on public roads (for which they may be entitled to a partial credit or no credit based on the vehicle). As such, depending on the business use of fuel, the need to apportion fuel between uses may be reduced or eliminated for fuel acquired from 1 July 2012.

124. *Given the different types and uses of the vehicles, the random selection of vehicles without first grouping them into relatively homogenous groups would not provide an adequate sampling design to provide a fair and reasonable basis for calculating the percentage rate for fuel used in the various types of vehicles.*
125. *Setzer Mining Company should group the vehicles into homogenous groups (having regard to the make and model of each type of vehicle) and sample each group. For example, if the type of vehicle is of the same/similar make and model and the fuel used for the various purposes in each type of vehicle is fairly constant then it would be appropriate to sample from each group, that is, a group of 50 forklifts, a group of 25 front end loaders, a group of 25 graders and a group of 100 light vehicles.*

#### **Review of method(s) used**

126. Where an entity's circumstances change, the method of apportionment needs to be reviewed to establish if it is still a fair and reasonable basis on which to calculate its fuel tax credit entitlement. For example, a method should be reviewed if there has been a significant impact on factors that are important to the conduct of an enterprise, or a change in the assumptions which form the basis for the selection and application of the method. This includes the loss of contracts that affect an entity's business operations or a change in the activities undertaken as part of business operations.
127. Tax officers are to have regard to the changing circumstances of the entity and the duration of time between reviews conducted by the particular entity. These are questions of fact to be determined on a case by case basis.

#### ***Changing circumstances***

128. Tax officers should observe for the relevant tax period(s) under review, whether there was a change in the entity's circumstances that would warrant a review of the method(s) being applied and a revision of the method used.
129. A change that would warrant a review of the method(s) being applied would typically be an event which impacts on previously derived apportionment values representing, for example, the proportion of eligible and ineligible fuel use and/or different uses of eligible fuel use that attract different fuel tax credit amounts (rates). Thus, where an entity merely increases its output which results in a proportional increase in fuel use across its activities, the previously derived apportionment values will not necessarily change.

#### ***On-going review***

130. The Commissioner notes that a change in an entity's circumstances would generally be the impetus for an entity to conduct a review of its methods of apportionment. Notwithstanding, tax officers should appropriately tailor any compliance activity to the risks inherently present in circumstances where an entity has not reviewed its methodology over an extended period of time.
131. For this purpose, an extended period of time is five years.
132. To determine whether or not an entity has adequately reviewed its method of apportionment during the relevant periods, tax officers should seek documentation that sets out the process undertaken, the steps taken by the entity in monitoring the continuing relevance of any method used, and reasons why the method of apportionment was reviewed for changing circumstances.

*Example 20 – when a review is necessary*

133. *Chandra Shine Operations Ltd runs a civil construction business. It uses the percentage use method to calculate the amount of taxable fuel that it acquires for use in carrying on its enterprise to work out its fuel tax credit entitlement.*
134. *Six months into using the relevant percentages, Chandra Shine Operations Ltd gains a major long term contract to construct a tunnel. As a result of the new contract and the difficult nature of the project, it adds new vehicles to its fleet and determines it necessary to allocate additional equipment to activities that would ordinarily require less equipment.*
135. *These changes result in particular classes of equipment consuming more fuel than normal. Given the changes in fuel consumption and that the tunnel project is long term, the basis of the previously derived percentages has changed. Thus, for Chandra Shine Operations Ltd to apportion its fuel use on a fair and reasonable basis, a reassessment of the percentages calculated is warranted.*

*Example 21 – when a review is not necessary*

136. *Luca Company runs a mining operation and acquires diesel fuel in bulk for use in heavy vehicles and equipment for mining activities and in 4WD vehicles with a GVM of less than 4.5 tonnes (light vehicles).*
137. *Based on its mining operations, Luca Company is entitled to a full or a half fuel tax credit for diesel fuel acquired for use in mining activities and no entitlement to a fuel tax credit for diesel fuel used in the light vehicles for travelling on public roads.<sup>47</sup> Luca Company decides to use the percentage use method to apportion diesel fuel between the different activities and calculates separate percentage rates for diesel fuel used in each activity.*
138. *Fifteen months into using the relevant percentages, five of the light vehicles were used for some unexpected on-road travel, totalling about 250 km each, in place of their normal pattern of use.*
139. *Given the unexpected and one-off nature of the use of diesel fuel in the five light vehicles, Luca Company would not need to review the percentages it has calculated to work out the amount of taxable fuel that it acquires for use in each activity. However Luca Company will need to make a fuel tax adjustment as explained in Example 23 of this practice statement.<sup>48</sup>*

*Example 22 – when it is prudent to conduct a review*

140. *Following on from Example 21 of this practice statement, Luca Company has not conducted a review of its method of apportionment for almost five years. Although there has not been a change in circumstances which has prompted an earlier review by Luca Company, it decides to review all procedures and systems in place to ensure that its method of apportionment and calculations continue to be on a fair and reasonable basis. Luca Company documents this review.*

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<sup>47</sup> In this example, Luca Company is entitled to a half fuel tax credit as it was not (or would not have been) previously entitled to an off-road credit for the fuel acquired for use in the light vehicles in off-road activities under the Energy Grants Act. It would be entitled to a full fuel tax credit if it was (or would have been) previously entitled to an off-road credit for the fuel acquired for use in the light vehicles in off-road activities under the Energy Grants Act.

<sup>48</sup> See paragraphs 142 to 145 of this practice statement for a discussion on adjustments.

141. *After 5 years from the tax period in which Luca Company commenced using its apportionment method an audit is carried out by the Australian Taxation Office (ATO). The tax officer obtains documents that provide evidence that Luca Company has reviewed its method of apportionment and is satisfied that the review has been adequately performed. This is because the documents show the method of apportionment continues to provide a fair and reasonable basis for working out the fuel tax credit. Although this represents only part of the review process, under a risk based audit, the tax officer is satisfied that a lower level of scrutiny is appropriate.*

#### **Adjustments when actual use of fuel is different from planned use of fuel**

142. An entity's entitlement to a fuel tax credit for taxable fuel is worked out on the basis of what the fuel is intended for when it was acquired. If an entity acquired the fuel with the intention of using it for a particular purpose but subsequently used it for a different purpose for which a different amount of fuel tax credit is applicable or for a purpose for which there is no entitlement to a fuel tax credit, there will be a fuel tax adjustment.<sup>49</sup>
143. Fuel tax adjustments are attributable to the tax period in which the entity becomes aware of the adjustment.<sup>50</sup>

#### *Example 23 – adjustment to a fuel tax credit claim where actual use is different from planned use*

144. *Following on from Example 21 of this practice statement, Luca Company had claimed its fuel tax credit entitlement on its planned use of the light vehicles. It realises after it has claimed its fuel tax credit entitlement that five of the light vehicles were actually used for more travel on public roads than planned.*
145. *As Luca Company has no entitlement to a fuel tax credit for diesel fuel used in the light vehicles for travelling on public roads, it will need to adjust the original fuel tax credit claimed in relation to diesel fuel acquired for use in the five light vehicles to reflect the actual use of diesel fuel in these vehicles. For example, if under the percentage use method Luca Company had made a claim based on the five light vehicles' general 90% off-road use giving an entitlement to a half fuel tax credit, and the unexpected trips reduce this percentage to 70% for off-road use for that tax period, Luca Company will have to make an increasing fuel tax adjustment to reflect the decreased percentage of off-road use of the five vehicles.<sup>51</sup>*

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<sup>49</sup> See Division 44 for fuel tax adjustments.

<sup>50</sup> See section 65-10 for attribution rules for fuel tax adjustments. Paragraph 2.97 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 considers the test of when a person becomes aware that an adjustment is necessary is an objective test. This means they will be taken to become aware of a fuel tax adjustment when all the necessary facts to make a reasonable person aware are known to them.

<sup>51</sup> As explained at paragraph 139 of this practice statement, Luca Company does not need to review and can continue using the percentages it calculated for future claims.

## Documentation

146. Tax officers should ensure that an entity has sufficient and appropriate records to support its method of apportionment and any changes to that method over time.<sup>52</sup> This requirement may also extend to steps taken by an entity to monitor the continuing relevance of any method of apportionment used, including documenting the factors that led to its conclusion that the method was appropriate, or whether a change in method and/or adjustments was necessary.
147. The records should contain the following information:
- the total quantity of taxable fuel that was acquired for use or actually used in an eligible activity
  - the quantity of fuel that was actually used in an eligible activity in a tax period
  - the quantity of fuel that was acquired for use in an eligible activity in a tax period
  - each use of taxable fuel in an eligible activity in a tax period, and
  - the methods of calculation of the fuel tax credit entitlement.
148. Records that an entity normally keeps as part of carrying on its enterprise may be sufficient to support the method of apportionment adopted. If this is not the case, tax officers should consider the need to refer to additional records.
149. Examples of records that may be relevant for supporting the method of apportionment adopted include:
- records of business expenses that relate to activities conducted in the course of carrying on an enterprise
  - sales and production records
  - lease documents for agricultural land or equipment
  - share farming contracts
  - vehicle and equipment use and maintenance records
  - work contracts, or government requirements (such as licences)
  - date of acquisition or delivery of taxable fuel
  - type of taxable fuel purchased or delivered
  - quantity of taxable fuel delivered
  - location or address to which the taxable fuel was delivered
  - date and location of each activity
  - type of work performed
  - quantity of taxable fuel used in each activity
  - log books
  - odometer readings
  - kilowatt hours of electricity generated
  - route distances
  - hours of vehicle or equipment operation
  - type of vehicle with a GVM greater than 4.5 tonnes, machine or equipment.

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<sup>52</sup> For details of the records an entity needs to keep to substantiate its claim for a fuel tax credit see Fuel Tax Determination FTD 2006/2 Fuel tax: what records are required to be kept by taxpayers to substantiate a claim for a fuel tax credit?

**Amendment History**

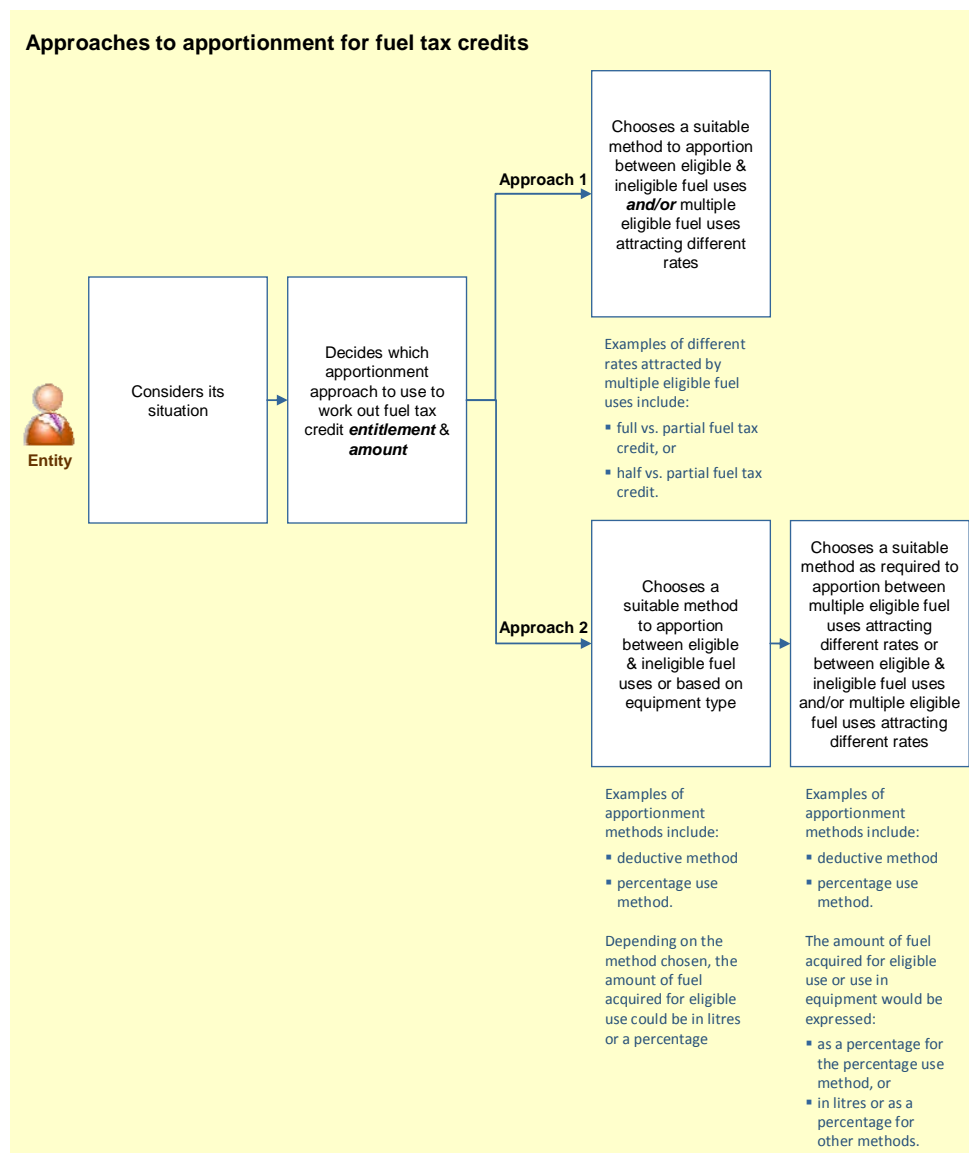
<b>Date of amendment</b>	<b>Part</b>	<b>Comment</b>
28 June 2012	Paragraphs 35, 62, 66 & 112 Footnotes 18, 25, 28 & 44	Omitted text and inserted new text

Subject references	apportionment of cost carrying on an enterprise fuel tax credits FTC acquisition FTC full credit FTC manufacture FTC taxable fuel gross vehicle mass total quantity of fuel
Legislative references	Customs Act 1901 Customs Tariff Act 1995 Energy Grants (Credit) Scheme Act 2003 Excise Act 1901 Excise Tariff Act 1921 Excise Tariff Act 1921 Sch Item 15 Excise Tariff Act 1921 Sch Item 20 Excise Tariff Act 1921 Sch Item 21 FTA 2006 FTA 2006 Div 41 FTA 2006 41-5 FTA 2006 41-10 FTA 2006 41-20 FTA 2006 Subdiv 41-B FTA 2006 Div 42 FTA 2006 Div 43 FTA 2006 43-10 (3) FTA 2006 Div 44 FTA 2006 60-5 FTA 2006 65-10 FTA 2006 110-5 Fuel Tax (Consequential and Transitional Provisions) Act 2006 Fuel Tax (Consequential and Transitional Provisions) Act 2006 Sch 3 Item 10 Fuel Tax (Consequential and Transitional Provisions) Act 2006 Sch 3 Item 11 ANTS(GST)A 1999 9-20
Related public rulings	FTD 2006/2 FTD 2006/3 FTD 2010/1
Related practice statements	PS LA 1998/1
Case references	
Other references	Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 Audit statistical sampling guidelines on the ATO website at <a href="http://www.ato.gov.au">www.ato.gov.au</a> <i>Keeping records and calculating eligible litres</i> on ATO website at <a href="http://www.ato.gov.au">www.ato.gov.au</a>
File references	1-1Y669F2
Date issued	28 July 2010
Date of effect	28 July 2010
<b>Other Business Lines consulted</b>	<b>Excise</b>

Attachment A provides a flow chart and example to explain the approaches to apportionment outlined in paragraph 17 of this practice statement.

### Example and flowchart to explain the approaches to apportionment.

#### Flowchart



#### Example

An entity operates a transport business. It has a long term contract to deliver goods to a fixed number of supermarkets and cafes four times a week. It uses trucks each with a GVM greater than 4.5 tonnes (heavy vehicles) and 4WD vehicles with a GVM of less than 4.5 tonnes (light vehicles) in operating this business.

Before 1 July 2012, the entity purchases diesel fuel which is stored in a bulk fuel tank for use in the trucks and the 4WD vehicles.

The vehicles travel on and off public roads. The trucks are used to deliver goods to the supermarkets. They travel mainly on public roads. There is some off-road travel to deliver the goods to the supermarkets' delivery points. The 4WDs are used to deliver goods to the cafes. Two of the cafes are located on large private properties in

semi-metropolitan settings. Three of the 4WDs are dedicated for delivery of goods to metropolitan cafes, which only involves travel on public roads. Two of the 4WDs are dedicated for delivery of goods to the semi metropolitan cafes, which involves travel on and off public roads.

The entity has the following entitlement:

- (a) a partial fuel tax credit for fuel acquired for use in the trucks for travel on public roads;
- (b) due to the operation of subitems 3 and 4 of Items 10 and 11 of Schedule 3 to the Transitional Act a partial fuel tax credit for fuel acquired for use in the trucks for the travel and incidental use off public roads in delivering goods to the supermarkets' delivery points;<sup>53</sup>
- (c) no entitlement to a fuel tax credit for fuel acquired for use in the light vehicles (4WDs) for travel on public roads; and
- (d) due to the operation of subitem 6 of Item 11 of Schedule 3 to the Transitional Act a half fuel tax credit for fuel acquired for use in the light vehicles for travel and incidental use off public roads.<sup>54</sup>

The entity needs to apportion between:

- eligible fuel uses (that is, (a), (b) and (d)) and ineligible fuel uses (that is, (c)) ; and
- multiple eligible uses up to 30 June 2012:
  - a partial fuel tax credit for uses (a) and (b); and
  - a half fuel tax credit for use (d).

The flowchart in this Attachment explains the approaches that the entity could use to work out the fuel use entitlement and the amount of the fuel tax credit entitlement.

<b>Approach 1</b> undertake all the necessary apportionment as a single step process that encompasses working out the entitlement as well as the calculation of a fuel tax credit amount	<b>Approach 2</b> undertake apportionment as discrete steps
<p><b>Single step</b> The entity acquires 1,000 litres for the month. As the pattern of fuel usage is constant, the entity decides to calculate its fuel tax credit entitlement under the percentage use method. The entity uses a sample period of 4 weeks to establish the relevant percentages. The entity uses the percentage use method to apportion between uses (a), (b), (c) and (d), and multiplies the percentages by the relevant fuel tax credit rates.</p> <p>For example, the entity establishes that the relevant percentages are:</p> <ul style="list-style-type: none"> <li>• 500 of 1,000 litres/50% for use (a) – at</li> </ul>	<p><b>Example 1 of Approach 2 where apportionment takes place in working out entitlement to a fuel tax credit and then in calculating the fuel tax credit amount</b></p> <p><b>Step 1</b> The entity acquires 1,000 litres for the month. The entity decides to use the deductive method to apportion between eligible uses (for example uses (a), (b) and (d)) and ineligible fuel uses (for example use (c)). It works out that 800 litres (80%) of the fuel is for eligible uses and 200 litres (20%) for ineligible uses.<sup>55</sup></p> <p><b>Step 2</b> As the pattern of fuel usage is constant, the</p>

<sup>53</sup> From 1 July 2012, the entity will be entitled to a full fuel tax credit for these uses of fuel.

<sup>54</sup> From 1 July 2012, the entity will be entitled to a full fuel tax credit for these uses of fuel.

<sup>55</sup> Whilst in this example the entity has decided to use the deductive method for Step 1, the entity could have instead used the percentage use method.

<p>the partial fuel tax credit rate</p> <ul style="list-style-type: none"> <li>• 100 of 1,000 litres/10% for use (b) – at the partial fuel tax credit rate</li> <li>• 200 of 1,000 litres/20% for use (c) – with no entitlement to a fuel tax credit, and</li> <li>• 200 of 1,000 litres/20% for use (d) – at the half fuel tax credit rate.</li> </ul>	<p>entity then decides to use the percentage use method to apportion the 800 litres/80% between the multiple eligible uses and multiplies the percentages by the relevant fuel tax credit rates.</p> <p>The entity uses a sample period of four weeks.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• 500 of the 800 litres (62.5%) is for use (a) – at the partial fuel tax credit rate</li> <li>• 100 of the 800 litres (12.5%) is for use (b) – at the partial fuel tax credit rate, and</li> <li>• 200 of the 800 litres (25%) is for use (d) – at the half fuel tax credit rate.</li> </ul>
	<p>Example 2 of Approach 2 where apportionment takes place in working out the amount of fuel used in particular equipment or a group of equipment and then in apportioning the uses of fuel in relation to that equipment or group of equipment to calculate the fuel tax credit amount.</p> <p>Step 1</p> <p>The entity acquires 1,000 litres for the month. The entity uses either the deductive or constructive methods to determine that the trucks use 600 litres (60%) of the fuel and the 4WDs use 400 litres (40%).</p> <p>Step 2</p> <p>As the pattern of use is constant, it then decides to use the percentage use method to apportion the fuel used by the trucks and the 4WDs. The entity uses a sample period of four weeks. For example, it establishes that the relevant percentages are:</p> <ul style="list-style-type: none"> <li>• 500 of the 600 litres (83% of fuel used by trucks) is for use (a) – at the partial fuel tax credit rate</li> <li>• 100 of the 600 litres (17% of fuel used by trucks) is for use (b) – at the partial fuel tax credit rate</li> <li>• 200 of the 400 litres (50% of fuel used by 4WDs) is for use (c) – with no entitlement to a fuel tax credit</li> <li>• 200 of the 400 litres (50% of fuel used by 4WDs) is for use (d) – at the half fuel tax credit rate</li> </ul>