



***FTD 2006/1 - Fuel tax: for the purposes of calculating your entitlement to a fuel tax credit what methods can be used to calculate the quantity of taxable fuel that you acquire, manufacture in, or import into, Australia for use in carrying on your enterprise or for use in generating electricity for domestic use?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *14 January 2009*



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## Fuel Tax Determination

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Fuel tax: for the purposes of calculating your entitlement to a fuel tax credit what methods can be used to calculate the quantity of taxable fuel that you acquire, manufacture in, or import into, Australia for use in carrying on your enterprise or for use in generating electricity for domestic use?

**1 This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any overpaid net fuel amount, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

### Ruling

1. You can use any method that is fair and reasonable in your circumstances to calculate the amount of taxable fuel you acquire for use or actually used in carrying on your enterprise<sup>1</sup> or for generating electricity for domestic use.
2. You are entitled to a fuel tax credit for taxable fuel that you acquire for use or actually used in carrying on your enterprise<sup>2</sup> or for generating electricity for domestic use.

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<sup>1</sup> The term 'carrying on' an enterprise is defined in section 110-5 of the *Fuel Tax Act 2006* (FT Act) as having the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The term 'enterprise' is defined in section 110-5 of the FT Act as having the meaning given in section 9-20 of the GST Act. See Fuel Tax Determination FTD 2006/3 Fuel tax: what is an 'enterprise' for the purposes of the *Fuel Tax Act 2006*?

<sup>2</sup> Subject to the requirements of items 10 and 11 of Schedule 3 of the *Fuel Tax (Consequential and Transitional Provisions) Act 2006* (Transitional Act).

3. The Commissioner accepts that the following methods are fair and reasonable for calculating the amount of taxable fuel for which you are entitled to a fuel tax credit. The methods are:

- the basic calculation methods, being:
  - the constructive method; and
  - the deductive method; and
- variations of the basic calculation methods, being:
  - the percentage use method; and
  - small claimants method (also known as the estimate use method).

### ***Basic calculation methods***

#### *Constructive method – actual use*

4. The constructive method of working out the quantity of fuel that you actually used in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period requires you to add up the quantity of fuel that you actually used in the period.

#### *Constructive method – acquired for use*

5. The constructive method of working out the quantity of fuel that you acquired for use in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period requires you to add up the quantity of fuel that you acquired for use in the period.

#### *Deductive method – actual use*

6. The deductive method of working out the quantity of fuel that you actually used or acquired for use in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period is the total quantity of fuel used less the quantity of disqualified fuel.<sup>3</sup>

#### *Deductive method – acquired for use*

7. The deductive method of working out the quantity of fuel that you acquired for use in carrying on your enterprise in a tax period or for electricity generation for domestic use in a fuel tax return period is the total quantity of fuel acquired less the proposed quantity of disqualified fuel.<sup>4</sup>

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<sup>3</sup> See paragraph 69 of the explanation in Appendix 1 for the meaning of 'quantity of disqualified fuel'.

<sup>4</sup> See paragraph 70 of the explanation in Appendix 1 for the meaning of 'proposed quantity of disqualified fuel'.

**Variations of the basic calculation methods***The percentage use method*

8. The percentage use method can only be used if the ratio of fuel used for an eligible purpose to fuel used for an ineligible purpose is fairly constant. The percentage use method requires that the amount of fuel acquired for use in carrying on your enterprise or for generating electricity for domestic use is expressed as a percentage of the total quantity of fuel that you acquire.<sup>5</sup> You may determine your percentage under this method from the actual amount of fuel you acquired for use in a sample period of 12 continuous weeks in a financial year.<sup>6</sup>

9. If you acquire one or more types of fuel for use in one or more eligible activities you should establish a separate percentage for each fuel type and each eligible activity for which you are entitled to a different amount of fuel tax credit.

*Example 1 – percentage use method*

10. *Ian and Janelle run a wheat farm. They purchase diesel fuel which is stored in a bulk fuel tank. They need to show that the fuel usage for which they will claim fuel tax credits is in the same proportion as fuel used in the work carried out on the farm, compared to the total amount of fuel that they acquire. To do this, they use maintenance records to verify equipment usage and establish fuel consumption rates for their equipment. They also keep a record of the number and type of diesel-powered machines and vehicles used on their property as well as the amount of time these vehicles are used for business uses.*

11. *Ian and Janelle decide that since they have a reasonably steady fuel usage pattern all year, they will establish a percentage for their fuel used in eligible farming activities and use that percentage in future to work out the amount of fuel for which they are entitled to a fuel tax credit.*

12. *Ian and Janelle have chosen to use the percentage use method. They purchase 1,000 litres of diesel fuel and record all usage for 12 weeks in a financial year.*

13. *They calculate their percentage using the formula:*

$$\text{Percentage rate} = \frac{\text{Sample taxable fuel}}{\text{Sample total taxable fuel}} \times \frac{100}{1}$$

$$\text{Percentage rate} = \frac{600}{1,000} \times \frac{100}{1} = 60\%$$

Where the **sample taxable fuel** is the quantity of taxable fuel used in Ian and Janelle's farming activities and the **sample total taxable fuel** is the total quantity of fuel to be used during the sample period.

14. *They calculate their eligible use to be 60% of their total usage. When Ian and Janelle make future bulk purchases of diesel fuel, they are entitled to a full fuel tax credit for 60% of the fuel that they purchase.*

<sup>5</sup> If the complexity of your operations or your fuel usage is not constant, the percentage use method may not be suitable for calculating your entitlement to a fuel tax credit.

<sup>6</sup> See paragraph 76 for other sample periods you can use.

*Example 2 – percentage use method applied to more than one activity*

15. George runs a farm on which he uses 2 tractors and a harvester. 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.

16. George needs to show that the fuel usage for which he will claim fuel tax credits is in the same proportion as the fuel usage in the activities he carries out in running his farm and his road transport businesses, compared to the total amount of fuel he acquires. As George was previously entitled to an off-road credit for agriculture under the Energy Grants (Credits) Scheme Act 2003, he is entitled to a full fuel tax credit for fuel acquired for use on his farm. He is also entitled to a partial fuel tax credit for fuel used in his road transport business. George should therefore calculate a percentage rate for each eligible activity.

17. George acquires 50,000 litres of diesel fuel, 40,000 litres for use in his road transport business and 10,000 litres for use on his farm. He records all usage of the fuel in each activity for twelve 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.

18. Using the percentage use method, George determines that 80 percent of the total diesel fuel he has acquired is used in his road transport business and 20 percent is used on his farm. When George makes future bulk acquisitions of diesel fuel he is entitled to claim a partial credit for 80 percent of the diesel and a full fuel tax credit for the remaining 20 percent.

*The small claimants method*

19. The small claimants method of working out the quantity of fuel that you acquire for use in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period requires you to make a fair and reasonable estimate of the quantity of fuel you acquire for use or actually use in a tax period or fuel tax return period.

20. You may only use the small claimants method, if your claims for fuel tax credits in the current financial year do not total more than \$5,000.

*Example 3 – small claimants method*

21. 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 four wheel drive utility. The utility is used on the farm and on average is used eight times per month to travel to Manjimup for groceries, social and recreational activities.

22. David and Grace are aware that fuel acquired for use in making the journeys to Manjimup is not eligible for a fuel tax credit. They estimate that each of these journeys uses three litres of fuel. Their fuel supplier delivers four 200 litre drums of fuel each month. Some of this fuel is used to fuel their vehicle.

23. David and Grace decide to use the small claimants method to calculate the quantity of fuel acquired for use in their farm as their total fuel tax credit claims for the year ended 30 June 2007 will not exceed \$5,000 (based on their claim pattern for energy grants in the year ended 30 June 2006). They estimate the quantity of fuel for business use for the year ended 30 June 2007 as follows:

- total diesel fuel purchased (800 litres per months  $\times$  12 months) = 9,600 litres
- fuel used on road (8 trips per month  $\times$  12 months = 96 trips)
- 96 trips @ 3 litres per trip = 288 litres
- fuel used in agriculture = 9,600 litres less 288 litres = 9,312 litres

24. As they are billed monthly David and Grace calculate their fuel tax credits monthly and claim their fuel tax credits quarterly. Their monthly fuel quantities are calculated as follows:

- total diesel fuel purchased (200 litres  $\times$  4 drums per month) = 800 litres
- fuel used on road (2 trips per week  $\times$  4 weeks = 8 trips)
- 8 trips  $\times$  3 litres per trip = 24 litres
- fuel used in agriculture = 800 litres less 24 litres = 776 litres

25. Using the small claimants method, David and Grace determine they are entitled to fuel tax credit each month in respect of 776 litres of fuel.

#### *Example 4 – small claimants method*

26. George and Louise operate a small farm near Mortlake in Victoria. They have one vehicle, which is an eight tonne tray truck.

27. The eight tonne tray truck is usually only used on the farm. Most of their livestock is transported by contractors but once a week they take some sheep to a small butcher in Warrnambool.

28. The fuel used in the tray truck on the farm is used for business purposes as it is used in their agricultural activities. They include the fuel used in delivering sheep as it is used for business purposes on a public road, which unlike the agriculture activity results in only a partial credit.<sup>7</sup>

29. George and Louise know from claims for energy grants made in the year ended 30 June 2006 that they received a total of \$3,500 in energy grants. As their farming business has not significantly changed, they estimate that their total claims for fuel tax credits in the year ended 30 June 2007 will not exceed \$5,000. George and Louise decide to use the small claimants method to calculate the quantity of fuel acquired for use in their enterprise.

<sup>7</sup> Under section 43-10 of the FT Act the fuel tax credit is reduced by the road user charge, for the fuel, to the extent that taxable fuel is used in a vehicle for travelling on a public road resulting in a partial fuel tax credit.

30. *They estimate the quantity of fuel that they will use this year based on last year's usage as follows:*

- *total diesel fuel purchased (2005/2006) = 12,000 litres*
- *fuel used in road transport (20 litres per trip × 52 trips) = 1,040 litres*
- *fuel used in agriculture = 10,960 litres*

31. *Using the small claimants method, George and Louise estimate that 10,960 litres of the fuel they acquire is used in their agricultural activity and 1,040 litres used in road transport. The amount of fuel for each of these activities is for a business use.*

#### *Example 5 – small claimants method*

32. *Giuseppe, a builder, runs a business, Giuseppe's general building services, and has a petrol powered 1 tonne utility. Giuseppe also has a petrol powered generator that he keeps on the back of his utility which he uses to generate electricity at job sites to operate his power tools.*

33. *Giuseppe knows from his business records for the year ending 30 June 2006, that he uses 5,000 litres of petrol a year in his business. Of this, 500 litres is used in his generator. From this he calculates that the total amount of fuel tax credits he would be entitled to receive in the year ended 30 June 2007 will be less than \$5,000. As the total amount of fuel tax credits will be less than \$5,000, Giuseppe decides to use the small claimants method to calculate the quantity of fuel acquired for use in carry on his enterprise.*

34. *From his previous year's records, Giuseppe estimates that, for the year ended 30 June 2007, he will again use 4,500 litres of petrol in his utility travelling to and from job sites with tools and equipment and 500 litres of petrol in his generator for generating electricity at job sites. The amount of fuel used in each of these activities is for a business use.*

35. *For the year ended 30 June 2007, Giuseppe is entitled to claim a full fuel tax credit for the petrol (500 litres) he acquires for use in his generator. However, because Giuseppe's utility has a gross vehicle mass less than 4.5 tonnes, Giuseppe is not entitled to a fuel tax credit for the petrol (4,500 litres) used in his vehicle.*

#### **General Rules**

36. You should use only one method for working out the quantity of fuel you acquired for use in an activity in the course of carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period.

37. If in the course of carrying on your enterprise you acquire one or more types of fuel for use in multiple activities, you should calculate the quantity of fuel used in each of the respective activities attracting different rates and fuel types separately. In doing so you may apply a different calculation method to different activities and fuel types.

#### *Example 6 – working out quantity of fuel*

38. *Whelan Enterprises Ltd (Whelan), which is registered for GST, acquires petrol for use in a generator to generate electricity for use in its business, for which it is entitled to a full fuel tax credit. Whelan also acquires diesel fuel for use in a truck with a GVM of more than 4.5 tonnes to deliver goods. Whelan is entitled to a partial fuel tax credit for this fuel.*

39. To work out its entitlement to fuel tax credits, Whelan should calculate the quantity of petrol acquired for use in its enterprise. Whelan should separately calculate the amount of diesel fuel acquired for use in the truck.

40. In relation to each of these fuels, Whelan can use a different method for calculating the quantity of fuel for which it is entitled to a fuel tax credit. For example, Whelan can use the deductive method to calculate the quantity of petrol and the constructive method, to calculate the quantity of diesel fuel. Once a calculation method has been chosen, Whelan should apply that method consistently within the tax period.

41. The words 'to the extent that' in sections 41-5 and 42-5 of the FT Act requires apportionment between a use that entitles you to a fuel tax credit and one that does not. You can use any method that is appropriate to your circumstances to work out the portion of fuel in respect of which you are entitled to a fuel tax credit. However, the apportionment method you choose needs to:

- be fair and reasonable;
- reflect the planned use of the taxable fuel if you are claiming a fuel tax credit on the basis of intended uses some of which qualify for a credit; and
- be appropriately documented in your individual circumstances.<sup>8</sup>

### **Class of entities**

42. This Determination applies to the class of entities who acquire or manufacture in, or import into, Australia, taxable fuel, to the extent that they do so for use in carrying on an enterprise or for generating electricity for domestic use.

### **Date of effect**

43. This Determination applies from 1 July 2006. However, the Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination.

44. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However if the scheme covered by the private ruling has not commenced, and the period to which it relates has not yet commenced, this Determination applies to the taxpayer to the extent of the inconsistency only.

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**Commissioner of Taxation**

9 August 2006

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<sup>8</sup> For details of the records you need to keep to substantiate your 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?



## Appendix 1 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### Background

45. In this Determination, unless otherwise stated a reference to:
- The Energy Grants Act is a reference to the *Energy Grants (Credits) Scheme Act 2003*.
  - 'Acquire' is a reference to 'acquire, manufacture in, or import into Australia' in section 41-5 of the FT Act and includes the purchase of fuel.
  - 'Fuel' is a reference to 'taxable fuel' as defined in section 110-5 of the FT Act.
  - 'Eligible activity' means an activity conducted in the course of carrying on an enterprise or generating electricity for domestic use, for which you have an entitlement to a fuel tax credit.
46. The FT Act and the Transitional Act provide for different amounts for fuel tax credits between 1 July 2006 and 30 June 2012 (inclusive):
- From 1 July 2006, you are entitled to a partial credit for taxable fuel, (including petrol), you acquire for use in a vehicle with a gross vehicle mass (GVM) over 4.5 tonnes travelling on a public road, provided the use is in carrying on your enterprise.<sup>9</sup>
  - From 1 July 2006, you are entitled to a full credit for taxable fuel, (including petrol), you acquire for use in carrying on your enterprise in electricity generation, burner applications and non-fuel uses (for example use in manufacturing explosives).
  - From 1 July 2006, if you are a non-business taxpayer, you are entitled to a full credit for taxable fuel (including petrol) that you acquire for use in generating electricity for domestic use.
  - From 1 July 2006 to 30 June 2008 (inclusive), you are entitled to a full credit, if you are carrying on an enterprise and if you acquire off-road diesel fuel<sup>10</sup> for use in specified eligible off-road activities as defined by the Energy Grants Act.

<sup>9</sup> If subitem 10(3) and subitem 11(3) of Schedule 3 of the Transitional Act apply to you, then under subitem 10(4) and subitem 11(4) respectively, you are taken, for the purposes of section 43-10 of the FT Act to have acquired, manufactured in or imported into, Australia fuel for use, in a vehicle, for travelling on a public road. The effect of subitem 10(4) and subitem 11(4) is that for fuel used in a vehicle travelling other than on a public road, the fuel tax credit is reduced under section 43-10 of the FT Act by the amount of the road user charge.

<sup>10</sup> Off-road diesel fuel is defined in section 4 of the Energy Grants Act.

- From 1 July 2008 to 30 June 2012 (inclusive), you are entitled to a half credit if you are carrying on an enterprise and you acquire off-road diesel fuel and petrol for use in activities for which an off-road credit under the Energy Grants Act was not previously available. This will change to a full credit from 1 July 2012.
- From 1 July 2008, you are entitled to a full credit if you are carrying on an enterprise and you acquire petrol for use in specified eligible activities for which you were entitled to an off-road credit under the Energy Grants Act.
- From 1 July 2011, you are entitled to a full credit if you are carrying on an enterprise and you acquire for off-road use, alternative fuels such as biodiesel, ethanol, liquefied petroleum gas (LPG), compressed natural gas (CNG) and liquefied natural gas (LNG) and methanol.
- From 1 July 2011, you are entitled to a fuel tax credit if you are carrying on an enterprise and you acquire alternative fuel for use in a vehicle with a GVM over 4.5 tonnes travelling on a public road.<sup>11</sup>

47. For the purposes of working out your entitlement to a fuel tax credit, to calculate the quantity of fuel that you acquire for an eligible activity, you can use any method that is fair and reasonable in your circumstances.

48. For the purposes of the Energy Grants Act, the constructive, deductive, percentage use and small claimants methods are prescribed in the Energy Grants (Credits) Scheme Regulations 2003<sup>12</sup> as methods that may be used for calculating the fuel quantities used for a qualifying use under the Energy Grants Act.

49. Although the constructive, deductive, percentage use and small claimants methods are not prescribed in any fuel tax regulations, the Commissioner accepts that these methods give a fair and reasonable estimate of the amount of fuel that you acquire for use in carrying on your enterprise or for use in generating electricity for domestic use.

50. You must keep records to show which method you use and how you have calculated the quantity of fuel that you acquire for use in carrying on your enterprise and generating electricity for domestic use. You must keep these records for a period of at least 5 years. The types of records you must keep are set out in FTD 2006/2.

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<sup>11</sup> If subitem 10(3) and subitem 11(3) of Schedule 3 of the Transitional Act apply to you, then under subitem 10(4) and subitem 11(4) respectively, you are taken for the purposes of section 43-10 of the FT Act to have acquired, manufactured in or imported into, Australia fuel for use, in a vehicle, for travelling on a public road. The effect of subitem 10(4) and subitem 11(4) is that for fuel used in a vehicle travelling other than on a public road, the fuel tax credit is reduced under section 43-10 of the FT Act by the amount of the road user charge.

<sup>12</sup> Schedule 8 of the Energy Grants (Credits) Scheme Regulations 2003 sets out the methods for working out the quantity of fuel used in eligible on-road and off-road activities under the Energy Grants Act.

51. Your entitlement to a fuel tax credit for taxable fuel is worked out on the basis of what the fuel is intended for when you acquire it. If you acquire the fuel with the intention of using it for a particular purpose but subsequently use it for a different purpose for which a different amount of fuel tax credit is applicable or for a purpose for which you are not entitled to a fuel tax credit you will have a fuel tax adjustment.<sup>13</sup> Fuel tax adjustments are attributable to the tax period or fuel tax return period in which you become aware of the adjustment.<sup>14</sup>

## **Explanation**

52. You can use any fair and reasonable method to calculate the quantity of fuel that you acquire for use in carrying on your enterprise or for generating electricity for domestic use.

53. The Commissioner considers that the methods set out in this determination are fair and reasonable and may be used to work out the quantity of fuel in respect of which you are entitled to a fuel tax credit. If you wish you may choose to use one of these methods.

## **General rules**

54. For any of the methods described in this determination the following general rules apply.

### *Working out quantity of fuel*

55. You must work out the quantity of fuel, in whole litres, acquired for use or actually used in carrying on your enterprise or for generating electricity for domestic use.

56. You must use one method of working out the quantity of fuel acquired for use in an eligible activity in a tax period or fuel tax return period.

57. If, in the course of carrying on your enterprise, you use one or more types of fuel in one or more eligible activities you should calculate the quantity of each fuel type used in each of the respective activities separately. In doing so you may apply a different calculation method to each of these eligible activities and fuel types.

## **Apportionment**

### *General principles of apportionment*

58. The words 'to the extent that' in sections 41-5 and 42-5 of the FT Act allow for apportionment between a use that entitles you to a fuel tax credit and one that does not. You can use any method that is fair and reasonable for working out the amount of fuel in respect of which you are entitled to a fuel tax credit.

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<sup>13</sup> See section 65-10 of the FT Act for attribution rules for fuel tax adjustments.

<sup>14</sup> 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.

59. The expression 'to the extent that' in the context of paragraph (z) of the definition of 'mining operations' in subsection 164(7) of the *Customs Act 1901*, was considered by the Full Federal Court in *BHP Billiton Petroleum Pty Ltd v. Chief Executive Officer of Customs*. The Court said:<sup>15</sup>

...para (z), in its terms, contemplates an activity (transport) of an eligible and non-eligible kind. The phrase 'to the extent that', in terms, it seems to us, calls for an apportionment between the transport contemplated within para (z) insofar as it is not eligible and insofar as it is eligible.

If such an apportionment is available, the decision as to the appropriate apportionment will generally be a factual question. ...

60. The principles to be applied in identifying situations where apportionment is appropriate in an income tax context, and the method to be employed where apportionment is required, were considered by the High Court in *Ronpibon Tin NL v. FC of T (Ronpibon)*.<sup>16</sup> In that case, the High Court considered what part of management and administrative expenses incurred by a taxpayer (whose principal business activity had been interrupted by World War II), were referable to gaining or producing assessable income. The High Court considered both the allocation of distinct expenditure to specific activities, and also apportionment, and said:<sup>17</sup>

In applying the foregoing test or standard separate and distinct items of expenditure should be dealt with specifically. To begin with there are the payments by Ronpibon Tin No Liability to the dependents of members of that company's Eastern staff. ...from the point of view of the income-tax law they could not be regarded as business expenditure...

In the next place the cost incurred by the same company in cables and other communications with reference to the buffer stock scheme cannot be deducted. ... Sufficient details do not appear to say what other distinct and severable items are wholly incapable of reference to the gaining of assessable income.

The charges for management and the directors' fees are entire sums which probably cannot be dissected. But the provision contained in s.51(1) [of the ITAA 1936], as has already been said, contemplates apportionment. The question what expenditure is incurred in gaining or producing assessable income is reduced to a question of fact when once the legal standard or criterion is ascertained and understood. This is particularly true when the problem is to apportion outgoings which have a double aspect, outgoings that are in part attributable to the gaining of assessable income and in part to some other end or activity. It is perhaps desirable to remark that there are at least two kinds of items of expenditure that require apportionment. One kind consists in undivided items of expenditure in respect of things or services of which distinct and severable parts are devoted to gaining or producing assessable income and distinct and severable parts to some other cause. In such cases it may be possible to divide the expenditure in accordance with the applications which have been made of the things or services. The other kind of apportionable items consists in those involving a single outlay or charge which serves both objects indifferently. Of this directors' fees may be an example. With the latter kind there must be some fair and reasonable assessment of the extent of the relation of the outlay to assessable income. It is an indiscriminate sum apportionable, but hardly capable of arithmetical or rateable division because it is common to both objects.

<sup>15</sup> *BHP Billiton Petroleum Pty Ltd v. Chief Executive Officer of Customs* [2003] FCAFC 61 at 34-35.

<sup>16</sup> *Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47.

<sup>17</sup> *Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47 pages 58-59.

*Apportionment of fuel*

61. Where some of a quantity of fuel acquired is for use in carrying on an enterprise or for generating electricity for domestic use and some is not, an apportionment will be necessary.

62. For the purposes of working out the quantity of fuel acquired for use or actually used in respect of a vehicle or piece of equipment, an apportionment may be made by reference to:

- kilometres actually travelled by the vehicle (taken from odometer readings);
- if the vehicle operates on fixed routes, route distances (instead of kilometres travelled);
- hours that the vehicle or piece of equipment was operated; or
- any other appropriate measure.

63. Although these are commonly used methods of apportionment, because of the diverse range of eligible activities, it is not possible to describe every possible measure that you can use to make the apportionment.

64. For example, where fuel is used to power a generator for the purpose of generating electricity, an acceptable method of apportionment between use in carrying on an enterprise, generating electricity for domestic use and a use for which there is no entitlement to a fuel tax credit would be by reference to kilowatt hours of electricity generated.

65. Following the principles set out by the High Court in *Ronpibon*<sup>18</sup> the apportionment method you choose needs to:

- be fair and reasonable;
- reflect the planned use of the fuel if you are claiming a fuel tax credit on the basis of intended uses some of which qualify for the credit; and
- be appropriately documented in your individual circumstances.<sup>19</sup>

***Basic calculation methods***

66. You may work out the quantity of fuel you acquired for use or actually used in a tax period<sup>20</sup> or fuel tax return period<sup>21</sup> by using a basic calculation method. The basic calculation methods are the constructive method and the deductive method.<sup>22</sup>

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<sup>18</sup> *Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47.

<sup>19</sup> For details of the records you need to keep to substantiate your claim for a fuel tax credit see FTD 2006/2.

<sup>20</sup> Tax period is defined in section 110-5 of the FT Act.

<sup>21</sup> Fuel tax return period is defined in section 110-5 of the FT Act.

<sup>22</sup> For the types of records you must keep in order to use the basic calculation methods refer to FTD 2006/2.

***The constructive method****Constructive method – actual use*

67. The constructive method of working out the quantity of fuel that you actually used in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period requires you to add up the quantity of fuel that you actually used in the period.

*Constructive method – acquired for use*

68. The constructive method of working out the quantity of fuel that you acquired for use in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period requires you to add up the quantity of fuel that you acquired for use in the period.

***The deductive method****Deductive method – actual use*

69. The deductive method of working out the quantity of fuel that you actually used in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period is:

total quantity of fuel used - quantity of disqualified fuel

where:

***total quantity of fuel used*** is the total quantity of fuel that you actually used in the tax period or fuel tax return period.

***quantity of disqualified fuel*** is the quantity of fuel that was actually used for a purpose for which there is no entitlement to a fuel tax credit in the tax period or fuel tax return period.

*Deductive method – acquired for use*

70. The deductive method of working out the quantity of fuel that you acquired for use in carrying on your enterprise in a tax period or for electricity generation for domestic use in a fuel tax return period is:

total quantity of fuel acquired - proposed quantity of disqualified fuel

where:

***total quantity of fuel acquired*** is the total quantity of fuel that you acquired in the tax period or the fuel tax return period.

***proposed quantity of disqualified fuel*** is the quantity of fuel that you acquired for a use for which there is no entitlement to a fuel tax credit in the tax period or fuel tax return period.

***Variations of the basic calculation methods***

71. If your operations allow, you may work out the quantity of fuel you acquired for use or actually used in carrying on your enterprise in a tax period using a variation of a basic calculation method. The variations of the basic calculation methods are:

- the percentage use method; and
- the small claimants (or estimate use) method.

72. These methods may also be used if you acquire fuel for use in generating electricity for domestic use.

***The percentage use method***

73. You may use this method if the ratio of fuel used for an eligible purpose to fuel used for an ineligible purpose is fairly constant. Using this method, the amount of fuel acquired for use in carrying on your enterprise or for generating electricity for domestic use is expressed as a percentage of the total quantity of fuel that you acquire.<sup>23</sup>

74. If you acquire one or more types of fuel for use in one or more eligible activities you should establish a separate percentage for each fuel type and each eligible activity for which you are entitled to a different amount of fuel tax credit.

***How to calculate your percentage***

75. To calculate your percentage you must keep detailed records of your fuel usage in a sample period.

76. The sample period must be:

- a continuous period of at least twelve weeks in a financial year;
- a continuous period of at least 3 monthly tax periods in a financial year; or
- at least 1 quarterly tax period in a financial year.

77. The quantity of fuel actually used in carrying on your enterprise or for generating electricity for domestic use in the sample period may be worked out from your fuel usage records using one of the basic calculation methods (constructive or deductive method).

78. Your fuel usage pattern in the sample period must be representative of your fuel usage in carrying on your enterprise or in generating electricity for domestic use.

79. Your sample percentage is then calculated using the following formula:

$$\text{Percentage rate} = \frac{\text{Sample taxable fuel}}{\text{Sample total taxable fuel}} \times \frac{100}{1}$$

Where **sample taxable fuel** is the quantity of taxable fuel used for an eligible activity during the sample period and the **sample total taxable fuel** is the total quantity of taxable fuel (both eligible and ineligible) used during the sample period.

<sup>23</sup> If the complexity of your operations or your fuel usage is not constant, the percentage use method may not be suitable for calculating your entitlement to a fuel tax credit.

80. As the fuel tax credit system commenced on 1 July 2006, you may determine your percentage rate using a sample period prior to this date.<sup>24</sup>

81. The percentage use method of working out the quantity of fuel that you acquired for use or actually used in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period is:

sample percentage × total quantity of fuel acquired in a period

where:

***total quantity of fuel acquired in a period*** is the total quantity of fuel that you acquired in a tax period or in a fuel tax return period.

*Alternative application of percentage use method*

82. If, in a tax period, 2 or more of your vehicles travel similar routes or 2 or more pieces of your equipment are used in a similar way:

- you may work out the sample percentage by reference to one of the vehicles or pieces of equipment; and
- the sample percentage may be applied to the other vehicles or pieces of equipment.

83. You must be able to substantiate the reasonableness of applying the sample percentage to:

- a fleet of vehicles; or
- a number of pieces of equipment.

*When you may rely on the sample percentage you have worked out*

84. If your total fuel tax credit claim in any financial year is less than \$10,000 you may rely on the sample percentage you have calculated for each type of fuel and eligible activity for 5 financial years unless your pattern of fuel usage has substantially changed.

85. If your total fuel tax credit claim in any financial year is \$10,000 or more you may rely on the sample percentage you have calculated for the financial year for each type of fuel and eligible activity. You must recalculate your percentage each financial year unless your pattern of fuel usage has substantially changed before the end of the year.

86. What is considered to be a substantial change is not defined. However, for guidance the Commissioner considers that a substantial change has occurred if your fuel usage has changed by 15 percent or more than 5,000 litres in a financial year.

87. It may also be appropriate to review the sample percentage on 1 July 2008 and 1 July 2012 when entitlement to fuel tax credits is extended.<sup>25</sup>

<sup>24</sup> If you have previously used the percentage use method under the Energy Grants Scheme you may continue to use the percentage rate calculated under that scheme if that rate is still appropriate to your circumstances.

<sup>25</sup> See paragraph 46 of this Determination.



## ***The small claimants (estimate use) method***

### *How to use the small claimants method*

88. You may use the small claimants method to calculate the quantity of fuel you acquired for use or actually used in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period only if using this method would not result in claims for fuel tax credits being a total of more than \$5,000 in the current financial year.

### *The small claimants method*

89. The small claimants method of working out the quantity of fuel that you acquired for use in carrying on your enterprise in a tax period or for generating electricity for domestic use in a fuel tax return period requires you to make a fair and reasonable estimate of the quantity of fuel acquired for use or actually used in the tax period or fuel tax return period.

90. As the fuel tax credit system commenced on 1 July 2006, for its first year of operation you can use the total amount of energy grants you received for the year ending 30 June 2006 to determine whether you can use the small claimants method.

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- apportionment
- basic calculation methods
- carrying on an enterprise
- constructive method
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- estimate use method
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