

## ***FTD 2006/2 - Fuel tax: what records are required to be kept by taxpayers to substantiate a claim for a fuel tax credit?***

! This cover sheet is provided for information only. It does not form part of *FTD 2006/2 - Fuel tax: what records are required to be kept by taxpayers to substantiate a claim for a fuel tax credit?*

! From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the Fuel Tax legislation with the term 'indirect tax zone' by the *Tax and Superannuation Laws Amendment (2015 Measures No. 1) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

! This document has changed over time. This is a consolidated version of the ruling which was published on *30 July 2014*



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# Fuel Tax Determination

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## Fuel tax: what records are required to be kept by taxpayers to substantiate a claim for a fuel tax credit?

### **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 ATO Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

### **Ruling**

1. You must keep records that record and explain all transactions and other acts you engage in that are relevant to the taxable fuel that you acquire, manufacture in, or import into, Australia to the extent that you do so for use in carrying on your enterprise<sup>1</sup> or for use in generating electricity for domestic use.<sup>2</sup>
2. The records must be retained for at least five years after the completion of the transactions or acts to which they relate.<sup>3</sup>
3. If you lodge a return that includes a net fuel amount which takes into account a fuel tax credit that relates to a tax period or fuel tax return period, you will need to keep records that explain those transactions and acts to which it relates and retain those records for at least five years after you lodge your return.<sup>4</sup>

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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 by 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> Section 42-5 of the FT Act.

<sup>3</sup> Subsections 382-5(1) and 382-5(2) of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

<sup>4</sup> Subsection 382-5(3) of Schedule 1 to the TAA.

4. You are required to keep records containing particulars of any choice, estimate, determination or calculation you make.<sup>5</sup> These records should also contain the particulars of the basis on which, and the method by which, an estimate, determination or calculation was made.<sup>6</sup>

## **Class of entities**

5. 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**

6. 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.

7. 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.

**Note:** The Addendum to this Determination that issued on 7 December 2011, explains the Commissioner's view of the law as it applied from 1 July 2010.

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**Commissioner of Taxation**

9 August 2006

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<sup>5</sup> For information regarding methods that may be used to calculate the quantity of fuel that you acquire for use in carrying on your enterprise or in generating electricity for domestic use see 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?* and Law Administration Practice Statement PS LA 2010/3 Apportionment for the purposes of the *Fuel Tax Act 2006*.

<sup>6</sup> Subsection 382-5(4) of Schedule 1 to the TAA.

## 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

8. 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.
9. The FT Act and *Fuel Tax (Consequential and Transitional Provisions) Act 2006* (Transitional Act) provide for different amounts for fuel tax credits between 1 July 2006 and 1 July 2012:
- From 1 July 2006, you are entitled to a partial credit for taxable fuel, (including petrol), acquired for use in a vehicle with a gross vehicle mass (GVM) over 4.5 tonnes or diesel vehicles with a GVM of 4.5 tonnes acquired before 1 July 2006<sup>6A</sup> travelling on a public road, provided the use is in carrying on your enterprise.<sup>7</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 you acquire off-road diesel fuel<sup>8</sup> for use in specified eligible off-road activities as defined by 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. From 1 July 2012 to 30

<sup>6A</sup> See item 12 of Schedule 3 to the Transitional Act.

<sup>7</sup> If subitem 10(3) and subitem 11(3) of Schedule 3 to 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 travelling on a public road. The effect of subitem 10(4) and subitem 11(4) of Schedule 3 to the Transitional Act 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>8</sup> Off-road diesel fuel is defined in section 4 of the Energy Grants Act.

June 2014, you will need to consider carbon emission charge consequences under Division 43 of the *Fuel Tax Act 2006* in working out your fuel tax credit entitlement amount.

- From 1 July 2008 to 30 June 2012, 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 2012 to 30 June 2014, you will need to consider carbon emission charge consequences under Division 43 of the *Fuel Tax Act 2006* in working out your fuel tax credit entitlement amount.
- From 1 July 2011 to 30 June 2012, 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 2012 to 30 June 2014, you will need to consider carbon emission charge consequences under Division 43 of the *Fuel Tax Act 2006* in working out your fuel tax credit entitlement amount.
- From 1 July 2011, you are entitled to a fuel tax credit if you are carrying on an enterprise and you acquire alternative fuels for use in a vehicle with a gross vehicle mass (GVM) over 4.5 tonnes travelling on a public road.<sup>9</sup>

## Explanation

10. To support your entitlement to a fuel tax credit, you must keep records that show you acquired the fuel for use in carrying on your enterprise or generating electricity for domestic use. You must retain these records for at least five years after the completion of the transactions or acts to which they relate. The records must be in English or easily translated into English. You do not need to send these records to the Commissioner unless requested to do so.<sup>10</sup>

11. To support your entitlement to a fuel tax credit you also need to keep details of any transactions, acts, estimates or calculations involving the fuel that you acquire. This may include:

- records of fuel acquired;
- use of fuel in carrying on your enterprise and private use;
- the basis and method for the calculation of the quantity of fuel for use in carrying on your enterprise or for generating electricity for domestic use and your fuel tax credit; and
- any loss of the fuel, taxable supply of fuel or fuel you have no prospect of using in carrying on your enterprise or for generating electricity for domestic use.

12. Where you have claimed a net fuel amount based on fuel acquired for use in carrying on your enterprise or generating electricity for domestic use you will need to keep

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<sup>9</sup> If subitem 10(3) and subitem 11(3) of Schedule 3 to 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 travelling on a public road. The effect of subitem 10(4) and subitem 11(4) of Schedule 3 to the Transitional Act 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> Section 382-5 of Schedule 1 to the TAA.

records of the fuel acquired and the estimated or intended use of fuel. You will also need to keep records of fuel actually used in carrying on your enterprise or generating electricity for domestic use to determine whether you have an increasing or decreasing fuel tax adjustment.<sup>11</sup>

13. [Omitted.]
14. [Omitted.]
15. [Omitted.]<sup>12</sup>
16. [Omitted.]
17. [Omitted.]
18. [Omitted.]<sup>13</sup>
19. [Omitted.]
20. [Omitted.]

### ***Records of fuel acquired***

21. If you acquire fuel you will need to retain documents to support your claim of having acquired the fuel. If you obtain an invoice or a tax invoice<sup>14</sup> for your acquisition, that document should contain all the relevant information to support your claim. If your invoices or tax invoices do not contain the necessary information to substantiate that you have acquired the fuel you should keep a record of the following details:

- date of acquisition or delivery;
- type of product purchased or delivered;
- details identifying the supplier including an Australian Business Number (ABN);
- price paid per litre;
- quantity delivered; and
- location or address to which the fuel was delivered.<sup>15</sup>

The details of your fuel acquisitions should be readily available from your fuel supplier.

### ***Records of fuel manufactured***

22. If you manufacture fuel you will need to retain the following records to substantiate your claim for a fuel tax credit:

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<sup>11</sup> Section 44-5 of the FT Act.

<sup>12</sup> For more information on apportionment see FTD 2006/1.

<sup>13</sup> For more information on apportionment see FTD 2006/1.

<sup>14</sup> If you are registered or required to be registered for GST, the tax period to which your fuel tax credit is attributed depends on whether or not you hold a tax invoice. See Division 65 of the FT Act for attribution rules for fuel tax credits.

<sup>15</sup> For GST purposes, under subsection 29-70(1B) of the GST Act, the Commissioner may treat as a tax invoice a particular document that is not a tax invoice. A document that the Commissioner treats as a tax invoice for GST purposes can be used to substantiate your claim for a fuel tax credit. For further explanation of the Commissioner's discretion to treat a document as a tax invoice, see *Law Administration Practice Statement PS LA 2004/11: The Commissioner's discretions to treat a particular document as a tax invoice or adjustment note*.

- a copy of your excise return showing the excise duty payable and date payable; and
- payment of the excise duty payable including the date paid.

***Records of fuel imported***

23. Goods imported into Australia are either entered for home consumption (within the meaning of the *Customs Act 1901*) or entered for warehousing and subsequently entered for home consumption when they are delivered from a Customs licensed warehouse.

24. If you import fuel you will need to retain the following records to support your claim for a fuel tax credit:

- the relevant import declaration with a status of 'FINALISED', that is, either:
  - an Import declaration: N10 – which provides details of values and charges for the imported goods that are initially entered for home consumption, and includes details of deferred GST and the total amount of customs duty payable; or
  - an Import Declaration (out of warehouse): N30 – this provides details of values and charges for the imported goods that are entered for home consumption when they are cleared out of a customs licensed warehouse. This document also includes details of deferred GST and the total amount of customs duty payable; and
- related matching official receipts from Customs (this document contains details of the total amount of customs duty paid).

***Use of fuel in carrying on your enterprise***

25. The fuel for which you are entitled to a fuel tax credit must be acquired for use or actually used in carrying on your enterprise. You need to keep records that show that you are carrying on an enterprise and that the fuel was acquired for use or actually used in activities done in the course of carrying on that enterprise. These records may include the following:

- records of business expenses that relate to activities conducted in the course of carrying on your enterprise;
- sales and production records;
- lease documents for agricultural land or equipment;
- share farming contracts;
- vehicle and equipment use and maintenance records; and
- work contracts, or government requirements (such as licences).

26. If your normal business or commercial records contain the records and information listed above you do not need to keep separate records to substantiate your claim.

26A. For further discussion on methods of apportionment and records that may be used to calculate and substantiate claims, respectively, see 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*? and Law Administration Practice Statement PS LA 2010/3 Apportionment for the purposes of the *Fuel Tax Act 2006*.

27. [Omitted.]
28. [Omitted.]
29. [Omitted.]
30. [Omitted.]
31. [Omitted.]
32. [Omitted.]<sup>16</sup>
33. [Omitted.]<sup>17</sup>

### ***Environmental criteria***

34. To be entitled to a fuel tax credit, operators of diesel powered motor vehicles with a GVM of more than 4.5 tonnes or with a GVM of 4.5 tonnes acquired before 1 July 2006<sup>17A</sup> are required to meet certain environmental criteria.<sup>18</sup> The vehicle must either:

- have been manufactured on or after 1 January 1996;
- be part of an accredited audited maintenance program;
- meet the Australian Transport Council's in-service emission standard (referred to in the National Environment Protection (Diesel Vehicle Emissions) Measure); or
- comply with a Government-endorsed maintenance schedule which includes an emission component.

35. If you operate a diesel powered motor vehicle with a GVM of more than 4.5 tonnes or with a GVM of 4.5 tonnes acquired before 1 July 2006<sup>18A</sup> you will need to keep records that show that you have complied with these requirements.<sup>19</sup> These records must be retained for at least five years.

### ***Greenhouse Challenge Plus Programme Participants***

36. During the period 1 July 2006 to 30 June 2009, your net fuel amounts for tax periods ending in a financial year must not take into account more than \$3 million of fuel tax credits, unless you were a member of the Greenhouse Challenge Plus Programme (GCPP)<sup>20</sup> or another programme determined by the Minister for the Environment, Heritage

<sup>16</sup> [Omitted.]

<sup>17</sup> [Omitted.]

<sup>17A</sup> See item 12 of Schedule 3 to the Transitional Act.

<sup>18</sup> Section 41-25 of the FT Act. A diesel powered motor vehicle that is used in carrying on a primary production business and primarily on an agricultural property is not subject to environmental criteria.

<sup>18A</sup> See item 12 of Schedule 3 to the Transitional Act.

<sup>19</sup> For further information see the Department of Transport and Regional Services' website [www.dotars.gov.au](http://www.dotars.gov.au).

<sup>20</sup> Division 45 of the FT Act was repealed with effect from 1 July 2009. This means that an entity is not required to be a member of the GCPP to be able to take into account in more than \$3 million in fuel tax credits in its net fuel amounts for tax periods in a financial year. For the period 1 July 2006 to 30 June 2009, if you become aware of an entitlement to fuel tax credits in excess of \$3 million in a financial year and you were not a member of the GCPP, you are deemed to be a member of the GCPP immediately prior to its close,



and the Arts. For this period, if you were a member of the programme, there is no difference in the records that you will be required to keep to support your claims for a fuel tax credit. However, you will be required to keep records that show that you were a member of the programme.<sup>21</sup>

### ***\$300 annual threshold***

37. You are not required to keep records showing proof that you acquired fuel if you claim less than \$300 in fuel tax credits in a year. However, the fuel that you acquire must be for use or actually used in an eligible activity in the course of carrying on your enterprise or for use in generating electricity for domestic use.

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therefore enabling you to make a decreasing fuel tax adjustment for the fuel tax credits. The decreasing fuel adjustment is attributable to the tax period ending 30 June 2009 and you will have four years from the end of the tax period to claim the entitlement in accordance with section 105-55 of the TAA.

<sup>21</sup> [Omitted.]

## References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

FTD 2006/3; FTD 2010/1

*Subject references:*

- actual use
- acquire
- acquire, manufacture in, or import into, Australia
- carrying on an enterprise
- constructive method
- deductive method
- eligible activity
- enterprise
- fuel tax credit
- full rate
- gross Vehicle Mass
- half rate
- partial rate
- percentage use method
- records
- sample percentage
- sample period
- small claimants method
- taxable fuel

*Legislative references:*

- ANTS(GST)A 1999 9-20
- ANTS(GST)A 1999 29-C
- ANTS(GST)A 1999 29-70(1B)
- ANTS(GST)A 1999 195-1
- Customs Act 1901
- EGCSA 2003
- EGCSA 2003 4
- FT Act 2006

- FT Act 2006 41-5
- FT Act 2006 41-25
- FT Act 2006 42-5
- FT Act 2006 43-10
- FT Act 2006 44-5
- FT Act 2006 Div 45
- FT Act 2006 Div 65
- FT Act 2006 110-5
- FT (Consequential and Transitional Provisions) Act 2006
- FT (Consequential and Transitional Provisions) Act 2006 Sch 3 10(3)
- FT (Consequential and Transitional Provisions) Act 2006 Sch 3 10(4)
- FT (Consequential and Transitional Provisions) Act 2006 Sch 3 11(3)
- FT (Consequential and Transitional Provisions) Act 2006 Sch 3 11(4)
- FT (Consequential and Transitional Provisions) Act 2006 Sch 3 12
- TAA 1953
- TAA 1953 Sch 1 105-55
- TAA 1953 Sch 1 382-5
- TAA 1953 Sch 1 382-5(1)
- TAA 1953 Sch 1 382-5(2)
- TAA 1953 Sch 1 382-5(3)
- TAA 1953 Sch 1 382-5(4)
- Tax Laws (2009 Measures No. 2) Act 2009

*Other references:*

- Law Administration Practice Statement PS LA 2004/11
- Law Administration Practice Statement PS LA 2010/3
- [www.dotars.gov.au](http://www.dotars.gov.au)

## ATO references

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