FTR 2006/2 - Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'mining operations' as defined in section 11 of the Energy Grants (Credit) Scheme Act 2003

This document has changed over time. This is a consolidated version of the ruling which was published on *15 August 2007*

Fuel Tax Ruling

Fuel tax: fuel tax credits for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise involving 'mining operations' as defined in section 11 of the *Energy Grants (Credit) Scheme Act 2003*

Contents Para

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.]

What this Ruling is about

1. This Ruling explains an entity's[1] entitlement to a fuel tax credit under the *Fuel Tax Act 2006* (FT Act) for taxable fuel it acquires or manufactures in, or imports into, Australia to the extent that it does so for use in carrying on an enterprise, involving activities that are within the meaning of 'mining operations' in Subdivision B of Division 3 of Part 2 (Subdivision 3B) of *the Energy Grants (Credits) Scheme Act 2003* (Energy Grants Act).

2. The Ruling also explains:

- the fuel tax credit system[2] under the FT Act, and the relevant transitional provisions; and

[1] Section 110-5 of the FT Act states that entity has the meaning given by section 184-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
[2] In this Ruling the Commissioner refers to the scheme established under the FT Act as the fuel tax credit system.

- the meaning of 'mining operations' and related terms in Subdivision 3B of the Energy Grants Act. In particular, the Ruling discusses:
  - the meaning of each of the activities in the definition of 'mining operations' in Subdivision 3B of the Energy Grants Act;
  - the interpretation of the phrase 'in mining operations';
  - the exclusion of certain substances from the definition of 'minerals' in section 20;
  - the interpretation of the 'solely' requirement in the definition of 'mining operations';
  - the meaning of 'at the place' where a mining operation is carried on; and
  - the effect of the exclusion in subsection 53(2) of taxable fuel acquired for the purpose of propelling any vehicle on a public road.

3. Unless otherwise stated, all legislative references in this Ruling are to the Energy Grants Act, and all references to the Energy Grants Regulations are to the Energy Grants (Credits) Scheme Regulations 2003.

4. This Ruling does not deal with your entitlement to a fuel tax credit if you acquire, manufacture in, or import into, Australia taxable fuel for use in generating electricity for domestic use. Nor does the Ruling deal with entitlement to a fuel tax credit if you acquire, manufacture in, or import into, Australia taxable fuel for use in a vehicle with a gross vehicle mass (GVM) of more than 4.5 tonnes travelling on a public road.

Definitions

5. In this Ruling, unless otherwise stated:

- a reference to:
  - fuel or diesel fuel is a reference to off-road diesel fuel as defined in section 4;
  - 'taxable fuel' is a reference to taxable fuel as defined in section 110-5 of the FT Act;
  - alternative fuel is a reference to 'on-road alternative fuel' as defined in section 4;
  - diesel fuel rebate scheme is a reference to the diesel fuel rebate scheme as provided for in section 164 of the *Customs Act 1901* and section 78A of the *Excise Act 1901*;

- an eligible activity or activities is a reference to a use that qualifies for the purposes of the Energy Grants Act;
- 'mining operations' is a reference to the activities within the meaning of 'mining operations' in section 11;
- a paragraph 11(1)(a) or 11(1)(b) mining operation is a reference to a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1);
- 'GST' is a reference to the goods and services tax;
- GST Act is a reference to the *A New Tax System (Goods and Services Tax) Act 1999*;
- 'you' in relation to provisions of the FT Act and the *Fuel Tax (Consequential and Transitional Provisions) Act 2006* applies to entities generally, unless its application is expressly limited;[3]
- the Transitional Act is a reference to the *Fuel Tax (Consequential and Transitional Provisions) Act 2006*;
- the transitional provisions is a reference to the relevant provisions in Schedule 3 of the Transitional Act; and
- 'acquire taxable fuel' or 'taxable fuel acquired' is a reference to 'taxable fuel that you acquire or manufacture in, or import into, Australia';

- it is assumed:
  - that if you are entitled to a fuel tax credit you meet the requirements that entitle you to the credit and are not disentitled by the disentitlement rules[4] in the FT Act;
  - that if you are claiming more than $3 million each financial year in fuel tax credits you meet the requirements of the Greenhouse Challenge Plus Programme or another programme determined, by legislative instrument, by the Environment Minister for the purposes of section 45-5 of the FT Act; and

[3] See the meaning of 'you' in section 110-5 of the FT Act.
[4] The disentitlement rules are set out in Subdivision 41-B of the FT Act.

- that if an entity is carrying on an enterprise of mining operations it is carrying on an enterprise in the form of a business[5] which involve the activities that are within the meaning of mining operations in section 11.

6. In this Ruling, a reference to you being entitled to a fuel tax credit if you acquire taxable fuel for use in an activity that falls within the meaning of 'mining operations' in section 11 of the Energy Grants Act, assumes that the requirements of either item 10 or 11 of Schedule 3 of the Transitional Act (where relevant) are met.

Class of entities

7. This Ruling 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 which involve activities that are mining operations.

How to read this Ruling

8. The Ruling section sets out the Commissioner's view on entitlement to a fuel tax credit for taxable fuel acquired or manufactured in, or imported into Australia for use in carrying on an enterprise that involves activities within the meaning of 'mining operations'.

9. For a more detailed analysis and explanation of the issues covered in the Rulings section, you should refer to the Explanation section in Appendix 1 of this Ruling.

10. This is followed by the Background section in Appendix 2 of this Ruling which provides an overview of the fuel tax credit system. Appendix 3 of this Ruling sets out a comparison table of the energy grants scheme and fuel tax credit system.

11. The Ruling is in this format so you can access more easily your specific areas of interest.

[5] An enterprise includes an activity, or a series of activities, done in the form a 'business'. See Fuel Tax Determination FTD 2006/3 Fuel tax: what is an 'enterprise' for the purposes of the *Fuel Tax Act 2006*?

Ruling

General entitlement rules for a fuel tax credit

12. You are entitled to a fuel tax credit for taxable fuel that you acquire or manufacture in, or import into, Australia[6] to the extent that you do so for use in carrying on your enterprise.[7]

13. However, you are only entitled to the fuel tax credit if, at the time you acquire the taxable fuel, you are registered for GST, or required to be registered for GST.[8] This is regardless of your turnover.[9]

14. The fuel tax credit to which you are entitled is taken into account in calculating your net fuel amount. The net fuel amount must be calculated for each tax period. If your net fuel amount is a positive figure, you must pay this amount to the Commissioner. If the net fuel amount is a negative figure, the Commissioner must pay this amount to you.

15. 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 arising under section 41-5 of the FT Act unless you are a member of the Greenhouse Challenge Plus Programme or another programme determined, by legislative instrument, by the Environment Minister for the purposes of section 45-5 of the FT Act.[10]

16. Taxable fuel means fuel on which customs or excise duty is payable.[11]

17. You must be 'carrying on an enterprise' within the meaning of section 9-20 of the GST Act to be able to be entitled to a fuel tax credit. The expression 'carrying on an enterprise' includes doing anything in the course of the commencement or termination of the enterprise.[12]

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[6] For the purposes of the FT Act, Australia has the meaning given by section 195-1 of the GST Act.
[7] Subsection 41-5(1) of the FT Act, subject to other provisions affecting your entitlement to the credit (see Subdivisions 41-B and 45-A of the FT Act).
[8] Subsection 41-5(2) of the FT Act. Division 23 of the GST Act provides who must be registered and who may be registered for GST.
[9] Under the GST Act, entities with a low annual turnover (less than $75,000 for a business entity and less than $150,000 for a non-profit body) may choose whether or not to register for GST.
[10] See section 45-5 of the FT Act.
[11] Section 110-5 of the FT Act.
[12] The definition of carrying on an enterprise in section 110-5 of the FT Act has the meaning given by section 195-1 of the GST Act. For a detailed discussion on the meaning of 'enterprise' see Miscellaneous Taxation Ruling MT 2006/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number. See also FTD 2006/3.

18. The words 'to the extent that' in subsection 41-5(1) 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 fair and reasonable basis for working out the amount of taxable fuel in respect of which you are entitled to a fuel tax credit.[13]

19. The Commissioner's view is that the 'fair and reasonable' principle applies in determining the extent of your entitlement to a fuel tax credit if the fuel is acquired for a number of uses, some of which qualify for a fuel tax credit and some of which do not.

20. 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 the credit; and
- be appropriately documented in your individual circumstances.[14]

Fuel tax credits arising between 1 July 2006 and 30 June 2008

21. Under the transitional provisions, if you acquire taxable fuel (namely diesel fuel) between 1 July 2006 and 30 June 2008 for use in carrying on your enterprise, you are entitled to a fuel tax credit under section 41-5 of the FT Act if you would have been entitled to an off-road credit in respect of the fuel.[15]

22. In determining whether you would have been entitled to an off-road credit in respect of the fuel, it is assumed that:

- the references to 'purchase or import into Australia' in the Energy Grants Act were instead references to 'acquire or manufacture in, or import into, Australia'; and
- you had disregarded subsection 51(2), section 52 (registration requirements) and section 55A.[16]

[13] For a full discussion on meaning of the terms 'to the extent that' and 'fair and reasonable' see Goods and Services Tax Ruling GSTR 2006/3 Goods and services tax: determining the extent of creditable purpose for providers of financial supplies and Goods and Services Tax Ruling GSTR 2006/4 Goods and services tax: determining the extent of creditable purpose for claiming input tax credits and for making adjustments for changes in extent of creditable purpose.

[14] 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?

[15] Item 10 of Schedule 3 of the Transitional Act.

[16] Paragraph 10(5)(b) of Schedule 3 of the Transitional Act.

23. Under subsection 65-5(1) of the FT Act, your fuel tax credit is attributable to the same tax period as your input tax credit for the creditable acquisition of the taxable fuel under the GST Act, or the same tax period that an input tax credit would have been attributable under the GST Act if the taxable fuel had been a creditable acquisition or a creditable importation.[17]

24. However, under item 12A of Schedule 3 to the Transitional Act, you may elect, before 31 December 2006, to receive early payments of fuel tax credits to which you are entitled for taxable fuel acquired between 1 July 2006 and 30 June 2008 (inclusive). If you receive an early payment of your fuel tax credit under these rules, you have an increasing fuel tax adjustment.

25. If you account on a cash basis and you provide part of the consideration for the taxable fuel in a tax period, your increasing fuel tax adjustment for an early payment of your fuel tax credit is attributable to that tax period but only to the extent that you provide the consideration in that tax period. In other cases, the increasing fuel tax adjustment is attributed to the earliest tax period to which your fuel tax credit can be attributed. Paragraphs 173 to 178 of this Ruling provide a detailed explanation of the early payments system.

Example 1: early payment of fuel tax credits

26. *Tina Enterprises Pty Ltd (Tina) carries on a mining enterprise. On 1 September 2006, Tina elects to receive early payments of fuel tax credits. Prior to 1 July 2006, Tina was entitled to energy grants for diesel fuel used in its mining operations. Tina is a quarterly BAS lodger who accounts for GST on a cash basis.*

27. *On 12 October 2006, Tina purchases and pays for diesel fuel for use in its mining operations. Tina claims an early payment of $10,000 in respect of the fuel Tina has acquired. The early payment is made to Tina on 26 October 2006.*

28. *In the BAS for the quarterly tax period ending 31 December 2006, Tina reports a fuel tax credit of a $10,000. Tina must also report an increasing fuel tax adjustment of $10,000 for this tax period.*

29. *For the tax period ending 31 December 2006, Tina has a net fuel amount of nil as Tina's increasing fuel tax adjustment is equal to the amount of the fuel tax credit.*

Example 2: attribution and the early payment of fuel tax credits

30. *Further to example 1 above, Tina receives another quantity of diesel fuel for use in mining operations on 11 December 2006. Tina pays in full for fuel on 3 January 2007. However, Tina does not acquire any fuel from 1 July 2007 to 31 March 2007.*

[17] Subsection 65-5(4) of the FT Act, provides for a later attribution of the fuel tax credit in certain circumstances.

31. *Tina claims an early payment of another $10,000. The early payment is made to Tina on 22 December 2006. Tina receives the early payment in the tax period ending 31 December 2006. However as Tina paid for the fuel on the 3 January 2007, the increasing fuel tax adjustment for the amount of the early payment is attributed to the tax period ending 31 March 2007 and not to the tax period ending 31 December 2006.*

32. *For the tax period ending 31 March 2007, Tina has a net fuel amount of nil as Tina's increasing fuel tax adjustment is equal to the amount of the fuel tax credit.*

Fuel tax credits arising between 1 July 2008 and 30 June 2012

33. Under the transitional provisions, if you acquire taxable fuel between 1 July 2008 and 30 June 2012 for use in carrying on your enterprise, you are entitled to a fuel tax credit under section 41-5 of the FT Act if you would have been entitled to an off-road credit in respect of the fuel.[18]

34. In determining whether you would have been entitled to an off-road credit in respect of the fuel, it is assumed that:

- the references to 'purchase or import into Australia' in the Energy Grants Act were instead references to 'acquire or manufacture in, or import into, Australia';
- you had disregarded subsection 51(2), section 52 (registration requirements) and section 55A; and
- the references to 'off-road diesel fuel' were instead references to the fuel.[19]

35. From 1 July 2008, eligibility for a fuel tax credit extends to petrol used in off-road qualifying activities that were previously eligible for an off-road credit under section 53.

36. From 1 July 2008, you are also entitled to a fuel tax credit for taxable fuel you acquired even if you are not entitled to an off-road credit for a qualifying use under section 53. However, your entitlement is limited to a half credit.[20]

37. From 1 July 2012, irrespective of whether or not the activity was a qualifying use under section 53, you are entitled to the full amount of the fuel tax credit for taxable fuel acquired, manufactured in or imported into, Australia for use in carrying on your enterprise.

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[18] Item 11 of Schedule 3 of the Transitional Act.
[19] Paragraph 11(5)(b) of Schedule 3 of the Transitional Act.
[20] Under subitem 11(6) of Schedule 3 of the Transitional Act the amount of your credit is half the amount worked out under Division 43 of the FT Act.

38. From 1 July 2011, coinciding with bringing alternative fuels[21] into the fuel tax system, if you acquire, manufacture in or import into, Australia, alternative fuel[22] you are entitled to a fuel tax credit for the fuel.[23] This entitlement is to the full amount of the credit.

Entitlement to fuel tax credits for taxable fuel acquired between 1 July 2006 and 30 June 2012 for use 'in mining operations'

39. If you carry on an enterprise involving mining operations and you acquire taxable fuel for use in an activity that is within the meaning of 'mining operations', in paragraphs 11(1)(a) to 11(1)(i) and the activity is not excluded from being a qualifying use by paragraphs 11(2)(a) and 11(2)(c), you are entitled to a fuel tax credit under section 41-5 of the FT Act in respect of diesel fuel that you acquire.[24]

40. For diesel fuel that you acquire between 1 July 2006 and 30 June 2008 for a use in that activity, you are entitled to the full amount of the fuel tax credit.

41. For diesel fuel and petrol that you acquire between 1 July 2008 and 30 June 2012 for a use in that activity, you are entitled to the full amount of the fuel tax credit for mining operations as defined in section 11.

42. For all taxable fuels acquired between 1 July 2008 and 30 June 2012, for use in an activity in mining operations for which an off-road credit under the energy grants scheme was not previously available, you are entitled a half credit.

43. If, between 1 July 2011 and 30 June 2012 (inclusive), you acquire, manufacture or import into, Australia alternative fuel for use in mining operations, that is, in an activity that is within the meaning of 'mining operations' in paragraphs 11(1)(a) to 11(1)(i) and the activity is not excluded from being a qualifying use by paragraphs 11(2)(a) and 11(2)(c), you are entitled to the full amount of the fuel tax credit under section 41-5 of the FT Act.

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[21] Alternative fuels such as biodiesel, ethanol, methanol, LPG, CNG and LNG begin to incur effective tax from 1 July 2011.
[22] Alternative fuel includes biodiesel, ethanol, LPG, LNG and CNG.
[23] Subitem 11(7) of Schedule 3 of the Transitional Act applies until 30 June 2012.
[24] See table in paragraph 516 for entitlement to a fuel tax credit for taxable fuel acquired for use in a vehicle with a Gross Vehicle Mass (GVM) not exceeding 3.5 tonnes.

The form of the definition of 'mining operations': means, includes, does not include

44. The use of the expressions *'means'*, *'includes'* and *'does not include'* in the definition of 'mining operations' in section 11 means that paragraphs 11(1)(c) to 11(1)(i) does not limit paragraphs 11(1)(a) and 11(1)(b). An activity that does not meet the requirements of any of paragraphs 11(1)(c) to 11(1)(i) may still be an activity that satisfies the requirements of either paragraph 11(1)(a) or 11(1)(b) and, if not excluded by subsection 11(2), may be an eligible activity.

Status of contractors and subcontractors

45. A contractor or subcontractor is entitled to a fuel tax credit if they acquire taxable fuel for use in an eligible activity that is a qualifying use under 'mining operations'. However, under the qualifying use of mining operations, a contractor or a subcontractor is not entitled to an off-road credit and therefore a fuel tax credit for taxable fuel acquired for use in the activity that relates to:

- the generation or provision of electricity solely for a mining town (paragraph 18(d)); and
- the use of taxable fuel at residential premises in the provision of food and drink, lighting, heating, air conditioning, hot water or similar amenities or the meeting of other domestic requirements of the residents of the premises (paragraph 18(e)).[25]

Example 3: generation of electricity by a contractor

46. *Goldee Mining Enterprises Ltd (Goldee Mining) has a mine site on a mining lease in a remote location in the Northern Territory. It engages Goldy Locker Contractors (Goldy Locker) to construct and provide it with power for use in mining at the mine site. Goldy Locker constructs and operates a power station for this purpose.*

47. *Goldy Locker is entitled to an off-road credit for the diesel fuel and therefore a fuel tax credit, it acquires for use in the generation of power at the power station, as this is an activity that is a mining operation under subparagraph 11(1)(b)(i).*

48. *From 1 July 2006, Goldy Locker is also entitled to a fuel tax credit under section 41-5 of the FT Act for taxable fuel acquired for use in the generation of electricity. However, Goldy Locker has only one entitlement to a fuel tax credit.*

[25] However, a contractor or subcontractor may be entitled to a fuel tax credit under section 41-5 of the FT Act for taxable fuel acquired for use in the generation of electricity.

Activities that are mining operations

Exploration or prospecting

49. You are entitled to a fuel tax credit if you acquire taxable fuel for use in the exploration or prospecting for minerals.

50. The phrase 'exploration or prospecting' means the systematic search for mineral deposits, and the subsequent determination of the extent of those deposits as part of establishing the commercial viability of mining.

'Removal of overburden' and 'other activities undertaken in the preparation of a site'

51. You are entitled to a fuel tax credit if you acquire taxable fuel for use in the removal of overburden and in other activities undertaken in the preparation of a site to enable mining for minerals to commence.

52. The phrase 'removal of overburden' means land clearing, removal of vegetation, and the removal and stockpiling of topsoil. It extends to the removal, whether by digging or blasting, of surface waste or worthless rock overlying a mineral deposit, in order to expose and mine the deposit.

Example 4: mobile manufacturing units used in the removal of overburden

53. *Blastitaway Pty Ltd (Blastitaway) is contracted by a mining company to remove overburden by blasting. The mining principal operates a mine located on a single mining lease in northern Western Australia. Rather than transport pre-mixed explosive products, Blastitaway utilises mobile manufacturing units (MMUs) to produce the explosives used on site.*

54. *Diesel fuel acquired for use in the MMUs whilst on the mining lease is considered to be for use in the removal of overburden. Blastitaway is entitled to an off-road credit as it acquires diesel fuel for use in an eligible activity. From 1 July 2006, Blastitaway is also entitled to a full fuel tax credit for the diesel fuel it acquires for use in this activity.*

55. *Diesel fuel acquired for use in the operation of the MMUs whilst on public roads, or otherwise off the mining lease, is not for a qualifying use for an off-road credit under the energy grants scheme. Nor is there an entitlement to a full fuel tax credit for such use.*

56. *However, Blastitaway may be entitled to a partial fuel tax credit for taxable fuel acquired for use in a vehicle with a GVM of more than 4.5 tonnes travelling on a public road.*

57. The phrase 'other activities undertaken in the preparation of a site to enable mining for minerals to commence' is taken to mean any activity that is undertaken in preparing a site to enable mining for minerals to commence.

Example 5: pipelines used in natural gas extraction

58. *Gas O Enterprises Ltd (Gas O) intends to mine natural gas on permits that it holds on the North West Shelf. Before mining can take place, wellheads at the point of extraction and a processing and control facility on a nearby island need to be constructed. In addition to these elements of infrastructure, pipelines are required to transport the raw gas fifty kilometres from the wellhead to the processing and control facility. Gas O transports construction material by vessels to the relevant sites for the construction work to be done.*

59. *Activities undertaken in the preparation of a site to allow mining for minerals to commence are not restricted to those undertaken at the point of mineral extraction, or the area immediately surrounding that point. Therefore, the construction of the pipeline by Gas O is an activity undertaken in the preparation of a site to enable mining for minerals to commence. Gas O is entitled to an off-road credit for diesel fuel acquired for use in this activity. From 1 July 2006, Gas O is entitled to a fuel tax credit for diesel fuel acquired for use in the construction of the pipeline.*

60. *Gas O is not entitled to an off-road credit, under the mining operations category, for diesel fuel purchased for use in the transport of construction materials. This is not an activity undertaken in the preparation of a site to enable mining for minerals to commence and, therefore, is not a mining operation. The transport activities take place prior to the activities undertaken in the preparation of a site to enable mining for minerals to commence. It may, however, qualify for an off-road credit under the category of 'use in marine transport' under subsection 53(3) and as such may qualify for entitlement to a fuel tax credit.*

Mining for minerals

61. You are entitled to a fuel tax credit if you acquire taxable fuel for use in operations for the recovery of minerals being mining for those minerals, including the recovery of salts by evaporation.

62. The generation of electricity at a mine site, that is for use in a mining operation under subparagraph 11(1)(b)(i), is also part of the operations for the recovery of minerals, and hence a qualifying use.

Example 6: mining for minerals – generation of electricity for support facilities

63. *Blackstump Mining Ltd (Blackstump) operates a mine site on a mining lease in remote South Australia. It constructs its own power station to provide power for its mining operations. In addition to power provided to equipment used in the extraction of ore, the station also provides power to a small camp housing mine staff, administration offices and other amenities located on the mining lease.*

64. *Blackstump is entitled to an off-road credit for diesel fuel acquired for use in the generation of the power, as this is an activity that is a mining operation under subparagraph 11(1)(b)(i). From 1 July 2006, Blackstump is also entitled a fuel tax credit under section 41-5 of the FT Act for taxable fuel acquired for use in the generation of electricity. However, Blackstump has only one entitlement to fuel tax credit.*

65. Mining is the action, process or industry of extracting minerals or ores bearing minerals from a mine or mines.[26] It does not include the synthetic production or manufacture of substances that are minerals.

Beneficiation

66. You are entitled to a fuel tax credit if you acquire taxable fuel[27] for use in operations for the recovery of minerals being the beneficiation of those minerals or of ores bearing those minerals.

67. Beneficiation is a technical term applicable to a range of processes undertaken in the mining or metallurgical industries. It is used to describe a treatment to improve, upgrade or concentrate the quality of mineral bearing ore up to, but not including, the refining or final pyrometallurgical or hydrometallurgical process whereby metal is produced.

68. It is clear that 'beneficiation' is distinct from refining to produce metal, or the process of manufacturing, or a process, which results in the destruction of a recovered mineral.

69. You are entitled to a fuel tax credit if you acquire taxable fuel for use in the beneficiation, in Australia, of imported minerals or imported ores.

Example 7: beneficiation of imported ore

70. *U Copper Enterprises Ltd (U Copper) is engaged in the mining and beneficiation of ores bearing copper at various locations throughout Australia. In addition to these activities, they also source ores bearing copper from a number of overseas locations for importation and subsequent beneficiation.*

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[26] *The Macquarie Dictionary*, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.
[27] Subject to items 10 and 11 of Schedule 3 of the Transitional Act.

It uses rail transport to transport the ore from the port to its beneficiation plant. It acquires diesel fuel for use in the beneficiation of the ore.

71. *The beneficiation of the imported ore qualifies as a mining operation under the energy grants scheme. From 1 July 2006, U Copper is entitled to a fuel tax credit as it acquires diesel fuel for use in a mining operation being beneficiation of ores bearing copper. From 1 July 2008, U Copper is entitled to a fuel tax credit for taxable fuel (diesel and petrol) acquired for use in the beneficiation of imported ore.*

72. *However, the off-road transport of the imported ore from the port to the place of beneficiation is not a mining operation under subparagraph 11(1)(b)(ii). In this case, the off-road transport may be eligible for a fuel tax credit under the 'use in rail transport' entitlement category of the energy grants scheme.*

Activities included as 'mining operations'

Solely

73. Some activities included in the definition of mining operations must be solely for a particular purpose.[28]

74. The Commissioner takes the view that the provisions that contain the solely requirement should not be interpreted so narrowly as to prevent their application in a practical and commonsense manner.

75. The Commissioner considers that where an entity who carries on a paragraph 11(1)(a) or (11)(1)(b) mining operation acquires taxable fuel for use in a number of activities, an apportionment can be made as to its intended use in the different activities.[29] If a portion of the taxable fuel is acquired for use in a qualifying activity that has the solely requirement, an entitlement to a fuel tax credit arises for the portion of the taxable fuel that is acquired for use in the activity that qualifies as a mining operation.

Example 8: solely – pumping of water

76. *Minotrics Pty Ltd (Minotrics) carries on an enterprise of mining. As part of Minotric's mining enterprise, it operates a mine and associated mining town in the Northern Territory. Minotrics' sources water for its mining operations from a series of bores. Minotrics operates a pumping station to supply water via a pipeline to the mine site and its mining town. Fuel is acquired for use in the pumping of water for these purposes.*

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[28] The word solely is used in paragraphs 14(a), 14(b) and 14(c) in the definition of 'mining water activity', paragraph 15(e) in the definition of 'mining construction activity', paragraph 17(b) and 17(c) of the definition of 'mining vehicle activity', and in paragraph 18(d) of the definition of 'sundry mining activity'.

[29] Or, in relation to the activities mentioned in paragraphs 14(a), 14(b), 14(c), 15(e), 17(b) and 17(c), by a contractor contracted by that entity.

77. *Paragraph 14(b) provides that a mining water activity includes the pumping of water solely for use in a mining operation if the conditions specified in subparagraphs 14(b)(i) and (ii) are met. In the case of Minotrics, both those conditions are met.*

78. *At the time of purchase of the diesel fuel for use in the pumping of water, Minotrics apportions on a reasonable basis the amount of water (in litres) for each use and that:*

- *95% of the pumping of water is solely for its general mining operations; and*
- *5% of it is provided to the mining town.*

79. *From 1 July 2006, Minotrics is entitled to a fuel tax credit for 95% of the diesel fuel, being in respect of an activity that is a mining operation under subsection 11(1).*

80. *From 1 July 2008, Minotrics is entitled to a half credit for taxable fuel acquired for use in pumping water to the mining town.*

81. *From 1 July 2012, Minotrics is entitled a full fuel tax credit for taxable fuel acquired for use in pumping water to the mining tow*n.

At the place where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on

82. The place where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on includes the whole of the area, site or land legally occupied for the purposes of the activities mentioned in those paragraphs. This includes any land that is legally occupied for purposes of private roads that connect a mine site to the place of beneficiation of minerals from the mine, or to connect those areas to a public road.[30]

Example 9: mine site and beneficiation plant connected by private road

83. *Digitup Enterprise Ltd (Digitup), a mining company runs an integrated mining operation that consists of three pits, a camp and an administration base, which are all located on one mining lease. The operation also includes a beneficiation plant that, for reasons of geographic practicality, is located on a non-adjoining lease.*

84. *An access road links the pits and the camp to the beneficiation plant. The road runs across a series of adjoining miscellaneous leases held by Digitup. These miscellaneous leases are issued under a State Mining Act, and were granted to the mining company for the purpose of activities directly connected to mining operations.*

[30] *Re Hampton Transport Services Pty Ltd and Chief Executive Officer of Customs* (2000) 34 AAR 130; (2001) 49 ATR 1005; [2001] AATA 894.

85. *The pits, beneficiation plant, camp and the access road are all on land legally occupied by Digitup for the purpose of carrying on mining operations. They are therefore 'at the place' at which a mining operation under paragraph 11(1)(a) or 11(1)(b) is carried on.*

Example 10: integrated mining operation – onshore base and offshore gas production site

86. *Gas to You Ltd (Gas to You), as an operator, is engaged in oil and gas exploration and production off the southern Australian coast. Gas to You runs an integrated mining operation that consists of an onshore equipment base and an offshore gas production well. The offshore gas production well is situated on an offshore mining permit issued under the Petroleum (Submerged Lands) Act 1967.*

87. *The onshore base and offshore gas production well are sites legally occupied for the purpose of carrying on mining operations. The two locations are separated by many kilometres of ocean.*

88. *Even though Gas to You runs an integrated mining operation, the onshore base and offshore gas production sites are two separate sites at which mining operations occur. The two locations and the space between them can not be considered to be 'at the place' as they are separated by ocean not legally occupied by Gas to You.*

Mining transport activity

89. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining transport activity.

90. A mining transport activity is defined in section 12. Under paragraph 12(a), journeys involving the transportation of minerals or mineral bearing ore for beneficiation are a qualifying use. Under paragraph 12(b), the transporting of natural gas for liquefaction is also a qualifying use. These transport activities are not affected by the exclusion in paragraph 11(2)(c).

Example 11: mining transport activity – closed loop journeys involving several mine sites

91. *Manymines Pty Ltd (Manymines) has a number of mine sites in close proximity on adjoining leases. It also operates a beneficiation plant located some 35 kilometres away on a separate lease*.

92. *Mineral bearing ore for beneficiation is transported via rail from mine sites A and C to its beneficiation plant. Raw materials and consumables for use in mining at the mine sites are then loaded at the beneficiation plant, and are transported to mine site B.*

93. *The raw materials are unloaded at mine site B. The empty train then travels to mine sites A and C to collect further mineral bearing ore for beneficiation.*

94. *Each of these journeys is considered to form part of a closed loop journey. Each journey is a mining transport activity. From 1 July 2006, Manymines is entitled to a fuel tax credit as it acquires taxable fuel (diesel fuel) for use in journeys that are mining operations under paragraph 12(a) and 12(b).*

95. A mining transport activity does not include:

- the transportation of imported minerals or ores from a port to a place in Australia for beneficiation; or
- the transportation of minerals or ores to a port of export for beneficiation overseas.

Example 12: not a mining transport activity – transport of minerals for overseas beneficiation

96. *Nickcob Mining Ltd (Nickcob) mines ore bearing nickel and cobalt on a mining lease in northern Western Australia. All beneficiation of the ore takes place in the Philippines. After extraction, the ores are transported via rail to a nearby port for export.*

97. *Nickcob is not entitled to a fuel tax credit under the qualifying use of mining operations for taxable fuel acquired for use in transporting the ore for export to, and subsequent beneficiation in, the Philippines. This transport activity is not a mining transport activity. However, an entitlement to a fuel tax credit for taxable fuel acquired for 'use in rail transport' may exist.*

Mining rehabilitation activity

98. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining rehabilitation activity.

99. Where rehabilitation occurs at a site that has been used for a paragraph 11(1)(a) or 11(1)(b) mining operation and also for other industrial purposes, only activities undertaken to rehabilitate those parts of the site used for mining operations are a qualifying use.

Example 13: mining rehabilitation activity – rehabilitation of a mining and industrial site

100. *Major Demolition Ltd (Major Demolition) is contracted by the former operators of a de-commissioned metal refining and extrusion plant to demolish and remove all plant and to rehabilitate the entire site.*

101. *The site contains an area where mineral bearing ore was stockpiled prior to beneficiation and a processing plant where the ore was beneficiated. The site also contains a metal smelting plant and an extrusion plant where the refined metal was formed into various profiles.*

102. *Only those two areas of the site where the ore was stockpiled prior to beneficiation and where the beneficiation plant is located are places where 'mining operations' were carried out. Major Demolition must determine the amount of fuel used in rehabilitating those two areas.*

103. *Major Demolition is entitled to a fuel tax credit to the extent that diesel fuel is acquired for use to rehabilitate those two specific areas within the site. To the extent that Major Demolition acquires diesel fuel for use in the rehabilitation of the other places at the site:*

- *from 1 July 2006 to 30 June 2008 (inclusive),no entitlement to a fuel tax credit arises in respect of this diesel fuel.*
- *for the period 1 July 2008 to 30 June 2012 (inclusive), Major Demolition is entitled to a half credit for taxable fuel acquired for use in the rehabilitation of the other areas of the site where mining operations did not take place.*
- *from 1 July 2012, Major Demolition is entitled to a fuel tax credit for taxable fuel acquired for use in carrying on its enterprise.*

Mining water activity

104. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining water activity.

Mining construction activity

105. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining construction activity.

106. The activities of constructing and maintaining private access roads (by the person who conducts the mining operation or their contractor) are restricted to 'the place' where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on. The construction of a private access road on land that is the subject of a miscellaneous licence granted to the person, linking a mining site to a public road qualifies as a mining operation under paragraph 15(a) as being 'at the place'.[31]

[31] See the facts of the case in *Re Hampton Transport Services Pty Ltd and Chief Executive Officer of Customs* (2000) 34 AAR 130; (2001) 49 ATR 1005; [2001] AATA 894.

Example 14: private access road 'at the place'

107. *Goldflinger Pty Ltd (Goldflinger) carries on an enterprise of gold mining at a site northwest of Kalgoorlie. In order to facilitate access to the site, a private road is required to link it to a public road. The public road is 60 kilometres away.*

108. *The mine itself is located on a mining lease. The private road is to be constructed partly on this lease, as well as on a series of adjoining miscellaneous leases held by Goldflinger. These miscellaneous leases are issued under the State Mining Act, and were granted to Goldflinger for the purpose of activities directly connected to mining operations.*

109. *As the access road is to be constructed on land legally occupied by Goldflinger for the purposes of undertaking a mining operation, it is 'at the place'. The construction is a mining construction activity.*

110. *Goldflinger is entitled to a fuel tax credit for taxable fuel acquired for use in the construction and maintenance of the road.*

Example 15: private access road not 'at the place'

111. *Further to example 14, Goldflinger wishes to facilitate quicker access to the mine site by constructing a private road from the mine site to a regional airstrip 20 kilometres away.*

112. *The mine itself is located on a mining lease. The regional airstrip is on public land which adjoins the mining lease. The private road is to be partly constructed on the mining lease and partly on public land leading to the regional airstrip.*

113. *As the access road does not connect parcels of land legally occupied for the purposes of carrying on the relevant mining operations, it is not 'at the place'. The construction of this private access road is not a mining construction activity even though the road may be for use in a mining operation.*

114. *Goldflinger is not entitled to a fuel tax credit for taxable fuel acquired for use in the construction and maintenance of the road.*[32] *From 1 July 2008 to 30 June 2012 (inclusive), Goldflinger is entitled to a half credit for taxable fuel acquired for use in the construction and maintenance of the road. From 1 July 2012, Goldflinger is entitled to a full credit for this activity.*

[32] However, that portion of the construction and maintenance activity which occurs at the place where the mining operation is carried on may be eligible as a paragraph 11(1)(a) or 11(1)(b) mining operation.

Mining waste activity

115. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining waste activity.

Mining vehicle activity

116. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining vehicle activity.

Sundry mining activity

117. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a sundry mining activity.

Use of taxable fuel 'at' residential premises

118. In the context of the phrase 'at residential premises' in paragraph 18(e), if taxable fuel is used in plant or equipment that is reasonably identified with those premises then the taxable fuel is for a use that qualifies. The Commissioner considers that plant or equipment is reasonably identified with the residential premises if it is appurtenant to, and coherent with, the premises sufficient for it to be said that it 'belongs' to those premises.

Activities excluded from mining operations

119. You are not entitled to a fuel tax credit if you acquire taxable fuel for use in an activity that is excluded from the definition of 'mining operations' by subsection 11(2).[33]

120. The exclusions relate to:

(a) certain quarrying or dredging operations;

(b) the use of vehicles not exceeding 3.5 tonnes gross vehicle mass, other than certain vehicles; or

(c) the transport of people, equipment or goods to or from a place, or a place adjacent to that place, where a mining operation as defined in subsection 11(1) is or is to be carried on, with certain exceptions.

[33] Subject to the requirements of either item 10 or 11 of Schedule 3 of the Transitional Act. For a full discussion of the transitional provisions, see paragraphs 171 to 184 of this Ruling.

Example 16: mining for gravel – a quarrying operation

121. *Big Pit Pty Ltd (Big Pit) operates a gravel quarry. They are contracted to supply dolerite gravel to Hard 'n Fast Ltd for use as an aggregate in pre-mix concrete.*

122. *Big Pit targets the parts of their dolerite deposit that meet the specification required by Hard 'n Fast Ltd. The dolerite is crushed to specified gravel sizes and processed by Big Pit to remove a small proportion of contaminant and debris. Big Pit tests each truck load for compliance with the required specification.*

123. *Big Pit's quarrying operation is undertaken to recover gravel for use as gravel and not its specific mineral contents or to recover specific minerals that are contained within the gravel. Diesel fuel acquired for use in Big Pit's mining operation is excluded from entitlement for an off-road credit because its operations are for the quarrying of materials excluded from the definition of minerals. It is also excluded from entitlement for an off-road credit by paragraph 11(2)(a).*

124. *Big Pit is therefore not entitled to a fuel tax credit for diesel fuel acquired between 1 July 2006 and 30 June 2008 inclusive for use in these activities. However, from 1 July 2008 to 30 June 2012 (inclusive) an entitlement to a half credit exists for taxable fuel acquired for use in Big Pit's quarrying operation. From 1 July 2012, Big Pit will be entitled a full fuel tax credit for its quarrying operation.*

Example 17: activities excluded under paragraph 11(2)(c) – the towing of off-shore drilling platforms

125. *Big Towaways Enterprises Ltd (Big Towaways) is contracted by a mining company to transport a concrete gravity structure (CGS) from Hobart to Bass Strait. The CGS is to be used in the drilling for oil. For this to happen, Big Towaways needs to move their vessels from Townsville to Hobart.*

126. *The movement of the vessels from Townsville to Hobart is not a mining operation under subsection 11(1).*

127. *The towing of the CGS is a transport activity that is within paragraph 11(2)(c) and is excluded from being a mining operation for the purposes of the energy grants scheme.*

128. *Big Towaways is not entitled to off-road credits for diesel fuel purchased for use in moving its vessels from Townsville to Hobart and for towing the CGS from Hobart to the Bass Strait as they are not qualifying uses.*

129. *However, the diesel fuel used in both the forward journey from Townsville to Hobart and in the subsequent towing activities may fall for consideration under the 'use in marine transport' category of the energy grants scheme. Big Towaways may be entitlted to a fuel tax credit on this basis.*

The exclusion from the qualifying use 'in mining operations' of taxable fuel acquired for use in propelling any vehicle on a public road

130. You are not entitled to a fuel credit under the qualifying activity of mining operations for taxable fuel acquired for use in propelling any vehicle on a public road.

131. Although not a qualifying use in mining operations, you are entitled to a fuel tax credit under section 41-5 of the FT Act for taxable fuel acquired for use in a vehicle[34] with a GVM greater than 4.5 tonnes, travelling on a public road.[35]

Meaning of 'public road'

Roads that are public roads

132. For the purposes of the subsection 53(2) mining operations exclusion, the Commissioner considers that a road is a public road if:

- it is opened, declared or dedicated as a public road under a statute;
- it is vested in a government authority having statutory responsibility for the control and management of public road infrastructure; or
- it is dedicated as a public road at common law.

Example 18: a public road

133. *Frog Mining Pty Ltd (Frog Mining) mines nickel ore in a remote area of North West Australia. As part of Frog Mining's agreement with the State Government, Frog Mining is required to contribute to the construction and maintenance costs of a new road linking a state highway to a remote town.*

134. *The road is to be constructed, maintained and managed by the state authority responsible for road transport infrastructure. Frog Mining can not deny access to this road by members of the public.*

135. *The road is also to be constructed on land covered by Frog Mining's mining lease.*

136. *The road is used by persons engaged in Frog Mining's operations.*

137. *Even though Frog Mining has contributed to the cost of construction and maintenance of the road, the road linking the state highway to the town site is a public road as the road was constructed for public use and not for the purposes of Frog Mining's mining operations.*

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[34] The term 'vehicle' is not defined and takes its ordinary meaning. It includes a 'road vehicle' as defined in section 4.
[35] Subject to meeting the requirements of section 41-25 of the FT Act.

Roads that are not public roads

138. The Commissioner takes the view that the following are not public roads for the purposes of the subsection 53(2) mining operations exclusion:

- a road constructed or maintained under a statutory regime by a public authority that is not an authority responsible for the provision of road transport infrastructure, in circumstances where the statutory regime provides that public use of, or access to, the road is subordinate to the primary objects of the statutory regime;
- a road that has not been dedicated as a public road over privately owned land; and
- a road that is a private access road for use in a paragraph 11(1)(a) or 11(1)(b) mining operation.[36]

Example 19: a private road

139. *Further to example 18, as part of Frog Mining's agreement with the State Government, Frog Mining is also responsible for the construction and maintenance of roads to be used in its operations.*

140. *To facilitate access to its mining operations, Frog Mining is required to construct a road from a state highway to its mine site.*

141. *The road is constructed on land legally occupied for purposes of the mining lease.*

142. *The road is shown on maps of the local area and as such the road may at times be used by persons not engaged in Frog Mining's operations. Frog Mining has the ability to deny members of the public access to the road.*

143. *The road linking the mine site to the state highway is not a public road for the purposes of the subsection 53(2) mining operations exclusion. The road is a private road*[37] *as Frog Mining constructed the road for it own use, the road is on land legally occupied for the purposes of mining operations and public use is irregular and may be denied.*

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[36] However, the transport of people, equipment to or goods from a place, or a place adjacent to that place, where a paragraph 11(1)(a) or 11(1)(b) mining operation is or is to be carried on may not be a qualifying activity because of the operation of paragraph 11(2)(c).

[37] The road is also a 'private access road' for the purposes of paragraph 15(a). Also, see discussion on the exclusion of certain activities from 'mining operations' at paragraphs 506 to 513 of this Ruling.

Example 20: a private road

144. *Toad Mining Pty Ltd (Toad Mining) mines nickel in a remote region of Australia. Frog Mining Pty Ltd (Frog Mining) mines nickel in an adjacent lease to Toad Mining.*

145. *Toad Mining and Frog Mining are jointly responsible for the construction and on going maintenance of a road from a state highway to a point where the access road splits in two (section A), with a spur to each mining operation (sections B and C). Toad Mining and Frog Mining are each responsible for the construction and on going maintenance of their respective spur roads.*

146. *Sections B and C of the road are constructed on land legally occupied for the purposes of the mining operations of Frog Mining and Toad Mining. Section A is constructed on a series of adjoining miscellaneous leases held by either mining company. Section A of the road is not dedicated for public use.*

147. *Persons engaged in either company's mining operations use the road.*

148. *The road is shown on maps of the local area and as such the road may at times be used by persons not engaged in either company's mining operations.*

149. *The road linking the mine sites to the state highway is not a public road for the purposes of the subsection 53(2) mining operations exclusion. The road is a private road*[38] *as it is constructed for the use in mining operations; public use is irregular and may be denied.*

Date of effect

150. This Ruling applies from 1 July 2006.[39]

151. However, the Ruling 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 Ruling (see paragraphs 75 to 77 of Taxation Ruling TR 2006/10 Income tax, fringe benefits tax and product grants and benefits: Public Rulings).

Note: the Addendum to this Ruling that issued on 15 August 2007 explains our view of the law as it applied as follows:

- paragraph 3 of the Addendum apply on and from 1 July 2006; and

[38] The road is also a 'private access road' for the purposes of paragraph 15(a). Also, see discussion on the exclusion of certain activities from 'mining operations' at paragraphs 506 to 513 of this Ruling.

[39] The FT Act commenced on 1 July 2006. For off-road credits for mining operations in relation to diesel fuel purchased or imported before 1 July 2006 refer to Product Grants and Benefits Ruling PGBR 2005/2 Energy grants: off-road credits for mining operations.

- paragraphs 1, 2 and 4 of the Addendum apply on and from 1 July 2007.

Withdrawal

152. This Ruling is withdrawn and ceases to have effect on 1 July 2012. The Ruling continues to apply, in respect of the fuel tax law ruled upon, to all taxpayers within the specified class who acquire, manufacture in, or import into Australia, taxable fuel before 1 July 2012. Thus, the Ruling continues to apply to those taxpayers, even following its withdrawal, who acquire taxable fuel prior to the withdrawal of the Ruling (see paragraph 46 of TR 2006/10).

Commissioner of Taxation
4 October 2006

Appendix 1 – Explanation

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.

153. The fuel tax credit system commenced on 1 July 2006. Prior to the commencement of the fuel tax credit system, claims for an energy grant for off-road credits for diesel fuel purchased for the qualifying use of mining operations were made under the energy grants scheme.

General entitlement rules for a fuel tax credit

154. You are entitled to a fuel tax credit[40] for taxable fuel that you acquire or manufacture in, or import into, Australia to the extent that you do so for use in carrying on your enterprise.[41]

155. However, you are only entitled to the fuel tax credit if, at the time you acquire the taxable fuel, you are registered for the GST, or required to be registered for the GST.[42] This is regardless of your turnover.

156. You must be 'carrying on an enterprise' within the meaning of section 9-20 of the GST Act to be able to claim a fuel tax credit. The expression 'carrying on an enterprise' includes doing anything in the course of the commencement or termination of the enterprise.

157. The expressions 'fuel tax', 'taxable fuel', 'acquire or manufacture in', and for 'use in carrying on your enterprise' are concepts that differ to terms used in the Energy Grants Act.

158. Fuel tax means duty that is payable on fuel under the *Excise Act 1901* or the *Customs Act 1901* and the respective Tariff Acts,[43] other than any duty that is expressed as a percentage of the value of fuel for the purposes of section 9 of the *Customs Tariff Act 1995*.[44]

159. Taxable fuel means fuel on which customs or excise duty is payable.[45]

160. You will not be considered to have used the taxable fuel if you sell the taxable fuel to another entity.[46]

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[40] The amount of your fuel tax credit is worked out under Division 43 of the FT Act.
[41] Subsection 41-5(1) of the FT Act. Subject to other provisions affecting your entitlement to the credit (see Subdivisions 41-B and 45-A of the FT Act).
[42] Subsection 41-5(2) of the FT Act.
[43] *Excise Tariff Act 1921* and *Customs Tariff Act 1995*.
[44] See section 110-5 of the FT Act and note the exceptions – that is, fuels specifically excluded from the definition of taxable fuel in section 110-5.
[45] Section 110-5 of the FT Act.
[46] The meaning of the term 'use' is explained in paragraphs 2.33 to 2.37 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006.

161. You only need to acquire taxable fuel with the intention of using it for an eligible purpose to be entitled to a fuel tax credit. It is not necessary for the taxable fuel to have been actually used by you for an eligible purpose at the time you make the claim for your fuel tax credit. However, if you acquire the taxable fuel with the intention of using it for a particular purpose but subsequently use the taxable fuel for a different purpose and the amount of your fuel tax credit, worked out on the basis of the intended use is different from the amount to which you are actually entitled to worked out on the basis of actual use, you will have a fuel tax adjustment.[47]

162. Under the FT Act, you are required to calculate your net fuel amount[48] for each tax period.[49] Your net fuel amount is worked out using the formula[50] set out in subsection 60-5(1) of the FT Act. The net fuel amount is claimed on your BAS. If the net fuel amount is positive, you must pay that amount to the Commissioner. If the net fuel amount is negative, the Commissioner must pay that amount to you. The attribution rules in Division 65 of the FT Act determine the tax period to which your fuel tax credit is attributed.[51]

163. 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 arising under section 41-5 of the FT Act unless you are a member of the Greenhouse Challenge Plus Programme or another programme determined, by legislative instrument, by the Environment Minister for the purposes of section 45-5 of the FT Act.[52]

General principles of apportionment

164. The words 'to the extent that'[53] in subsection 41-5(1) of the FT Act allow for apportionment between a use that qualifies and one that does not. You can use any reasonable basis for apportionment to work out your entitlement to a fuel tax credit if you acquire taxable fuel that you use for qualifying and non-qualifying uses.

165. An apportionment can be made on the basis of an intended use even if precise quantification cannot be made at the time that the taxable fuel is acquired.

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[47] Division 44 of the FT Act.
[48] See Division 60 of the FT Act. The net fuel amount reflects how much you or the Commissioner must pay.
[49] See sections 61-15 and 61-20 of the FT Act.
[50] Under the formula, Net fuel amount = Total fuel tax – Total fuel tax credits + Total increasing fuel tax adjustments – Total decreasing fuel tax adjustments where the total fuel tax is zero.
[51] See subsections 65-5(1) to 65-5(3) of the FT Act for the primary attribution rules for fuel tax credits. In some circumstances, you can claim a fuel tax credit in the tax period in which the fuel is used – see subsection 65-5(4) of the FT Act.
[52] See section 45-5 of the FT Act.
[53] See GSTR 2006/3 and GSTR 2006/4 for a full discussion on meaning of the terms 'to the extent that' and 'fair and reasonable'.

166. In *Collector of Customs v. Pozzolanic Enterprises Pty Limited*,[54] in relation to the facts of that case, the Court stated:

> The fact that only a proportion of the fuel so purchased was intended for that use and the fact that it might not be precisely quantified at the point of sale does not take the purchase outside the rebate provisions. So long as there is some means of establishing that a proportion of the fuel is to be used for an exempt purpose, the precise quantification can await the actual use.[55]

167. If you acquire taxable fuel partly for use in carrying on your enterprise of mining operations, apportionment of the fuel tax credit referable to that acquisition is required. In practice, this will usually involve an initial decision about whether the acquisition of the fuel is 'solely' for a particular purpose (in which case apportionment will not be required).

168. 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*.[56] 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:

> 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 dependants 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.

[54] *Collector of Customs v. Pozzolanic Enterprises Pty Limited* (1993) 43 FCR 280; (1993) 115 ALR 1.
[55] *Collector of Customs v. Pozzolanic Enterprises Pty Limited* (1993) 43 FCR 280 at 290; (1993) 115 ALR 1 at 12.
[56] *Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47.

> 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.[57]

169. The High Court therefore emphasised the necessity of considering the facts of individual cases. Where items of expenditure (in relation to 'acquire, manufacture in or import into, Australia' in the context of the FT Act) are not referable to a particular object, then apportionment is required using a method which results in a fair and reasonable reflection of the relation of the expenditure to assessable income.

170. Following the principles set out by the High Court, the method you choose to apportion the taxable fuel that you acquire between a qualifying use and a non-qualifying use needs to:

- be fair and reasonable;
- reflect the planned use of the taxable fuel if you are claiming on the basis of intended use; and
- be appropriately documented in your individual circumstances.

Fuel tax credits arising between 1 July 2006 and 30 June 2008

171. Under the transitional provisions, if you acquire taxable fuel (namely diesel fuel) between 1 July 2006 and 30 June 2008 for use in carrying on your enterprise, you are entitled to a fuel tax credit under section 41-5 of the FT Act if you would have been entitled to an off-road credit under the energy grants scheme in respect of the fuel.[58]

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[57] *Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47 at 58-59.
[58] Item 10 of Schedule 3 of the Transitional Act.

172. In determining whether or not you would have been entitled to an off-road credit in respect of the fuel, it is assumed that:

- the references to 'purchase or import into Australia' in the Energy Grants Act were instead references to 'acquire or manufacture in, or import into, Australia'; and
- you had disregarded subsection 51(2), section 52 (registration requirements) and section 55A.[59]

Early payments of fuel tax credits

173. Under the transitional provisions, you may elect to claim for an early payment of fuel tax credit for taxable fuel acquired between 1 July 2006 and 30 June 2008.[60]

174. The Commissioner must make an early payment to you, if:[61]

- you elect before 31 December 2006 (in the approved form) to receive an early payments of a fuel tax credit;
- you were previously entitled to an energy grant under the Energy Grants Act;
- you acquire taxable fuel between 1 July 2006 and 30 June 2008 (inclusive);
- you are entitled to a fuel tax credit under section 41-5 of the FT Act as affected by the Transitional Act;
- the fuel tax credit or part of the fuel tax credit is attributable to:
  - if you account for GST on a cash basis – the tax period in which the claim for the early payment is made or a later tax period;[62]
  - if you do not account for GST on a cash basis – the tax period in which the claim for early payment is made;[63] and
- you have not previously received an early payment of the fuel tax credit for the taxable fuel.[64]

175. The amount of the early payment is the amount of the fuel tax credit to which you are entitled.[65]

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[59] Paragraph 10(5)(b) of Schedule 3 of the Transitional Act.
[60] Item 12A of Schedule 3 of the Transitional Act.
[61] Subparagraph 12A(1)(c)(i) of Schedule 3 of the Transitional Act. The entity or another member of the GST group for which the entity is the representative member or another participant in a GST joint venture for which the entity is the joint venture operator must have been entitled to an energy grant.
[62] Subparagraph 12A(1)(e)(i) of Schedule 3 of the Transitional Act.
[63] Subparagraph 12A(1)(e)(ii) of Schedule 3 of the Transitional Act.
[64] Paragraph 12A(1)(f) of Schedule 3 of the Transitional Act.
[65] Subitem 12A(2) of Schedule 3 of the Transitional Act.

176. If you:

- receive an early payment;
- account on a cash basis; and
- in a tax period provide part of the consideration for the taxable fuel,

you have an increasing fuel tax adjustment for the amount of the early payment, but only to the extent that you provide the consideration in that tax period. The increasing fuel tax adjustment is attributable to the tax period.[66]

177. If you:

- receive an early payment; and
- account on a non-cash basis,

you have an increasing fuel tax adjustment for the amount of the early payment. The increasing fuel tax adjustment is attributable to the earliest tax period to which the credit can be attributed.[67]

178. If you have elected to receive early payments you are not obliged to claim all your fuel tax credits as an early payment. Fuel tax credits not claimed as an early payment can be claimed on the BAS in the relevant tax period.

Fuel tax credits arising between 1 July 2008 and 30 June 2012

179. Under the transitional provisions, if you acquire taxable fuel between 1 July 2008 and 30 June 2012 (inclusive) for use in carrying on your enterprise, you are entitled to a fuel tax credit under section 41-5 of the FT Act if you would have been entitled to an off-road credit in respect of the fuel.[68]

180. From 1 July 2008, eligibility for a fuel tax credit also extends to petrol used in off-road qualifying activities that were previously eligible for an off-road credit under the Energy Grants Act.

181. In determining whether or not you would have been entitled to an off-road credit in respect of the fuel, it is assumed that:

- the references to 'purchase or import into Australia' in the Energy Grants Act were instead references to 'acquire or manufacture in, or import into, Australia' and references to 'off-road diesel fuel' were instead references to taxable fuel;

[66] Paragraph 12A(3)(a) of Schedule 3 of the Transitional Act.
[67] Paragraph 12A(3)(b) of Schedule 3 of the Transitional Act.
[68] Item 11 of Schedule 3 of the Transitional Act.

- you had disregarded subsection 51(2), section 52 (registration requirements) and section 55A of the Energy Grants Act; and
- the references to 'off-road diesel fuel' were instead references to the fuel.[69]

182. From 1 July 2008, under the transitional provisions, if you are not entitled to an off-road credit for a qualifying use under section 53 of the Energy Grants Act, you are entitled to a fuel tax credit for taxable fuel (includes diesel and petrol) under section 41-5 of the FT Act. However, your entitlement is limited to a half credit.[70]

183. From 1 July 2012, irrespective of whether or not the activity was a qualifying use under section 53, you will be entitled to the full amount of the fuel tax credit for taxable fuel acquired, manufactured in or imported into, Australia for use in carrying on your enterprise.

184. From 1 July 2011, coinciding with bringing alternative fuels[71] into the fuel tax system, if you acquire, manufacture in, or import into, Australia alternative fuel[72] for use in carrying on your enterprise you are entitled to a fuel tax credit.[73]

Entitlement to fuel tax credits for taxable fuel acquired between 1 July 2006 and 30 June 2012 for use 'in mining operations'

185. You are entitled to a fuel tax credit for taxable fuel acquired for use or used 'in mining operations'. The expression 'mining operations' is defined in subsection 11(1).

186. In the context of the phrase 'in mining operations' in subsection 53(2), the preposition 'in' means 'in the course of' or 'in the process or act of'. Therefore to be entitled to a fuel tax credit under mining operations, your activities must take place 'in' mining operations.

187. In *Chief Executive Officer of Customs v. WMC Resources Ltd (as agent for East Spar Alliance)*,[74] Nicholson J, stated:

> The word 'in' as it appears in para (a) of the definition of 'mining operations' is to be understood in this context as 'inclusion within, or occurrence during the course of…'

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[69] Paragraph 11(5)(b) of Schedule 3 of the Transitional Act.
[70] Under subitem 11(6) of Schedule 3 of the Transitional Act the amount of your credit is half the amount worked out under Division 43 of the FT Act.
[71] Alternative fuels such as biodiesel, ethanol, methanol, LPG, CNG and LNG begin to incur effective fuel tax from 1 July 2011.
[72] Alternative fuel includes biodiesel, ethanol, LPG, LNG and CNG.
[73] Subitem 11(7) of Schedule 3 of the Transitional Act applies until 30 June 2012.
[74] *Chief Executive Officer of Customs v. WMC Resources Ltd (as agent for East Spar Alliance)* (1998) 158 ALR 241 at 259; (1998) 87 FCR 482 at 501; see also *Re* W*andoo Alliance Pty Ltd and Chief Executive Officer of Customs* [2001] AATA 801 paragraph 9; (2001) 34 AAR 98 at 114.

188. The Commissioner considers that the following three criteria may be relevant in determining if an activity takes place 'in the course of' mining operations.[75] These are:

- a **causal** link exists – in other words, a certain activity is functionally integrated with a mining operation, thereby forming an essential part of it;
- a **spatial** link exists – meaning that an activity takes place in an area set aside or utilised for a mining operation; and
- a **temporal** link exists – the activity takes place in a timely fashion, not prior to, or after the completion of, the mining operation.

189. The relevance or weighting afforded to these criteria will vary depending on the facts in each case.

190. Accordingly, the meaning of 'in mining operations' is not restricted to merely the physical act of mining. In determining whether an activity takes place 'in the course of' mining operations, the three criteria above should be applied.

The form of the definition of 'mining operations': means, includes, does not include

191. The definition of 'mining operations' in section 11 consists of three parts:

- **subsection 11(1), paragraphs (a) and (b):** 'mining operations' means exploration or prospecting for minerals, removal of overburden, site preparation to enable mining for minerals to commence, and the recovery of minerals being mining for minerals or recovery of salts by evaporation, or the beneficiation of those minerals or ores bearing those minerals;
- **subsection 11(1), paragraphs (c) to (i):** 'mining operations' includes a number of specific activities. Each of these activities is then separately defined in sections 12 to 18; and
- **subsection 11(2), paragraphs (a) to (c):** 'mining operations' does not include the specific operations or activities detailed in these paragraphs.

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[75] In *Federal Commissioner of Taxation v. Payne* [2001] HCA 3; (2001) 46 ATR 228; 2001 ATC 4027; (2001) 202 CLR 93; (2001) 177 ALR 270; (2001) 75 ALJR 442, *Chief Executive Officer of Customs v. WMC Resources Ltd (as agent for East Spar Alliance)* (1998) 87 FCR 482; 158 ALR 241 and *Re Wandoo Alliance Pty Ltd and Chief Executive Officer of Customs* (2001) 34 AAR 98; [2001] AATA 801, amongst others, it was deemed pertinent to consider one or all of these factors when determining whether an activity or activities were undertaken 'in the course of' something.

192. The use of the form *'means ... includes ... does not include'* in section 11 means that paragraphs 11(1)(a) and 11(1)(b) contain the central features of 'mining operations', which is then expanded by the specific activities listed in paragraphs 11(1)(c) to 11(1)(i). All activities contained in paragraphs 11(1)(a) to 11(1)(i) are subject to the specific exclusions contained in paragraphs 11(2)(a) to 11(2)(c). If an activity is within one of paragraphs 11(1)(a) to 11(1)(i) and is not excluded by subsection 11(2), an entity is entitled to a fuel tax credit if they acquire taxable fuel for use in that activity.

193. The Commissioner considers, the use of the expressions, *'means', 'includes' and 'does not include'* in the definition of 'mining operations' in section 11 means that paragraphs 11(1)(c) to 11(1)(i) do not limit paragraphs 11(1)(a) and 11(1)(b).[76] Paragraphs 11(1)(c) to 11(1)(i) do not provide an exhaustive list of eligible activities, and an activity is not necessarily precluded from being an eligible activity if it is not specifically listed in them.

194. An activity that does not meet the specific requirements of any of paragraphs 11(1)(c) to 11(1)(i) may still be an activity that satisfies the requirements of either paragraph 11(1)(a) or 11(1)(b) and, if not excluded by subsection 11(2), may be an eligible activity.

195. Similarly, an activity does not have to be mentioned in subsection 11(2) to be excluded from the definition of 'mining operations'. These paragraphs exclude particular activities from the definition of 'mining operations', while other activities will be excluded because they do not fall within the meaning of 'mining operations' in subsection 11(1).

196. In practical terms, in determining whether a certain activity is 'in mining operations', and, therefore, eligible for a fuel tax credit, the Commissioner takes the view that it is appropriate to consider:

- firstly, whether the activity falls within one of the paragraphs 11(1)(c) to 11(1)(i). If it does and the activity is not excluded by any of the paragraphs of subsection 11(2), it will be a mining operation for the purposes of the fuel tax credit system; and
- secondly, if the provisions of paragraphs 11(1)(c) to 11(1)(i) are not met, whether the activity otherwise comes within paragraphs 11(1)(a) or 11(1)(b) of the definition of 'mining operations'.[77] If it does and the activity is not excluded by subsection 11(2), it will be a mining operation for the purposes of the fuel tax credit system.

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[76] See *Re Goodyear Australia Ltd and Others and Chief Executive Officer of Customs* AAT No. 13035; [1998] AATA 488 (1 July 1998) at paragraph 4, *Re Esso Australia Ltd and Chief Executive Officer of Customs* V96/1393 V96/1394 AAT No. 12919; [1998] AATA 366 at paragraphs 5 to 8.

[77] *Re Goodyear Australia Ltd and Others and Chief Executive Officer of Customs* AAT No. 13035; [1998] AATA 488 (1 July 1998) at paragraph 19.

197. This approach ensures that appropriate consideration is given to the specific activities in paragraphs 11(1)(c) to 11(1)(i) in determining whether a particular activity is in mining operations.

198. Paragraphs 11(1)(c) to 11(1)(i) and paragraphs 11(2)(a) to 11(2)(c) of the definition of 'mining operations' are to be construed in their own terms and not by reference to paragraphs 11(1)(a) and 11(1)(b) of the definition.[78] The operation of paragraphs 11(1)(c) to 11(1)(i) and paragraphs 11(2)(a) to 11(2)(c) is not expanded by cross-referencing with the provisions of paragraphs 11(1)(a) and 11(1)(b). Paragraphs 11(1)(c) to 11(1)(i) should be considered self-contained compartments of specific eligible activities which are within the definition of 'mining operations'.

Status of contractors and subcontractors

199. For the purposes of the energy grants scheme, activity determines eligibility, rather than whether the entity's principal business is mining.[79]

200. The specific inclusion of contractor or subcontractor in sections 13, 14, 15, 17 and 18 is for clarification and in recognition that the activities mentioned are often carried out by a contractor or a subcontractor rather than the entity who carries on the business of mining.

201. Paragraph 18(d), relates to the generation or provision of electricity solely for a mining town. This paragraph states that the generation or provision of electricity must be carried out by the entity that carries on the mining operation. Under the energy grants scheme, a contractor is not entitled to an off-road credit for diesel fuel purchased for use in the activity described in that paragraph. However, with the commencement of the fuel tax credit system, a contractor or subcontractor may be entitled under section 41-5 of the FT Act to a fuel tax credit for taxable fuel acquired for use in the generation of electricity.

202. Paragraph 18(e), relates to the use of diesel fuel at residential premises in the provision of food and drink, lighting, heating, air conditioning, hot water or similar amenities or the meeting of other domestic requirements of the residents of the premises. The paragraph states the use must be by the entity who carries on a mining operation and that the residential premises must be situated at the place where the mining operation is carried on, or at a place adjacent to that place. Under the energy grants scheme, a contractor is not entitled to an off-road credit for diesel fuel purchased for use in the activity described in that paragraph. A contractor would therefore, not be entitled to a fuel tax credit for taxable fuel acquired for use in an activity as described in paragraph 18(e) of the Energy Grants Act.

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[78] Paragraph 11(7)(b).
[79] *Australian National Railways Commission v. Collector of Customs (SA)* (1985) 8 FCR 264; (1985) 69 ALR 367.

203. However, with the commencement of the fuel tax credit system, a contractor or subcontractor may be entitled under section 41-5 of the FT Act to a fuel tax credit for taxable fuel acquired for generating electricity at residential premises situated at the place where the mining operation is carried on, or at a place adjacent to that place.

204. Sections 13, 14, 15 and 17, and paragraph 18(c) make specific reference to the eligibility of contractors of the entity that carries on a mining operation. A subcontractor has the same eligibility as a contractor for the activities mentioned in those provisions.[80] A subcontractor is, therefore, also entitled to a fuel tax credit if they acquire taxable fuel for use in the activities detailed in sections 13, 14, 15 and 17 and paragraph 18(c).

205. A contractor or subcontractor is entitled to a fuel tax credit, provided they acquire taxable fuel for use in an eligible activity in carrying on an enterprise, under the definition of 'mining operations'.

What is a mineral?

206. A central concept of the definition of 'mining operations' is the recovery of minerals, being mining for minerals or the beneficiation of those minerals. It is, therefore, relevant to look at the definition of 'mineral'.

207. Section 20 defines 'minerals' as meaning:

> minerals in any form, whether solid, liquid or gaseous and whether organic or inorganic, except:
>
> (a) sand, sandstone, soil, slate, clay (other than bentonite or kaolin), basalt, granite, gravel or water; or
>
> (b) limestone (other than agricultural use limestone)

208. The Courts have taken the view that the term 'minerals' has, in its ordinary meaning, the denotation of substances, which can be won by mining.[81] This denotation is reinforced by the central concept of 'mining operations' being defined to mean, amongst other things, the recovery of minerals by mining for those minerals and the beneficiation of those minerals or of ores bearing those minerals.[82]

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[80] Paragraph 11(7)(a).
[81] As per the comments of Barwick CJ in *Federal Commissioner of Taxation v. Imperial Chemical Industries Australia* (1972) 127 CLR 529 at 567; (1972) 3 ATR 321 at 326; 72 ATC 4213 at 4219.
[82] Paragraph 11(1)(b). For discussion of the meaning of the term 'mining for minerals' see paragraphs 238 to 251 of this Ruling.

209. The *Macquarie Dictionary*[83] defines 'mineral' as 'a substance obtained by mining'. Therefore, a factor to be considered in determining if a substance is a mineral is whether the extraction or recovery process would correspond to the normal understanding of the term 'mining'.

210. The definition provided by section 20 adopts this ordinary meaning of 'minerals'. It then clarifies the meaning in respect of form and chemical qualities – that is, a mineral can be solid, liquid or gaseous and organic or inorganic – and restricts it by excluding the substances listed in paragraphs 20(a) and 20(b).

The exclusion of certain substances

211. Paragraphs 20(a) and 20(b) exclude sand, sandstone, soil, slate, clay (other than bentonite or kaolin), basalt, granite, gravel, water and limestone (other than agricultural use limestone) from the definition of minerals.

212. The exclusion of these substances from the definition of 'minerals' was introduced into the diesel fuel rebate scheme by the *Customs and Excise Legislation Amendment Act 1995* No. 87 of 1995. The explanatory memorandum stated:

> The purpose of the amendment proposed in this item is to exclude from eligibility for the payment of rebate diesel fuel for use in extracting certain materials from the ground because they are valuable as extracted, rather than for the purpose of recovering their inherent mineral qualities. For example the use of diesel fuel in the mining of sand for its use in concreting, rather than for the purpose of extracting the minerals contained in the sand, is to be excluded from eligibility for rebate.[84]

213. The activities described in paragraphs 11(1)(a) to 11(1)(i), when undertaken as part of a mining operation to recover a substance excluded by paragraphs 20(a) or 20(b), are not eligible as mining operations.

214. However, where a substance excluded by paragraphs 20(a) or 20(b) is extracted from the ground as part of an operation to recover a specific mineral, or minerals, that are contained within that substance the activities may qualify as mining operations for the purposes of the Energy Grants Act.[85]

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[83] *The Macquarie Dictionary,* 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.
[84] Explanatory Memorandum to the Customs and Excise Legislation Amendment Bill 1995, item 7, page 11.
[85] However, paragraph 11(2)(a) excludes from 'mining operations', quarrying or dredging operations to the extent that the purpose of the operation is to obtain materials for use in building, road making, land scaping, construction or similar purposes. See paragraphs 490 to 495 of this Ruling for a discussion on this exclusion.

215. In *Re Adelaide Brighton Cement Ltd and Chief Executive Officer of Customs*[86] *(Adelaide Brighton Cement)*, the AAT considered whether the exclusion extended to limestone that was extracted for its mineral contents and used in the manufacture of cement. In its decision, the AAT stated:

> I have found that Adelaide Brighton Cement's object in mining is not limestone. Indeed, it discards some of the limestone as suitable only for land rehabilitation. Its operations I have found are for the recovery of calcite, alumina, silica and haematite. They are not for the recovery of limestone. The fact that limestone does or may contain those four minerals does not detract from this finding. The section focuses on Adelaide Brighton Cement's operations and on what those operations are for. It does not focus on whether the minerals sought by Adelaide Brighton Cement are found in limestone and disentitle the company to a diesel fuel claim on that basis.[87]

216. The decision was affirmed by a three to two majority of the full Federal Court.[88] Tamberlin, Sackville and Finn JJ of the full Federal Court held that it was open, on the facts, for the AAT to hold that the extraction was for calcite, silica, alumina and haematite and constituted mining operations. The majority said:

> An operator may excavate limestone with a view to stockpiling and using or marketing the product so excavated, for example for building purposes. The operator may have little or no concern about the precise mineral content of the limestone. In these circumstances, there can be little doubt that the operations should be characterised as mining for limestone. This is so notwithstanding that the particular limestone comprises a number of identifiable mineral compounds. The operations would therefore be caught by the exclusion in para (b) of the definition of 'minerals' in s 164(7) of the Act[89] and the diesel fuel rebate would not be payable.
>
> An operator may, however, excavate limestone with a view to recovering and using the particular mineral compounds found in the limestone. Sometimes it may be quite clear that the operations are for the recovery of one or more of the particular compounds. Other cases, for example when the operator claims to excavate limestone in order to utilise the particular mineral compounds found in the ore body, as distinct from the limestone as such, may present much more difficult questions of characterisation. It may be that the evidence in a particular case is such that a decision-maker could reasonably reach either conclusion.[90]

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[86] *Re Adelaide Brighton Cement Ltd and Chief Executive Officer of Customs* [2002] AATA 688; (2002) 50 ATR 1123.
[87] *Re Adelaide Brighton Cement Ltd and Chief Executive Officer of Customs* [2002] AATA 688; (2002) 50 ATR 1123 at paragraph 54.
[88] *Chief Executive Officer of Customs v. Adelaide Brighton Cement Ltd* [2004] FCAFC 183.
[89] In the quotation, the Full Federal Court was referring to the *Customs Act 1901*.
[90] *Chief Executive Officer of Customs v. Adelaide Brighton Cement Ltd* [2004] FCAFC 183 at paragraphs 114 to 115.

217. Tamberlin, Sackville and Finn JJ went on to find that:

> In the present case, the AAT, having found that Adelaide Brighton was mining for minerals, sought to identify the minerals for which Adelaide Brighton was mining. This was the correct question for it to address. In answering that question the AAT took into account a number of matters…[91]

218. In determining whether a particular mining operation is undertaken to recover an excluded substance for use as such, or whether it is undertaken to recover minerals within that substance, the AAT and Courts have had regard to a number of matters, including:

- the ultimate use of the substance that is extracted;
- the ultimate use of the specific mineral(s) contained in the material and the importance of the chemical properties of those minerals to that use;
- the degree of assurance as to the ultimate use of the material extracted. For example, whether the material is mined by the end user or their contractor for a specific use, or whether it is mined for sale on the open market with a range of possible uses;
- the extent of sampling, testing and analysis of the material both prior to and after extraction, to measure the precise levels of the desired mineral(s) contained within the material;
- discarding of the portion of the extracted material that does not contain the required mineral(s) in the required proportions; and
- planning of mining operations to target those parts of the deposit that contain the required mineral(s) in proportions suitable to the intended use.

219. In considering the particular matters that the AAT had taken into account, the majority of the full Federal Court in *Adelaide Brighton Cement* said:

> The AAT had to weigh these matters against other considerations, such as the absence of a process designed to separate any of the four minerals and the fact that Adelaide Brighton described its operations as mining for limestone. None of these considerations was, however, decisive. In our view, it was open to the AAT to conclude that Adelaide Brighton's operations involved mining for the four particular mineral compounds rather than limestone. …[92]

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[91] *Chief Executive Officer of Customs v. Adelaide Brighton Cement Ltd* [2004] FCAFC 183 at paragraph 116.
[92] *Chief Executive Officer of Customs v. Adelaide Brighton Cement Ltd* [2004] FCAFC 183 at paragraph 117.

> The conclusion that the AAT committed no error of law does not necessarily mean that every operation involving the mining of limestone for use in the production of cement is to be regarded as mining for minerals other than limestone. Each case must depend on the evidence and its own circumstances. In particular, other cases may not have the features that persuaded the AAT in the present case to make the critical factual findings in Adelaide Brighton's favour.[93]

220. As pointed out by the majority in *Adelaide Brighton Cement*, the question of whether an entity is mining for minerals which are excluded from the definition of minerals will depend on the evidence and the facts of each case. The conclusions reached by the AAT in *Adelaide Brighton Cement* may not necessarily be the conclusions that may be reached in every case involving the extraction of limestone or other material excluded from the definition of 'minerals' by section 20. In deciding whether or not an entity is mining for substances that are excluded from the definition in section 20, regard will be had to the factors listed in paragraph 218 of this Ruling. However, those are not the only relevant factors, and the weighting to be given to those and other matters will depend on the particular facts and circumstances of a case.

221. Where it can be shown that an excluded substance is being extracted to obtain a specific mineral, or minerals, contained within it, and those minerals are not excluded by paragraphs 20(a) or 20(b), taxable fuel acquired for use or used in the particular activity may qualify for a fuel tax credit.

222. In circumstances where an excluded substance, such as limestone, is extracted to obtain specific minerals contained within it, mining for those minerals ceases when no further process is undertaken by the miner to separate the material adhering to the minerals and intermixed with them, prior to sale or use.[94]

223. For example, in *Adelaide Brighton Cement*, the AAT ruled that mining ceased when limestone was first stockpiled at the mine site and that activities undertaken after the first point of stockpile do not qualify for an off-road credit under the energy grants scheme. The AAT said:

> I find that the 4 minerals are recovered when they are stockpiled. Any further blending or crushing is beneficial to Adelaide Brighton Cement in its subsequent use of the 4 minerals but it cannot be said to be related to their recovery.[95]

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[93] *Chief Executive Officer of Customs v. Adelaide Brighton Cement Ltd* [2004] FCAFC 183 at paragraph 120.
[94] *Re Adelaide Brighton Cement Ltd and Chief Executive Officer of Customs* [2002] AATA 688 at paragraph 49.
[95] *Re Adelaide Brighton Cement Ltd and Chief Executive Officer of Customs* [2002] AATA 688 at paragraph 50.

Activities that are 'mining operations'

224. Paragraphs 11(1)(a) and 11(1)(b) contain the central concepts of 'mining operations'. These paragraphs are dealt with below.

'Exploration or prospecting'

225. The definition of 'mining operations' in paragraph 11(1)(a) states in part:

> Subject to subsection (2), the expression ***mining operations*** means:
>
> (a) exploration or prospecting for minerals...

226. An entity is entitled to a fuel tax credit if they acquire taxable fuel for use in the exploration or prospecting for minerals.

227. The terms 'exploration' and 'prospecting' are not defined in the Energy Grants Act. They, therefore, take their ordinary meaning.[96] The phrase 'exploration or prospecting' means the systematic search for mineral deposits, and the subsequent determination of the extent of those deposits as part of establishing the commercial viability of mining.

228. When considering what activities should be included as 'exploration or prospecting', the same criteria mentioned in paragraph 188 of this Ruling – causal, spatial and temporal proximity – should be considered. This will be a case of fact and degree that will vary between activities.

229. Activities that are considered to be exploration or prospecting include:

- geological, geophysical and geochemical mapping and surveys;
- systematic search for minerals by drives, shafts, cross-cuts, winzes and drilling;
- magnetometry;
- construction and maintenance of trial pits, surface headings, underground headings, drifts or tunnels;
- construction and maintenance of access roads used in exploration or prospecting;
- construction and maintenance of infrastructure integral to the undertaking of exploration or prospecting; and

[96] *Re BHP Petroleum Pty Ltd and Collector of Customs* (1987) 11 ALD 413 at 420-423; (1987) 6 AAR 245 at 252-255.

- repositioning or relocation of equipment engaged in a systematic search at a designated exploration site or place within an area covered by an exploration permit, lease or licence. However, the transportation of equipment between areas covered by different exploration permits, leases or licences would not be regarded as activities in exploration or prospecting.[97]

'Removal of overburden' and 'other activities undertaken in the preparation of a site'

230. The definition of 'mining operations' in paragraph 11(1)(a) states in part:

> Subject to subsection (2), the expression ***mining operations*** means:
>
> (a) ... the removal of overburden and other activities undertaken in the preparation of a site to enable mining for minerals to commence

231. You are entitled to a fuel tax credit if you acquire taxable fuel for use in the removal of overburden and in other activities undertaken in the preparation of a site to enable mining for minerals to commence.

232. The phrase 'removal of overburden' means land clearing, removal of vegetation, and the removal and stockpiling of topsoil. It extends to the removal, whether by digging or blasting, of surface waste or worthless rock overlying a mineral deposit, in order to expose and mine the deposit. The Commissioner takes the view that these processes are completed at the first point at which the material removed is stockpiled.

233. The phrase 'other activities undertaken in the preparation of a site to enable mining for minerals to commence' is not restricted in meaning to activities similar in nature to the removal of overburden. It is taken to mean any activity that is undertaken in preparing a site to enable mining for minerals to commence.

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[97] *Re BHP Petroleum Pty Ltd and Collector of Customs* (1987) 11 ALD 413; (1987) 6 AAR 245, in which the AAT determined that the relocation of rigs between places of exploration was not an eligible activity. The transporting by any means of people, equipment or goods to or from a place where a mining operation referred to in subsection 11(1) is, or is to be, carried on is excluded as a qualifying use under paragraph 11(2)(c).

234. Activities considered eligible under this category are not restricted to those undertaken at the point of mineral extraction, or the area immediately surrounding that point. Instead, the term 'site' is not taken to have a restricted meaning, and thus refers to an area or location utilised for the mining of minerals. In addition, acts of preparation of a site are not restricted to acts on the site.[98]

235. Whether an activity takes place in the course of preparation of a site to enable mining for minerals to commence is a question of fact, determined having regard to the facts and circumstances of each case.

236. Activities that are considered to be 'other activities undertaken in the preparation of a site to enable mining for minerals to commence' include the following:

- activities undertaken in the dewatering of a site, including drilling bore holes and monitoring holes;
- construction and maintenance of infrastructure of sufficient causal, temporal and spatial proximity. This infrastructure may include plant, buildings, access roads and other equipment necessary for preparation and the subsequent mining to take place. Taxable fuel acquired for use in the transportation of materials used in this construction, however, is not eligible;[99] or
- preparation of a site that will be involved in beneficiation activities only is not eligible under paragraph 11(1)(a). It is considered that such activities are not undertaken in the preparation of a site to enable mining for minerals to commence. Rather, they are undertaken in the preparation of a site to allow beneficiation of those minerals to take place.

237. The Commissioner considers that construction of plant or buildings to enable beneficiation to commence will fall for consideration under paragraph 15(d). However, the construction of plant or buildings does not include preparatory work done on the site of the beneficiation plant prior to the commencement of the construction work.[100]

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[98] *Re Wandoo Alliance Pty Ltd and Chief Executive Officer of Customs* [2001] AATA 801; (2001) 34 AAR 98, *Dawson Rockwater Joint Venture between Dawson Engineering Pty Ltd and Brown & Root Pty Ltd v. Chief Executive Officer of Customs* [1998] FCA 1010.

[99] *Chief Executive Officer of Customs v. WMC Resources Ltd (as agent for East Spar Alliance)* (1998) 87 FCR 482; (1998) 158 ALR 241.

[100] Construction of private airstrips, plant, buildings or equipment is discussed at paragraphs 400 to 406 of this Ruling.

Mining for minerals

238. The definition of 'mining operations' in subparagraph 11(1)(b)(i) states:

> Subject to subsection (2), the expression ***mining operations*** means:
>
> (b) operations for the recovery of minerals, being:
>
> (i) mining for those minerals including the recovery of salts by evaporation

239. You are entitled to a fuel tax credit if you acquire taxable fuel for use in operations for the recovery of minerals being mining for those minerals, including the recovery of salts by evaporation.

240. 'Mining' is not defined by the Energy Grants Act, and must take its ordinary meaning. Mining is the action, process or industry of extracting minerals or ores bearing minerals from a mine or mines.[101]

241. A 'mine' means an excavation made in the earth for the purposes of getting out minerals (including coal), ores or, precious stones, or a deposit of such minerals, ores or precious stones, either below the ground or at its surface.[102]

242. It will be self-evident in most cases whether an activity is mining for minerals. The factors determining whether an activity is mining for minerals will vary, and these will need to be considered on a case-by-case basis.

243. In determining what constitutes mining for minerals, the Courts have had regard to the informed general usage of the term.[103] Factors taken into account in making that determination include:

- the way in which the deposits of the material occur;
- the character of the material to be recovered; and
- the use to which it may be reasonably put.

244. Certain activities are sometimes undertaken to synthetically produce or manufacture substances, which would come under the definition of 'minerals', by means other than that which would normally be considered mining. As stated in paragraph 208 of this Ruling, a factor to be considered in determining if a substance is a mineral is whether the extraction or recovery process for the substance would correspond to the normal understanding of the term 'mining'.

245. The Commissioner does not consider synthetic production or manufacturing operations of this kind to be within the normal understanding of the term 'mining'. Such processes will not be mining operations.

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[101] *The Macquarie Dictionary,* 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.
[102] *The Macquarie Dictionary,* 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.
[103] See, for example, *North Australian Cement Ltd v. Federal Commissioner of Taxation* (1969) 119 CLR 353 at 362-363; (1969) 1 ATR 225 at 231; 69 ATC 4077 at 4082-4083.

246. The Commissioner takes the view that the creation of an artificial environment in which minerals are generated by a natural process is not mining for the purposes of the off-road credits scheme. For instance, the burying of waste in a landfill site in order to facilitate the natural production of methane for later extraction is not 'mining for minerals'. The Commissioner also takes the view that this activity is not an activity 'undertaken in the preparation of a site to enable mining for minerals to commence'.

247. The point at which 'operations for the recovery of minerals' cease depends upon whether any processes of beneficiation are undertaken. If no beneficiation process is undertaken, 'operations for the recovery of minerals' cease when 'mining for minerals' is completed. This is provided for in paragraph 11(3)(b) which states:

> For the purposes of the definition of mining operations, operations for the recovery of a mineral cease:
>
> (b) in the absence of a beneficiation process – when the mineral, or ores bearing the mineral:
>
> (i) are first stockpiled or otherwise stored at the place at which the mining operation is carried on; or
>
> (ii) if subparagraph (i) does not apply – are removed from the ore body or deposit.

248. In cases not involving any process of beneficiation, 'mining operations' will cease at the first point of stockpile or storage of the minerals, or the ores bearing minerals, after mining. Where the mineral or the ore bearing mineral is not stockpiled and there is no process of beneficiation, 'mining operations' will cease when the mineral or the ore bearing mineral is removed from the ore body or deposit. The factors determining when 'mining operations' cease will vary, and these will need to be considered on a case-by-case basis.

249. Activities that are considered to be 'mining for minerals' include:

- operations undertaken in the physical recovery of minerals or ores bearing minerals; and
- construction and operation of facilities and infrastructure used directly in the recovery of minerals or ore bearing minerals.

250. The recovery of salt by evaporation is specifically included as 'mining for minerals' by subparagraph 11(1)(b)(i). The recovery of salt by evaporation includes screening, grinding or other like processes, the washing process, and dry stockpile operations undertaken as part of a continuous process for the recovery of salt. Salt is fully recovered once these operations are complete.

251. The generation of electricity for use at a mine site, that is, for use in a mining operation under subparagraph 11(1)(b)(i), is also part of the operations for the recovery of minerals, and hence a qualifying use.

Beneficiation

252. The definition of 'mining operations' in subparagraph 11(1)(b)(ii) states:

> Subject to subsection (2), the expression ***mining operations*** means:
>
> (b) operations for the recovery of minerals, being:
>
> (ii) the beneficiation of those minerals, or of ores bearing those minerals

253. You are entitled to a fuel tax credit if you acquire taxable fuel for use in operations for the recovery of minerals being the beneficiation of those minerals or of ores bearing those minerals.

254. Beneficiation is not a term in ordinary English usage. It is a technical term applicable to a range of processes undertaken in the mining or metallurgical industries. It is used to describe a treatment to improve, upgrade or concentrate the quality of mineral bearing ore up to, but not including, the refining or final pyrometallurgical or hydrometallurgical process whereby metal is produced.

255. The meaning of the term 'beneficiation' was discussed in *Abbott Point Bulk Coal Pty Ltd & Anor v. Collector of Customs (Abbott Point)*.[104] In *Abbott Point*, the court dealt with a claim for rebate under the diesel fuel rebate scheme for diesel fuel used in transporting coal by rail and in vehicles at the export facility.

256. In dismissing the claim, Ryan and Cooper JJ said:

> It is clear, in our view, that 'beneficiation' is not a term in ordinary English usage. It is a technical term applicable to a range of processes in the mining and metallurgical industries. Accordingly, its meaning is to be determined as a question of fact. … Here the Tribunal found, … 'beneficiation' denotes the processing of minerals or ore-bearing minerals to improve their physical and chemical properties.[105]

257. Ryan and Cooper JJ went on to find that:

> The process of recovery includes, in our view, those steps which are taken by a miner before sale, by whatever process, to remove the mineral from that in which it is embedded or with which it is intermixed. Such a process comprehends the refining of minerals or ore to remove impurities naturally occurring in the material as it has been mined. Once the process of separation or refining has been completed, to subject the mineral product to a process or procedure designed purely to facilitate its better use as so separated or refined or to render it more readily or advantageously marketable is not in our view part of the recovery process.[106]

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[104] *Abbott Point Bulk Coal Pty Ltd & Anor v. Collector of Customs* (1992) 35 FCR 371; (1992) 15 AAR 365.
[105] *Abbott Point Bulk Coal Pty Ltd & Anor v. Collector of Customs* (1992) 35 FCR 371 at 374; (1992) 15 AAR 365 at 368.
[106] *Abbott Point Bulk Coal Pty Ltd & Anor v. Collector of Customs* (1992) 35 FCR 371 at 379; (1992) 15 AAR 365 at 373.

258. Subsection 11(4) specifies that the beneficiation of ores bearing manganese ceases when manganese-mineral concentrates are last deposited in a holding bin, or in a stockpile, at the place where the concentration is carried on, before transportation of those concentrates.

259. For the purposes of the definition of 'mining operations' in subparagraph 11(1)(b)(ii), beneficiation is a technical concept rather than an economic concept. Subsection 11(5) states that, in determining whether a particular process constitutes beneficiation, regard is to be had to the nature of the technical process involved but no regard is to be had to any market considerations. That is, if market forces dictate that a mineral must undergo a certain process to result in a saleable product, this does not necessarily mean that the process will be considered beneficiation.

260. Subsection 11(6) provides that the Energy Grants Regulations may provide a list of specific processes that are considered beneficiation for the purpose of the Energy Grants Act. As at the date of release of this Ruling no regulations have been made under subsection 11(6).

261. Activities eligible as beneficiation begin after the last point of stockpile or storage of the minerals or ores after 'mining for minerals' has taken place.

262. In cases where beneficiation occurs at the site or at a place adjacent to the site and there is no stockpile of minerals or ores, the Commissioner considers that beneficiation begins after 'mining for minerals' has taken place. The factors determining when 'mining for minerals' cease will vary, and these will need to be considered on a case-by-case basis.

263. The Commissioner considers that if beneficiation occurs at a different place to that at which mining for minerals is conducted, beneficiation begins at the last point of stockpile or storage of the minerals or ores after transport.[107]

264. Whether or not a mineral or an ore is beneficiated is a question of fact, and will need to be determined on a case-by-case basis in light of technical evidence in the relevant mining industry. However, it is clear that 'beneficiation' is distinct from refining to produce metal, or the process of manufacturing, or a process, which results in the destruction of a recovered mineral.

265. The point at which beneficiation is deemed to have been completed differs depending upon the mineral in question and the precise process utilised. Factors affecting beneficiation, including mining, metallurgical and environmental factors, mean that beneficiation processes can vary both between and within minerals.

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[107] See also paragraphs 331 to 338 of this Ruling for discussion of journeys involving transportation of minerals or mineral bearing ore for beneficiation. This is a qualifying use under 'mining transport activity' as defined in section 12.

Cessation of 'operations for the recovery of minerals'

266. The point at which 'operations for the recovery of minerals' cease is dependent upon whether a process of beneficiation is carried out. This is provided for in subsection 11(3), which states:

> For the purposes of the definition of mining operations, operations for the recovery of a mineral cease:
>
> (a) when the process of beneficiation ceases; or
>
> (b) in the absence of a beneficiation process – when the mineral, or ores bearing the mineral:
>
> (i) are first stockpiled or otherwise stored at the place at which the mining operation is carried on; or
>
> (ii) if subparagraph (i) does not apply – are removed from the ore body or deposit.

267. You are entitled to a fuel tax credit for taxable fuel acquired for use in the beneficiation of minerals or ores bearing minerals until the first point of stockpile or storage after beneficiation.[108] Alternatively, in the absence of a point of stockpile or storage after beneficiation, there is an entitlement for a fuel tax credit for taxable fuel acquired for use until the final process of beneficiation has been completed, prior to the commencement of further processing.

268. In the absence of a beneficiation process, a person is entitled to a fuel tax credit for taxable fuel acquired for use for the recovery of minerals or ores bearing the mineral until the first point of stockpile or storage at the place at which the mining operation is carried on. In the event that the mineral or the ores bearing the mineral are not stockpiled or stored, mining operations cease when the mineral is removed from the ore body or deposit and loaded onto a vehicle or any other plant or equipment (for example, a conveyor belt) for transport from the excavation site.

269. Some of the more common minerals, and examples of the processes involved in beneficiation and the points at which beneficiation may cease are contained in paragraphs 270 to 285 of this ruling.

[108] Subject to the operation of subsection 11(4), discussed at paragraph 258 of this Ruling.

Coal

270. Beneficiation of coal ceases after it has been washed in a preparation plant and dewatered at a product stockpile at the mine site. Beneficiation of coal extends to pushing-in and pushing-out operations at the load-outs, if undertaken with a view to dewatering.[109] Blending of coal is not considered beneficiation, nor is the magnetic removal of foreign contaminants from the coal.[110]

Gold

271. Beneficiation of gold includes the crushing and grinding of ore, the carbon in pulp (CIP) and electrowinning processes. Beneficiation is considered to be complete when the electrowinning process is complete prior to the smelting of gold.

Silver

272. Beneficiation of silver is usually considered to be complete at the first concentrate stage. Silver is generally a by-product of lead, copper, zinc or gold extraction, and the first concentrate may be obtained by the 'flotation' method through the processing of the ore known as 'Galena'. When extracted through the production of lead/zinc, beneficiation of the silver will cease when the beneficiation of the lead/zinc material ceases. If silver is a by-product of gold extraction, beneficiation is complete at the end of the electrowinning process, prior to smelting.

Copper

273. Beneficiation of copper continues until the matte stage is reached. Matte is an impure sulphide mixture produced by smelting the sulphide ores of copper. Alternatively, if an interim matte is not produced, beneficiation continues through all smelting furnace processes up until the point at which a copper anode, suitable for refining, is produced. The leaching of copper, involving any preceding crushing, grinding, screening plus leaching or bacterial leaching, solvent extraction and electrowinning, is also considered beneficiation.

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[109] *Re BHP Australia Coal Ltd and Collector of Customs* Q91/446 AATA No. 9266; (1994) 32 ALD 773. This decision was confirmed by the full Federal Court – see *Collector of Customs v. BHP Australia Coal Ltd* (1994) 53 FCR 499.

[110] See the AAT's decision in *Re Freight Rail Corporation and Anor and Chief Executive Officer of Customs* [2000] AATA 175, N98/1352 & 1353; (2000) 44 ATR 1028; the decision was *affirmed* by Hill J in *Freight Rail Corporation v. Chief Executive Officer of Customs* (2000) 107 FCR 15 at 27; [2000] FCA 1796 at paragraph 53.

Uranium

274. Beneficiation includes grinding, crushing and flotation, and continues up to the calcining process. Beneficiation does not include the calcining process. Calcining is the heating of ores, precipitates, concentrates or residues so that hydrates, carbonates or other compounds are decomposed and the volatile material is expelled.

Bauxite

275. Beneficiation includes the production of alumina by the Bayer process.

Crude oil

276. Beneficiation of crude oil includes any process that separates oil from the other constituents of crude oil to yield the product known as stock tank oil.

Lead ore

277. Beneficiation includes any crushing, screening, wet sizing, separation, thickening, drying, filtration, flotation and sintering processes, until the point at which the ore is put in the top of a blast furnace or an electric arc furnace.

Natural gas for liquefaction

278. Beneficiation includes the removal of carbon dioxide, water, mercury, hydrogen sulphide and other sulphide compounds. The separation of heavier hydrocarbon gases (pentanes and heavier) is not beneficiation as these gases are not waste, but other minerals that are recovered for use. The separation of the heavier gases in a liquefied natural gas (LNG) processing train is part of the liquefaction of natural gas and taxable fuel acquired for use in that process qualifies for fuel tax credit.

Natural gas for sale as domestic gas

279. Beneficiation includes the removal of mercury and water. The recovery and beneficiation is complete prior to the compression or storage of the gas or the introduction into a pipeline for distribution.

280. The transport of gas from a mining site to a place for liquefaction is a qualifying use as a mining operation under paragraph 12(b) of the definition of 'mining transport activity'.[111] The liquefaction of natural gas is a qualifying use as a mining operation under paragraph 18(a) of the definition of 'sundry mining activity'.[112]

Iron ore

281. Beneficiation of iron ore for the recovery of minerals includes the crushing, screening, flotation, water reduction and sintering processes, until the point at which the ore is put in the top of a blast furnace or an electric arc furnace.

Nickel

282. Beneficiation of nickel is completed when nickel matte is produced.[113] Beneficiation includes processes leading up to this stage, such as crushing, grinding, flotation and smelting.

283. In determining, whether a process or processes described above (for example, crushing) is beneficiation or not, consideration needs to be given on a case by case basis as to whether:

- the recovery of minerals is complete;
- the process is simply being conducted to produce a more saleable product;[114] or
- the process is part of an integrated process that is not in mining operations as defined in subsection 11(1).

284. The processes in relation to the minerals mentioned above are examples only and do not limit entitlement to a fuel tax credit for beneficiation involving other processes for the particular mineral or ores bearing minerals.

285. For the purposes of the fuel tax credit system, beneficiation of minerals is not limited to beneficiation of minerals or ores that are mined in Australia. An entity is entitled to a fuel tax credit for taxable fuel acquired for use in the beneficiation, in Australia, of imported minerals or imported ores.

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[111] This is discussed in paragraphs 328 to 330 of this Ruling.
[112] This is discussed in paragraphs 451 to 455 of this Ruling.
[113] *Re Western Mining Corporation Ltd and Collector of Customs* [1984] AAT W83/13 (Unreported, 30 March 1984).
[114] Subsection 11(5). See also *Abbott Point Bulk Coal Pty Ltd & Anor v. Collector of Customs* (1992) 35 FCR 371 at 379; (1992) 15 AAR 365 at 373.

Activities included as 'mining operations'

286. Paragraphs 11(1)(c) to 11(1)(i) set out the activities that are included as mining operations. To qualify as a mining operation for the purposes of the off-road credits scheme, some activities included in the definition of mining operations must be solely for a particular purpose.[115] For example, paragraph 14(a) refers to 'searching for ground water solely for use in a mining operation referred to in paragraphs (a) or (b) of the definition of that expression in subsection 11(1). In addition, some activities must be at the place where a relevant mining operation is carried on or at a place adjacent to that place.

287. Each of these concepts is discussed in the following paragraphs.

Solely

288. The word solely, in the context of the paragraphs in which it is used, takes on its ordinary meaning of 'only' or 'exclusively'. For an activity to be solely for a particular purpose, it must be only or exclusively for that purpose and for no other purpose. Where a specified activity is required to be solely for a particular purpose for it to be a mining operation, an activity that is for a dual purpose will not qualify as a mining operation.

289. In *Randwick Municipal Council v. Rutledge*[116] *(Randwick Council)*, Windeyer J in relation to the use of the words 'exclusively' or 'solely' stated:

> The words 'exclusively' and 'solely' are familiar in fiscal and rating law. Where an exemption from rating depends upon the use of land exclusively for a particular stated purpose, then the use must be for that purpose only. … such words confine the use of the property to the purpose stipulated and prevent any use of it for any purpose, however minor in importance, which is collateral or independent, as distinguished from incidental to the stipulated use.[117]

290. A strict and narrow interpretation of the provisions of the definition of mining operations in the Energy Grants Act that contain the solely requirement would mean that an entity may not be entitled to a fuel tax credit for taxable fuel[118] acquired for use in an activity that is essential to a paragraph 11(1)(a) or 11(1)(b) mining operation.

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[115] The word solely is used in paragraphs 14(a), 14(b) and 14(c) in the definition of 'mining water activity', paragraph 15(e) in the definition of 'mining construction activity', paragraph 17(b) and 17(c) of the definition of 'mining vehicle activity', and in paragraph 18(d) of the definition of 'sundry mining activity'.
[116] *Randwick Municipal Council v. Rutledge* (1959) 102 CLR 54.
[117] *Randwick Municipal Council v. Rutledge* (1959) 102 CLR 54 at 93-94.
[118] Subject to items 10 and 11 of Schedule 3 of the Transitional Act.

291. For example, paragraph 14(c) provides that a mining water activity includes the supply of water solely for a paragraph 11(1)(a) or 11(1)(b) mining operation. If a miner supplies water to a beneficiation plant only or exclusively for use in beneficiation activities, the supply of water will be a water mining activity. The miner is entitled to a fuel tax credit for taxable fuel acquired for use in the supply of water.

292. If, however, the bulk of the water is for use in beneficiation activities, and a small quantity is for use in post beneficiation activities, then, on a strict and narrow reading of paragraph 14(c), the activity is not a water mining activity as the supply of water is not solely for a paragraph 11(1)(a) or 11(1)(b) mining operation. No entitlement to a fuel tax credit[119] will arise even though the bulk of the water is for use in the relevant mining operation.

293. The above approach does not accord with the legislative intent to maintain entitlement to off-road credits for those that engage in mainstream mining.

294. The Commissioner takes the view that the provisions that contain the solely requirement should not be interpreted so narrowly as to prevent their application in a practical and commonsense manner.

295. The Commissioner considers that where an entity who carries on a paragraph 11(1)(a) or (11)(1)(b) mining operation acquires taxable fuel for use in a number of activities, an apportionment can be made as to its intended use in the different activities.[120] If a portion of the fuel is acquired for use in a qualifying activity that has the solely requirement, an entitlement to a fuel tax credit arises for the portion of the fuel that is acquired for use in the activity that qualifies as a mining operation.

296. The Commissioner's views accord with the legislative intent in relation to the introduction of the solely requirement in a number of specified eligible activities in the definition of mining operations in the energy grants scheme. The Commissioner's views are also supported by some AAT and judicial decisions.

Legislative intent

297. Prior to the 1995 amendments to the Customs Act and the Excise Act, the eligibility criteria for the 'mining operations' category of the diesel fuel rebate scheme contained two broad eligibility criteria known as the 'sweeper clauses'.[121] The so called 'sweeper clauses' provided that operations 'connected with' relevant mining activities were eligible activities.

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[119] However, from 1 July 2008 an entitlement to a half credit exists and as of 1 July 2012, a full fuel tax credit.
[120] Or, in relation to the activities mentioned in paragraphs 14(a), 14(b), 14(c), 15(e), 17(b) and 17(c), by a contractor contracted by that person.
[121] Paragraphs 164(7)(c) and 164(7)(ca) of the Customs Act.

298. The 1995 amendments sought to narrow the eligibility criteria by replacing the broad and ambiguous 'sweeper clauses' with an objective list of eligible activities.

299. In introducing the amendments, the then Minister for Industry Science and Technology said:

> In the existing legislation, both the definition of 'agriculture' and the definition of 'mining operations' employ what are known as 'sweeper clauses', which have the effect of making other operations connected with agriculture or mining eligible for the payment of rebate. The interpretation of these 'sweeper clauses' has been a source of contention over the years, and has generated most of the litigation in the lifetime of the scheme. …
>
> The intention of these amendments is to put beyond doubt that the Scheme is not meant to provide rebate eligibility for activities which are not sufficiently connected with mining or agriculture; for instance, the provision of a service or utility to a farmer or miner, such as electricity through a grid, …
>
> Because claims of these kinds have sought to broaden the scheme well beyond what it should be, the Government is proposing that these amendments be made retrospective to 1 August 1986 to protect the revenue.[122]

300. The Customs and Excise Legislation Amendment Bill 1995 was subject to further amendments in the Senate prior to being enacted. Those further amendments introduced the solely requirement into a number of specified activities.

301. In explaining the further amendments, the Supplementary Explanatory Memorandum stated:

> The stated intention of the Bill is not to affect the eligibility of rebate of persons engaged in mainstream farming and mining. … The schedule of amendments to the Bill is a direct response to these representations and proposes to expand the list of eligible activities under both the definitions of 'agriculture' and 'mining operations'. It is considered that the expanded list will maintain the integrity of the Scheme in assisting persons engaged in mainstream… mining operations while excluding from eligibility activities that can only be regarded as being remotely connected with agriculture or mining.[123]

302. The introduction of the solely requirement in a number of activities in the diesel fuel rebate scheme was not, therefore, to deny rebate to those that engaged in mainstream mining (or farming) activities but was intended to deny rebate to those that provide services, or goods to miners (or farmers) as part of a supply of services or goods to the public at large. As the energy grants scheme adopts the same definition of 'mining operations', and maintains the entitlements equivalent to those available under the diesel fuel rebate scheme, this applies equally to the entitlement provisions of the energy grants scheme.

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[122] Second Reading Speech, Customs and Excise Legislation Amendment Bill 1995.
[123] Supplementary Explanatory Memorandum to the Customs and Excise Legislation Amendment Bill 1995.

AAT and judicial decisions

303. The Commissioner's view on the interpretation of the provisions that have the solely requirement takes into account the views expressed in AAT and Court decisions.

304. *Re Central Norseman Gold Corporation Limited and Collector of Customs*[124] *(Central Norseman)*, although decided in the context of the 'sweeper clauses', is instructive as to how the AAT or the Courts may interpret the provisions that have the solely requirement. In its decision, the AAT stated:

> These provisions are intended to apply to commercial operations and are therefore to be read in a practical, commonsense manner. They therefore permit the apportionment of a bulk purchase of fuel whenever it can be shown that there is an appropriate basis upon which the apportionment should be made. Although the matter was not argued before the Tribunal, we would accept that a case for apportionment may in a proper case be made out in relation to the purchase of fuel for the operation of a powerhouse which produces electricity for use partly in the course of a mining operation as defined and partly not in the course of such an operation.
>
> That is not to say, however, that the rebate is to be determined simply by apportioning the use to which electricity from a multi-purpose powerhouse is actually used or is intended to be used. The applicant is not entitled to a rebate unless it demonstrates that it purchased diesel fuel for use in a mining operation as defined. If it is established that it has done so, the applicant will not lose its entitlement to rebate simply because some of the electricity produced is in fact used for a purpose which, looked at on its own, does not form part of a mining operation as defined.[125]

305. In *Randwick Council*, Windeyer J, in relation to land, accepted that questions may arise when part of the land is used for the relevant purpose and another part for a different purpose. He referred to the decision of the High Court in *Sisters of Mercy Property Association v. Newtown and Chilwell*[126] (*Sisters of Mercy*).

306. In *Sisters of Mercy*, the High Court examined subsection 249(5) of the *Local Government Act 1928-1941 (Victoria)* which stated:

> Land in the occupation of or under the management and control of any religious body and upon which is situated any hall or other building used in connection with any church exclusively for any purposes connected with or in support of the objects of such religious body shall not be rateable property.

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[124] *Re Central Norseman Gold Corporation Ltd and Collector of Customs, Western Australia* AAT No. W84/118; (1985) 8 ALN N288.
[125] *Re Central Norseman Gold Corporation Ltd and Collector of Customs, Western Australia* AAT No. W84/118; (1985) 8 ALN N288 at 1.
[126] *Sisters of Mercy Property Association v. Newtown and Chilwell* (1944) 69 CLR 369.

307. In that case, on the relevant land there was a convent for nuns of the order, a convent chapel, a college and a small building used exclusively for the preparation of altar bread and for mending church vestments for the religious purposes of the convent chapel.

308. The court adopted an apportionment approach and held that the land actually occupied by the 'altar-bread building' with its curtilage (if any) was exempt from rates, but that this did not bring about the exemption of any other part of the land.[127]

309. The above decisions indicate that, in appropriate circumstances, an apportionment can be made to determine the extent to which an activity or thing is solely or 'exclusively' for a particular purpose.

310. The Commissioner takes the view that, in relation to those activities in the definition of 'mining operations' under the energy grants scheme that have the solely requirement, it is open and appropriate for the Commissioner to take the apportionment approach in determining whether or not an activity is solely for the relevant purpose.[128] The provisions are capable of this interpretation, which gives a reasonable result that accord with the legislative intent.[129]

311. Even though the FT Act is a taxing Act,[130] many of the provisions of the fuel tax credit system and the transitional provisions are beneficial in that they confer benefits on entities that acquire taxable fuel for use in carrying on an enterprise. Having regard to this policy intent, and to the comments made in AAT and judicial decisions to the effect that a commonsense and commercial approach is to be taken to the interpretation of the entitlement provisions of the diesel fuel rebate scheme, the Commissioner considers that the AAT or Court is likely to take a similar interpretative approach to the provisions that contain the solely requirement in the definition of 'mining operations' in the Energy Grants Act.

312. The apportionment must be made on a reasonable basis. In calculating the extent that an activity is solely for a particular purpose, reference can be made to appropriate records that substantiate the quantity of fuel that an entity proposes to use or actually uses in a qualifying use.

313. For example, in relation to the supply or pumping of water solely for use in a mining operation, appropriate records to substantiate apportionment include:

- the quantity (in litres or tonnes) of water supplied to the site and any other sites;

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[127] *Sisters of Mercy Property Association v. Newtown and Chilwell* (1944) 69 CLR 369, Latham CJ at 376.
[128] See paragraphs 289 to 293 of this Ruling for an alternative narrow interpretation of solely and its effect.
[129] *Sisters of Mercy Property Association v. Newtown and Chilwell* (1944) 69 CLR 369, Latham CJ at 376.
[130] Paragraph 1.66 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and the Fuel Tax (Consequential and Transitional Provisions) Bill 2006.

- if meters are installed, meter readings of the quantity of water supplied to the mining operation and other sites; and
- the total number of hours and fuel consumption rate for the equipment used to pump water to a mining operation.

314. If an activity fails to meet the provisions of one of the paragraphs where the solely requirement is present, its eligibility as a mining operation under paragraphs 11(1)(a) and 11(1)(b) can be considered.[131]

At the place where the mining operation is carried on

315. The phrase 'at the place where the mining operation is carried on' is used in paragraphs 17(a), 18(c) and 18(e), and sections 14, 15 and 16.[132] These paragraphs and sections contain the definitions of specific activities that are included in the definition of 'mining operations'. The reference to 'the mining operation' in the phrase is a reference to the mining operations as referred to in paragraphs 11(1)(a) or 11(1)(b) of the definition of 'mining operations'.

316. Whether the relevant 'mining operation' is carried on at one or more places is a question of fact to be determined on a case by case basis. However, the 'place' at which those operations are carried on is taken to include the whole of the land legally occupied for the exploration or prospecting, site preparation, mining for minerals and the beneficiation of those minerals. This includes any land that is legally occupied for the purposes of private roads that connect a mine site to the place of beneficiation of minerals from the mine, or to connect those areas to a public road.[133]

317. In *Re BHP Billiton Petroleum Pty Ltd and Chief Executive Officer of Customs*[134] *(BHP Billiton)*, the AAT considered the meaning of 'at the place' in relation to the exclusion, under paragraph (z) of the definition of 'mining operations' in subsection 164(7) of the Customs Act. That paragraph excluded transport activities (with certain exceptions) to or from a place where mining operations as defined in paragraphs (a) to (w) of the definition in subsection 164(7) is, or is to be, carried on, or to or from a place adjacent to that place, other than transport that constituted specified activities.

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[131] See paragraph 194 of this Ruling.
[132] The phrase is also used in paragraph 11(2)(c). A reference to the mining operation in the phrase in paragraph 11(2)(c) is a reference to a mining operation referred to in any of the paragraphs in subsection 11(1).
[133] *Re Hampton Transport Services Pty Ltd and Chief Executive Officer of Customs* (2000) 34 AAR 130; (2001) 49 ATR 1005; [2001] AATA 894.
[134] *Re BHP Billiton Petroleum Pty Ltd and Chief Executive Officer of Customs* (2002) 69 ALD 453; (2002) 50 ATR 1156; [2002] AATA 705.

318. In BHP Billiton, the mining operations involved onshore bases and offshore locations and the transport of goods between the two. The AAT found that the transport of goods between the two locations did not occur 'at the place where the mining operation is carried on' but rather between two separate locations over many kilometres of ocean not occupied by the miner and not used by the miner otherwise than as a transport route.[135] In its decision the AAT stated:

> If an onshore base and offshore location, and the sea between, can be characterised as one place we do not see that that has the consequence that the onshore and offshore locations cannot also separately be described as places. The fact that it can be said that one of the places where a miner carries out mining operations is Western Australia does not preclude it being said that one place of its operations is, for example, Kalgoorlie.[136]

319. The decision of the AAT was confirmed by the full Federal Court.[137] The approach adopted by the AAT in *BHP Billiton* and confirmed by the full Federal Court[138] is consistent with the approach taken by the AAT in *Re Hampton Transport Services Pty Ltd and Chief Executive Officer of Customs*[139] (*Hampton Transport*).

320. In *Hampton Transport*, the AAT dealt with the question of whether diesel fuel purchased for use in the maintenance of the private portion of an access/haul road between the Red October mine site south of Leonora in Western Australia and the mine's processing plant near Leonora was eligible for the diesel fuel rebate.

321. The AAT held that it was. In reaching its conclusions, the AAT stated:

> In the Tribunal's view the words 'mining operation', in the phrase 'occurs at the place where the mining operation is carried on', mean all of the operations involved in mining for minerals and in the beneficiation of those minerals and thus the places at which those operations occur include the whole of the land legally occupied for the purposes of the excavation or extraction process, the whole of the land legally occupied for the purposes of the beneficiation process, and the whole of the land legally occupied for the purposes of private roads that connect that parcel or those parcels of land, either together, or to the public road system beyond.[140]

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[135] *Re BHP Billiton Petroleum Pty Ltd and Chief Executive Officer of Customs* (2002) 69 ALD 453; (2002) 50 ATR 1156; [2002] AATA 705.
[136] *Re BHP Billiton Petroleum Pty Ltd and Chief Executive Officer of Customs,* (2002) 69 ALD 453 at 473; (2002) 50 ATR 1156 at 1177; [2002] AATA 705 at paragraph 58.
[137] *BHP Billiton Petroleum Pty Ltd v. Chief Executive Officer of Customs* [2003] FCAFC 61; (2003) 52 ATR 491.
[138] *BHP Billiton Petroleum Pty Ltd v. Chief Executive Officer of Customs* [2003] FCAFC 61; (2003) 52 ATR 491.
[139] *Re Hampton Transport Services Pty Ltd and Chief Executive Officer of Customs* (2000) 34 AAR 130; (2001) 49 ATR 1005; [2001] AATA 894.
[140] *Re Hampton Transport Services Pty Ltd and Chief Executive Officer of Customs* (2000) 34 AAR 130 at 135; (2001) 49 ATR 1005 at 1010-1011; [2001] AATA 894 at paragraph 17.

322. In *Hampton Transport*, the legal occupation of the land by way of leases, licences and permits for the purposes of carrying on mining operations and the need for a connecting road between the mining site and the beneficiation site meant that the construction of the road was 'at the place'. In *BHP Billiton*, there was no possibility of there being legal occupation of the ocean serving as the transport route between the onshore bases and the offshore locations.

323. The legal entitlement to conduct mining operations in a specified area may flow from a variety of agreements or licences. The entitlement to legally occupy that area for the purposes of a paragraph 11(1)(a) or 11(1)(b) mining operation is usually in the form of an exploration or prospecting licence, lease or permit, a mining licence, lease or permit, or a miscellaneous licence, lease or permit that is issued for a purpose directly associated with the mining operations.

324. State or Territory authorities issue these licences, leases or permits under their relevant mining Acts. They provide the holder with the legal entitlement to undertake specific activities in relation to exploration and prospecting, site preparation and the recovery of minerals.

A place adjacent to the place where the mining operation is carried on

325. In the phrase 'a place adjacent to the place where the mining operation is carried on',[141] the word 'adjacent' takes its ordinary meaning of, lying near, close or contiguous.[142]

326. A place is adjacent if it is abutting, close or near, and is not distant or remote from the place at which the mining operation is carried on. A place is adjacent if it is in sufficient proximity so as to enable it to be reasonably identified with the mining operation. It is not possible to give precise measurements or distances between places to determine their adjacency. It is a question of fact and degree in each case as to whether a place is adjacent to the place where the relevant mining operation is carried on.

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[141] The phrase 'a place adjacent to that place' refers to a place that is adjacent to a place where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on. The phrase is found in paragraphs 14(b), 14(c), 15(b) and 18(e).

[142] This was discussed by the AAT in *Re BHP Petroleum Pty Ltd and Collector of Customs* (1987) 11 ALD 413 at 424-425; (1987) 6 AAR 245 at 256-258. See also *Federal Commissioner of Taxation v. BHP Minerals Ltd* (1983) 51 ALR 166 at 172-174; (1983) 14 ATR 389 at 395-397; 83 ATC 4407 at 4412-4413.

327. In *Federal Commissioner of Taxation v. BHP Minerals Ltd*,[143] the Court was called upon to decide whether residential accommodation was 'at a place adjacent to the site of prescribed mining operations'. In their majority judgment, Toohey and Lockhart JJ in relation to the concept of adjacency said:

> In our view the inquiry as to the definition of the expression 'at a place adjacent to, the site of prescribed mining operations …' calls for a broad approach and not one that is narrow or pedantic. …The expression is not one which is capable of a precise or uniform meaning. …
>
> An ordinary and natural meaning of the word 'adjacent' is 'near' or 'close'. …But to be provided at a place adjacent to the site of mining operations does not require contiguity or abutment. Nor does it necessarily require very close proximity. It is sufficient that it is near or close to the site.[144]

Mining transport activity

328. The definition of 'mining operations' in paragraph 11(1)(c) states:

> Subject to subsection (2), the expression mining operations includes:
>
> (c) a mining transport activity

329. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining transport activity.

330. Mining transport activity is defined in section 12. Paragraph 12(a) refers to journeys involving the transportation of minerals or mineral bearing ore for beneficiation. Paragraph 12(b) refers to the transporting of natural gas for liquefaction.

(a) Journeys involving the transportation of minerals or mineral bearing ore for beneficiation

331. Paragraph 12(a) states:

> The expression ***mining transport activity*** means:
>
> (a) if minerals, or ores bearing minerals, are beneficiated at a place other than the mining site as an integral part of operations for their recovery:
>
> (i) the journey undertaken for the purpose of transporting the minerals or ores from the mining site to that place; and

[143] *Federal Commissioner of Taxation v. BHP Minerals Ltd* (1983) 51 ALR 166; (1983) 14 ATR 389; 83 ATC 4407.
[144] *Federal Commissioner of Taxation v. BHP Minerals Ltd* (1983) 51 ALR 166 at 173-174; (1983) 14 ATR 389 at 396-397; 83 ATC 4407 at 4413.

(ii) the return journey of a vehicle, a locomotive or other equipment from that place to the mining site or any part of that journey if it is undertaken for the purpose of repeating a journey referred to in subparagraph (i) or for the backloading of raw materials or consumables for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1).

332. If the beneficiation of minerals or ores bearing minerals occurs at a place other than the mining site, the off-public road transportation of minerals or ores bearing minerals from the mine site to the place of beneficiation is a 'mining operation' as a mining transport activity under subparagraph 12(a)(i).

333. Under subparagraph 12(a)(ii), a return journey, that is, to the mine site from the place of beneficiation, is also a mining transport activity. The return journey, or a part of that journey, must be for the purpose of repeating a journey to transport minerals or ore from the mine site to the place of beneficiation, or for the purpose of backloading raw materials or consumables for use in a paragraph 11(1)(a) or 11(1)(b) mining operation. There is no requirement that the transport must be done in one continuous operation. The Commissioner considers that transport where the forward journeys are carried out by vehicles or equipment servicing several mines but where these vehicles or equipment do not always return to the same mine site qualify as mining operations under paragraph 12(a).[145]

334. The Commissioner is of the view that, under paragraph 12(a), the journey must be between a mine site situated in Australia and a place of beneficiation that is also situated within Australia.[146] The beneficiation must also be an integral part of operations for the recovery of minerals.

335. Mining transport activity does not include transport using a vehicle that is covered by paragraph 11(2)(b).

336. Paragraph 11(2)(b) excludes the use of vehicles not exceeding 3.5 tonnes gross vehicle mass (other than fork-lifts, front-end loaders, tractors, and any other vehicle specified in the regulations). The exclusion does not apply to such a vehicle that is extensively modified for use underground while it is so used.

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[145] These are often referred to as 'closed loop' return journeys.

[146] Paragraph 21(b) of the *Acts Interpretation Act 1901* states: 'references to localities, jurisdictions and other matters and things shall be construed as references to such localities jurisdictions and other matters and things in and of the Commonwealth'. See also *State Rail Authority (NSW) v. Collector of Customs* (1991) 33 FCR 211 at 213-216; 14 AAR 307 at 309-312 in relation to the former paragraph (d) of the definition of 'mining operations' in subsection 164(7) of the Customs Act.

337. If beneficiation is to take place overseas, the transportation of minerals or ores to a port for export will not be a 'mining operation' within paragraph 12(a).[147] However, the extraction of the mineral or ore by mining will be a mining operation under subparagraph (11)(1)(b)(i).

338. Mining transport activity does not include the transportation of imported minerals or ores from a port to a place in Australia for beneficiation.[148] Such transportation does not constitute 'mining operations' under paragraph 12(a), as there is no journey 'from the mining site' in Australia to a place of beneficiation within Australia. The beneficiation of imported ore itself, however, is an eligible activity under subparagraph (11)(1)(b)(ii).[149]

(b) The transporting of natural gas for liquefaction

339. Paragraph 12(b) states:

> The expression ***mining transport activity*** means:
>
> (b) if natural gas is liquefied at a place other than the mining site – the transporting of the natural gas from the mining site to that place.

340. If natural gas is liquefied at a place other than a mining site, the transport of the gas from the mining site to the place of liquefaction is a mining operation under paragraph 12(b). You are entitled to a fuel tax credit if you acquire taxable fuel for use in the transporting of the natural gas from the mining site to the place of liquefaction.[150]

341. However, the transport must not be by a vehicle that is excluded under paragraph 11(2)(b).[151]

Mining rehabilitation activity

342. The definition of 'mining operations' in paragraph 11(1)(d) states:

> Subject to subsection (2), the expression ***mining operations*** includes:
>
> (d) a mining rehabilitation activity

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[147] However, this transport activity may be eligible under either marine or rail transport or use in a vehicle (having a GVM greater than 4.5 tonnes) travelling on a public road, depending on the method of transport.

[148] However, this transport activity may be eligible under either marine or rail transport or use in a vehicle (having a GVM greater than 4.5 tonnes) travelling on a public road, depending on the method of transport.

[149] Beneficiation is discussed at paragraphs 252 to 285 of this Ruling.

[150] See paragraphs 451 to 455 of this Ruling for a discussion on liquefaction of natural gas. Liquefaction of natural gas is a sundry mining activity – see paragraph 18(a).

[151] See paragraphs 496 to 505 of this Ruling for a discussion on this exclusion.

343. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining rehabilitation activity.

344. Mining rehabilitation activity is defined in section 13 to mean:

> …the rehabilitation of a place affected by a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) if the rehabilitation is carried out by:
>
> (a) the person who carried on the mining operation; or
>
> (b) a person contracted by that person to carry out the rehabilitation.

345. Rehabilitation means the act of restoration.[152] In this context, it means the act of restoring a place (usually land) affected by a paragraph 11(1)(a) or 11(1)(b) mining operation to a reasonable approximation of the condition it was in prior to that mining operation taking place, and/or to an agreed or acceptable environmental standard.

346. Activities that extend beyond the restoration of a place to the condition it was in prior to the relevant mining operation taking place and/or to an agreed environmental standard are not mining rehabilitation activities. For example, preparatory work for building construction, the establishment of sports fields, or for converting a disused mine site to a garbage tip are not mining rehabilitation activities for the purposes of the energy grants scheme.

347. Whilst rehabilitation activities will generally be undertaken when the relevant mining operations have been completed, this is not a condition of eligibility. Taxable fuel acquired for use in rehabilitation that takes place while a paragraph 11(1)(a) or 11(1)(b) mining operation is continuing is also eligible for a fuel tax credit.

348. Paragraphs 13(a) and 13(b) each apply a clear identity test. Only an entity that carries on the relevant mining operation or a contractor who is contracted by that entity to carry out the rehabilitation is entitled to a fuel tax credit if they acquire taxable fuel for use in the rehabilitation activities that qualify.

349. Rehabilitation activities carried out at a place where a paragraph 11(1)(a) or 11(1)(b) mining operation is not, or was not, carried out are not mining rehabilitation activities.

350. Mining rehabilitation activity does not include the rehabilitation of a place if the material extracted from or beneficiated at that place is excluded from the definition of minerals[153] or is excluded from being a mining operation by paragraph 11(2)(a). Paragraph 11(2)(a) excludes from the definition of mining operations quarrying or dredging operations to the extent that the purpose of the operations is to obtain materials for use in building, road making, landscaping, construction or similar purposes.

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[152] *The Macquarie Dictionary,* 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW.
[153] See paragraphs 206 to 223 of this Ruling for a discussion on the meaning of 'minerals'.

351. Where rehabilitation occurs at a site that has been used for a paragraph 11(1)(a) or 11(1)(b) mining operation and also for other industrial purposes, only activities undertaken to rehabilitate those parts of the site used for mining operations will qualify for entitlement to a fuel tax credit. In such cases, an apportionment may be made to determine the amount of taxable fuel acquired for a use that qualifies.

Mining water activity

352. The definition of 'mining operations' in paragraph 11(1)(e) states:

> Subject to subsection (2), the expression mining operations includes:
>
> (e) a mining water activity

353. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining water activity.

354. Paragraphs 14(a) to 14(c) specify the activities that qualify as mining water activity. Each of the activities is discussed below under the broad categories of searching for ground water, pumping of water and the supply of water.

(a) Searching for ground water

355. Paragraph 14(a) provides:

> The expression ***mining water activity*** means:
>
> (a) searching for ground water solely for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1), or the construction or maintenance of facilities for the extraction of such water, solely for that use, if the searching, construction or maintenance:
>
> (i) occurs at the place where the mining operation is carried on; and
>
> (ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the searching, construction or maintenance

356. As explained at paragraph 288 of this Ruling, the expression solely in paragraph 14(a) takes on its ordinary meaning of 'only' or 'exclusively'. Therefore, the water, which is the subject of the search, must be exclusively for use in a paragraph 11(1)(a) or 11(1)(b) mining operation.

357. Unlike paragraphs 14(b) and 14(c) (discussed below), the search for ground water or the construction or maintenance of facilities for the extraction of the ground water is limited to the place where the relevant mining operation is carried on.

358. Paragraph 14(a) is limited in its application to searching for ground water. This is different from paragraphs 14(b) and 14(c), which are not limited in their application to the pumping or supply of ground water but which refer to the pumping and the supply of any water solely for use in the relevant mining operation.

359. 'Ground water' is water that lies beneath the surface of the ground, usually in aquifers. Searching for ground water includes the repositioning or relocation of equipment used in searching for ground water provided it is performed in a systematic manner within the place where the relevant mining operation is carried on. It does not include the relocation of equipment between places where the relevant mining operations are carried on, as such relocation is not 'at the place'.

360. The construction or maintenance of facilities must be for the extraction of the ground water found, and not for any other purpose. For the relevant activity to qualify as a 'mining operation' under paragraph 14(a), it must be carried on either by the entity who carries on the relevant mining operation or by a contractor contracted by that entity.

361. Searching for ground water solely for use in a paragraph 11(1)(a) or 11(1)(b) mining operation is a mining water activity even if the search does not result in any ground water being found.

(b) Pumping of water

362. Paragraph 14(b) provides:

> The expression ***mining water activity*** means:
>
> (b) the pumping of water solely for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) if the pumping:
>
> (i) occurs at the place where the mining operation is carried on or at a place adjacent to that place; and
>
> (ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the pumping

363. To qualify as a 'mining operation' under paragraph 14(b), the water being pumped must be solely, that is, exclusively or only for use in paragraph 11(1)(a) or 11(1)(b) mining operations.[154] The pumping of water must occur at the place where that mining operation is carried on, or at a place that is adjacent to that place. The pumping must be carried out either by the person that carries on the relevant mining operations or by a contractor contracted by that person.

[154] See paragraphs 288 to 314 of this Ruling for a discussion on solely.

364. The activity that constitutes 'mining operations' under paragraph 14(b) is the actual pumping of water. The construction or maintenance of facilities for the pumping or the maintenance of infrastructure, including the laying of supply pipes, does not qualify as a mining operation under this paragraph. However, these activities may qualify as a mining operation under another category of eligible activities in subsection 11(1).

365. The pumping of water is not restricted to ground water and applies to the pumping of any water solely for use in the relevant mining operations.

(c) Supply of water

366. Paragraph 14(c) provides:

> The expression ***mining water activity*** means:
>
> (c) the supply of water solely for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) if:
>
> (i) the supply is to the place where the mining operation is carried on; and
>
> (ii) the water comes from that place or a place adjacent to that place; and
>
> (iii) the supply is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the supply.

367. For the supply of water to qualify as a 'mining operation' under paragraph 14(c), the water must be solely, that is, exclusively or only, for use in a paragraph 11(1)(a) or 11(1)(b) mining operation.[155]

368. The supply is not limited to the supply of ground water. However, the water must come from either the place where the relevant mining operation is carried on or from a place that is adjacent to that place. The supply must be to the place where that mining operation is carried on.

369. The supply of water includes all off-public road modes of supplying water. These can include private road transportation (subject to the exclusion in paragraph 11(2)(b)), supply through a pipeline system, and water carried as part of the cargo on a vessel.

370. Where the water is carried as part of the cargo on a vessel, only the transport of the water constitutes a mining operation for the purposes of the off-road credits scheme. The transport of water solely for use in a paragraph 11(1)(a) or 11(1)(b) mining operation is not excluded from being a mining operation by paragraph 11(2)(c).

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[155] See paragraphs 288 to 314 of this Ruling for a discussion on solely.

371. In those circumstances, an apportionment may be necessary to ensure that a fuel tax credit entitlement only arises in respect of taxable fuel that is acquired for use in the transporting of water.[156]

372. For example, if a supply vessel, transporting a mixture of cargo including water, undertakes a direct journey from its home port to an offshore rig, an apportionment is necessary to ensure that an entitlement to a fuel tax credit only arises in relation to the transport of water, and not in relation to the transport of other cargo. The latter transport is excluded from the definition of 'mining operations' by paragraph 11(2)(c).

373. A reasonable basis of apportionment must be used. For example, an apportionment could be made by reference to the weight of the water as a percentage of the total weight of the cargo. That percentage would then be applied to the taxable fuel acquired for use in that journey to calculate the quantity of fuel eligible for a fuel tax credit. If a journey involves detours, a more complicated method of apportionment may need to be used.

374. Apportionment of the taxable fuel for the transport of water is provided for by the exclusion from the operation of paragraph 11(2)(c) of:

> …such transport *to the extent* that it constitutes the activity described in:
>
> (ii) paragraph (c) of the definition of mining water activity in section 14 (emphasis added)

375. An apportionment may not be necessary if, in relation to the rest of the cargo on the vessel, an entitlement to a fuel tax credit arises for use in marine transport under the energy grants scheme.

376. The Commissioner does not consider the concept of supply to extend to all of the steps necessary for the supply of water to take place. An entity is not entitled to a fuel tax credit for taxable fuel acquired for use in the construction and maintenance of supply infrastructure, such as pipelines, as a qualifying use under paragraph 14(c). However, these activities may qualify as a mining operation under another category of activities in subsection 11(1).

Mining construction activity

377. The definition of 'mining operations' in paragraph 11(1)(f) states:

> Subject to subsection (2), the expression ***mining operations*** includes:
>
> (f) a mining construction activity

[156] *Re BHP Billiton Petroleum Pty Ltd v. Chief Executive Officer of Customs* [2003] FCAFC 61; (2003) 52 ATR 491.

378. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining construction activity.

379. Mining construction activity is defined in section 15. Activities that constitute mining construction activities can broadly be described as:

- the construction or maintenance of private access roads;
- the construction or maintenance of tailings dams and dams which store contaminants;
- the construction or maintenance of dams for the storage of uncontaminated water;
- the construction or maintenance of private airstrips, buildings, plant or equipment; and
- the construction or maintenance of power stations or power lines.

380. Each of these activities is discussed in the following paragraphs.

(a) The construction or maintenance of private access roads

381. Paragraph 15(a) provides:

> The expression ***mining construction activity*** means:
>
> (a) the construction or maintenance of private access roads for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) if the construction or maintenance:
>
> (i) occurs at the place where the mining operation is carried on; and
>
> (ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the construction or maintenance

382. For the purposes of paragraph 15(a), it is necessary to make a distinction between roads that are private access roads and those that are not (that is, public roads). For a discussion on what is a public road see paragraphs 518 to 539 of this Ruling. Examples of private access roads for use in a mining operation include a private road which is necessary to allow access to a paragraph 11(1)(a) or 11(1)(b) mining operation from a public road and a private road which connects a mining site and a place at which beneficiation occurs.[157]

[157] See *Re Hampton Transport Services Pty Ltd and Chief Executive Officer of Customs* (2000) 34 AAR 130; (2001) 49 ATR 1005; [2001] AATA 894 at paragraph 12.

383. Factors that are indicative of a private access road include:

- permission is required from the land owner, permit holder or licensee to use the road;
- the land owner, permit holder or licensee has the ability to deny access to the road;[158]
- the road is not constructed for use by the public, and is not continuously or regularly used by the public at large;
- there is no thoroughfare to places, for example local communities, other than the relevant mining operations;
- the road is constructed 'at the place where the mining operation is carried on';
- the road is constructed for private use in a paragraph 11(1)(a) or 11(1)(b) mining operation; and/or
- the road provides a private right of entry to a 11(1)(a) or 11(1)(b) mining operation.

384. No single factor is conclusive in identifying whether a road is a private access road or not. What is required is a weighing up of a combination of factors in the context of the facts of each case.

385. The construction or maintenance of a private access road includes the grading, levelling, watering or compacting of the soil. The extraction, processing or transportation of road base materials for use in the construction or the maintenance of roads is not a mining operation under paragraph 15(a) as these activities occur prior to construction or maintenance of a road.

386. The activities of constructing and maintaining private access roads are restricted to 'the place' where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on. The construction of a private access road on land that is the subject of a miscellaneous licence granted to the person, linking a mining site to a public road will qualify as a mining operation under paragraph 15(a) as being 'at the place'.[159]

387. The construction and maintenance of a private access road connecting or interconnecting parcels of land not legally occupied for the purposes of mining for minerals and the beneficiation of those minerals or for the purposes of private roads that are not private access roads will not qualify as a mining operation under paragraph 15(a).

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[158] For example, a sign restricting access to the road, or use of a gate to restrict access to the road.

[159] See the facts of the case in *Re Hampton Transport Services Pty Ltd and Chief Executive Officer of Customs* (2000) 34 AAR 130; (2001) 49 ATR 1005; [2001] AATA 894.

(b) The construction or maintenance of tailings dams or dams which store contaminants

388. Paragraph 15(b) provides:

> The expression ***mining construction activity*** means:
>
> (b) the construction or maintenance of:
>
> (i) tailings dams for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1); or
>
> (ii) dams, or other works, to store or contain water that has been used in, or obtained in the course of conducting, a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) and that contains contaminants that preclude its release into the environment;
>
> if the construction or maintenance:
>
> (iii) occurs at the place where the mining operation is carried on or at a place adjacent to that place; and
>
> (iv) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the construction or maintenance

389. Tailings are materials resulting from processes in the mining or beneficiation of ores or minerals. A tailings dam is therefore an area set aside for the storage of these materials.

390. The Commissioner takes the view that dams or other works used in the storage of contaminated water that has been used or obtained in the course of conducting a paragraph 11(1)(a) or 11(1)(b) mining operation to consist of ponds, mud lakes, dykes and other similar works.

391. The construction or maintenance of dams to hold contaminated water involves the grading, levelling or compacting of the soil. It also includes the construction of dams composed of concrete, steel and other materials.

392. Paragraph 15(b) does not include the extraction, processing or transportation of materials for use in the construction or the maintenance of these dams as the extraction, processing and transportation are activities that occur before the construction and maintenance activities that are within the paragraph.

393. The phrase ‘construction or maintenance’ includes repairing and servicing.

394. The construction and maintenance of tailings dams or other dams to store or contain contaminated water can be either at the place where the relevant mining operation is carried out or at a place adjacent to it.[160]

(c) The construction or maintenance of dams for the storage of uncontaminated water

395. Paragraph 15(c) provides:

> The expression ***mining construction activity*** means:
>
> (c) the construction or maintenance of dams for the storage of uncontaminated water for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) if the construction or maintenance:
>
> (i) occurs at the place where the mining operation is carried on; and
>
> (ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the construction or maintenance

396. The construction or maintenance of dams to hold uncontaminated water involves the grading, levelling or compacting of the soil. It also includes the construction of dams composed of concrete, steel and other materials.

397. Paragraph 15(c) does not include the extraction, processing or transportation of materials for use in the construction or maintenance of these dams as the extraction, processing and transportation are activities that occur before the construction and maintenance activities that are within the paragraph.

398. The phrase 'construction or maintenance' includes repairing and servicing.

399. The construction and maintenance of dams to store or contain uncontaminated water must be at the place where the relevant paragraph 11(1)(a) or 11(1)(b) mining operation is carried on.[161]

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[160] See paragraphs 325 to 327 of this Ruling for a discussion on 'a place adjacent to the place where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on'.
[161] See paragraphs 315 to 324 of this Ruling for a discussion of 'at the place'.

(d) The construction or maintenance of private airstrips, buildings, plant or equipment

400. Paragraph 15(d) provides:

> The expression ***mining construction activity*** means:
>
> (d) the construction or maintenance of private airstrips, buildings, plant or equipment for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) if the construction or maintenance:
>
> (i) occurs at the place where the mining operation is carried on; and
>
> (ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the construction or maintenance

401. The construction or maintenance of administration offices, mess halls, equipment sheds, workshops and storage facilities that are for use in a paragraph 11(1)(a) or 11(1)(b) mining operation is a qualifying use under paragraph 15(d).

402. The reference to buildings, plant or equipment is not limited to those that are associated with any airstrip that is constructed or maintained but applies to all buildings, plant and equipment for use in the relevant mining operation. However, the construction and maintenance of a mining town would not be a mining operation under this paragraph as the construction and maintenance of a mining town is not for use in a paragraph 11(1)(a) or 11(1)(b) mining operation.

403. The Commissioner considers that the phrase 'construction or maintenance' includes repairing and servicing.

404. Construction and maintenance activities that fall within paragraph 15(d) include the construction and maintenance of pipelines used in the supply of water and the construction of a beneficiation plant (but not the preparation of the site to enable the construction work for the beneficiation plant to commence).

405. For the activity to be a mining operation under paragraph 15(d), it must occur at the place where the paragraph 11(1)(a) or 11(1)(b) mining operation is carried on. The construction or maintenance must be carried out by the person who carries on the mining operation or by a contractor contracted by that person.[162]

[162] See paragraphs 315 to 324 of this Ruling for a discussion of 'at the place'.

406. Paragraph 15(d) does not include the extraction, processing or transportation of materials for use in the construction or the maintenance of private airstrips, buildings, plant or equipment as the extraction, processing and transportation are activities that occur before the construction and maintenance activities that are within the paragraph.[163]

(e) The construction or maintenance of power stations or power lines

407. Paragraph 15(e) provides:

> The expression ***mining construction activity*** means:
>
> (e) the construction or maintenance of power stations or power lines solely for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) if the construction or maintenance:
>
> (i) occurs at the place where the mining operation is carried on; and
>
> (ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the construction or maintenance.

408. For the construction or maintenance of power stations or power lines to be a 'mining operation' under paragraph 15(e), they must be solely, that is exclusively or only for use in a paragraph 11(1)(a) or 11(1)(b) mining operation.[164] The power station or power lines must not be constructed or maintained partly for use in the relevant mining operation and partly for some other purpose.

409. The Commissioner considers that the phrase 'construction or maintenance' includes repairing and servicing.

410. The construction of a power station or power lines by a general utility provider as part of a grid for the supply of electricity to the general public does not qualify as a mining construction activity under paragraph 15(e). The power station or power lines constructed are not solely for use in a paragraph 11(1)(a) or 11(1)(b) mining operation.

411. Paragraph 15(e) does not include the extraction, processing or transportation of materials for use in the construction or maintenance of a power station or power lines as the extraction, processing and transportation are activities that occur before the construction and maintenance activities that are within the paragraph.

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[163] *Re McDermott Industries and others and Chief Executive Officer of Customs* (7 July 1997) W96/238 AAT No. 12014; (1997) 47 ALD 134.

[164] See paragraphs 288 to 314 of this Ruling for a discussion on solely.

Mining waste activity

412. The definition of 'mining operations' in paragraph 11(1)(g) states:

> Subject to subsection (2), the expression ***mining operations*** includes:
>
> (g) a mining waste activity

413. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining waste activity.

414. Mining waste activity is defined in section 16 to mean:

(a) the removal of waste products of a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) from the place where the mining operation is carried on; or

(b) the disposal of waste products of a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) at the place where the mining operation is carried on.

415. A waste product is a material produced in a process and discarded as useless when that process is completed.[165] It can be described as something that is an excess material, or is unproductive and superfluous.

416. A waste product can include any matter, whether liquid, solid, gaseous or radioactive, with or without matter in suspension or solution in it, which is discharged, emitted or deposited in such volume, constituency or manner as to cause an alteration of the environment. The concept of waste embraces all unwanted and economically unusable or rejected by-products at any given place and time, and any other matter which may be discharged, accidentally or otherwise, to the environment.

417. Waste is not restricted to naturally occurring materials such as tailings and gangue. Waste also includes:

- sewerage;
- garbage;
- used pipes or tubing from drilling operations; and
- domestic and industrial waste from a paragraph 11(1)(a) or 11(1)(b) mining operation.[166]

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[165] *Re Water Administration Ministerial Corporation and Chief Executive Officer of Customs* (13 August 1997) N96/1212 AAT No. 12111, in which the AAT considered that the term 'waste' could encompass these concepts. See also *Re BHP Billiton Petroleum Pty Ltd and Chief Executive Officer of Customs* (2002) 69 ALD 453; (2002) 50 ATR 1156; [2002] AATA 705.

[166] *Re Esso Australia Ltd and Chief Executive Officer of Customs* V96/1393 V96/1394 AAT No. 12919; [1998] AATA 366 at paragraph 20.

418. Useful material cannot be waste products, even if the proposed use is confined to analysis. Nor can material, which is to be repaired for further use, be waste products.[167]

419. The fact that something may, at some later time, be reused does not necessarily preclude it from being waste.

420. You must be able to prove that the waste products have been produced as a result of the relevant mining operation. The waste products must be a product of a paragraph 11(1)(a) or 11(1)(b) mining operation and not of a mining operation under paragraphs 11(1)(c) to 11(1)(i) or of some other operation.

421. To qualify as a mining operation under paragraph 16(a), the removal of the waste products must be from the place where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on. Under paragraph 16(b), the disposal of the waste products must be at the place where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on.

422. Removal in the context of paragraph 16(a) means the taking away of, or the movement of, the waste product from the place where the relevant mining operation is carried on. The requirements of paragraph 16(a) will not be met if there is a movement of waste products from one part of the place to another part of the same place.

423. Paragraph 16(a) does not encompass the disposal of waste products at the place where the relevant mining operation is carried on. The meaning of the phrase 'at the place where the mining operation is carried on' is discussed at paragraphs 315 to 324 of this Ruling.

424. The Commissioner considers that the transport of a waste product for disposal within a place at which a mining operation is carried on may be an eligible activity under paragraph 11(1)(a) or 11(1)(b).

425. The transportation of waste products from the place where the relevant mining operation is carried on is not affected by the exclusion contained in paragraph 11(2)(c).

426. Under paragraph 16(b), the disposal of waste products of the relevant mining operation must occur at the place where the relevant mining operation is carried on. The waste product must be the product of the particular mining operation. In the context of the paragraph, 'disposal' means the elimination, destruction or, in any other manner, getting rid of a waste product. This can include disposal by burying or incineration.

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[167] *Re BHP Billiton Petroleum Pty Ltd and Chief Executive Officer of Customs* (2002) 69 ALD 453; (2002) 50 ATR 1156; [2002] AATA 705.

Mining vehicle activity

427. The definition of 'mining operations' in paragraph 11(1)(h) states:

> Subject to subsection (2), the expression mining operations includes:
>
> (h) a mining vehicle activity

428. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a mining vehicle activity.

429. Mining vehicle activity can broadly be described as:

(a) the service, maintenance or repair of vehicles, plant or equipment for use in a paragraph 11(1)(a) or 11(1)(b) mining operation (paragraph 17(a));

(b) the service, maintenance or repair of vehicles or equipment solely for use in a paragraph 12(a) mining transport activity (paragraph 17(b)); or

(c) the service, maintenance or repair of transport networks that are employed solely for use in a paragraph 12(a) mining transport activity (paragraph 17(c)).

430. Each of these activities is discussed in following paragraphs.

(a) The service, maintenance or repair of vehicles, plant or equipment for use in a paragraph 11(1)(a) or 11(1)(b) mining operation

431. ***Mining vehicle activity*** is defined in paragraph 17(a) to mean:

(a) the service, maintenance or repair of vehicles, plant or equipment for use in a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) if the service, maintenance or repair:

(i) occurs at the place where the mining operation is carried on; and

(ii) is carried out by the person who carries on the mining operation or by a person contracted by that person to carry out the service, maintenance or repair

432. Subject to paragraph 11(2)(b), the service, maintenance or repair of vehicles used in exploration or prospecting, removal of overburden and other activities undertaken in the preparation of a site, mining for minerals, or the beneficiation of those minerals or of ores bearing minerals are eligible activities for the purposes of the energy grants scheme.

433. Plant can be described as the machinery and tools needed to carry on the relevant mining operations. Plant can include the pipeline constructed between a well head and beneficiation plant. Service or maintenance can include sand blasting and/or repainting of the eligible vehicles, plant or equipment.

434. For the purposes of paragraph 17(a), the service, maintenance or repair must occur at the place where the mining operation is carried on.[168] The transportation of vehicles, plant or equipment away from the place for repair work to be carried out elsewhere is not an activity that is within the paragraph.

435. Paragraph 11(2)(b) precludes from the definition of mining operations, the use of vehicles, other than fork-lifts, front-end loaders, and tractors, not exceeding 3.5 tonnes gross vehicle weight (other than such vehicles that have been extensively modified for use underground while they are so used).

436. As the use of such vehicles is specifically excluded from the definition of mining operations, and as paragraph 17(a) only applies to the service, maintenance and repair of vehicles used in a paragraph 11(1)(a) or 11(1)(b) mining operation, paragraph 17(a) does not apply to the service, maintenance and repair of such vehicles.

(b) The service, maintenance or repair of vehicles or equipment used solely in a mining transport activity in paragraph 12(a)

437. ***Mining vehicle activity*** is defined in paragraph 17(b) to mean:

> (b) the service, maintenance or repair of vehicles or equipment solely for use in a mining transport activity referred to in paragraph (a) of the definition of that expression in section 12 if the service, maintenance or repair is carried out by:
>
> (i) the person who carries on the mining operation; or
>
> (ii) a person contracted by that person to carry out the service, maintenance or repair

438. Unlike paragraph 17(a), paragraph 17(b) refers to vehicles or equipment used in activities referred to in paragraph 12(a); that is, the transportation of minerals or ores for beneficiation at a place other than the mine site.[169] Paragraph 17(b) does not apply to plant that is used in the relevant mining operation.

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[168] *Re Goodyear Australia Ltd and Others and Chief Executive Officer of Customs* AAT No. 13035; [1998] AATA 488 (1 July 1998) at paragraph 13.

[169] For a discussion on paragraph 12(a) of the definition of mining operations, see paragraphs 331 to 338 of this Ruling.

439. The vehicle or equipment must be for use solely, that is, exclusively or only in activities outlined in paragraph 12(a) for their service, maintenance or repair to qualify as a mining operation under paragraph 17(b).[170] Paragraph 17(b) does not require that the service, maintenance or repair be carried out either at the mining site or the place where the beneficiation takes place. However, paragraph 11(2)(c) excludes the transportation of equipment, people and parts to or from the place where the mining operation under paragraph 11(1)(h) is carried on.

440. For the purposes of paragraph 17(b), service or maintenance of vehicles includes sand blasting and/or repainting of the relevant vehicles or equipment.

(c) The service, maintenance or repair of transport networks

441. ***Mining vehicle activity*** is defined in paragraph 17(c) to mean:

> (c) the service, maintenance or repair of transport networks (including conveyor belts, pipelines and railway lines) that are employed solely for use in a mining transport activity referred to in paragraph (a) of the definition of that expression in section 12 to the extent that the service, maintenance or repair:
>
> (i) is carried out on so much of the network as is located at the place where a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) is carried out; and
>
> (ii) is carried out by the person who carries on the mining transport activity referred to in paragraph (a) of the definition of that expression in section 12 or by a person contracted by that person to carry out the service, maintenance or repair.

442. The Commissioner considers that a transport network consists of a group or system of interconnected transport infrastructures utilised for the movement of minerals, or ores bearing minerals, from the mining site to the place of beneficiation. A transport network is intended to encompass railway and road networks,[171] and is defined to include conveyor belts, pipelines and railway lines.[172]

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[170] See paragraphs 288 to 314 of this Ruling for a discussion on solely.
[171] Supplementary Explanatory Memorandum to the Customs and Excise Legislation Amendment Bill 1995 item 21. (The criteria for this particular eligible activity are unchanged in the provisions of the energy grants scheme).
[172] Paragraph 17(c).

443. For the service, maintenance or repair of transport networks to qualify as a mining operation under paragraph 17(c), the following requirements must be met:

- the transport network must be employed solely, that is exclusively or only, for use in activities that constitute paragraph 12(a) mining transport activities;[173]
- the service, maintenance or repair must be carried out on so much of the transport network that is located at the place where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried out; and
- it must be carried out by the person who undertakes the journeys referred to in paragraph 12(a), or by a person contracted by that person.

444. Where the service, maintenance or repair is carried out on parts of the transport network that are located partly at the place where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on and partly outside that place, only the service, maintenance or repair carried out at the place qualifies as a mining operation under paragraph 17(c). An apportionment of taxable fuel will need to be made as the entitlement to a fuel tax credit only arises in relation to taxable fuel acquired for use in the activity that qualifies as a mining operation.

445. Under paragraph 17(c), only the service, maintenance or repair of transport networks qualifies as mining operations. The construction or installation of a transport network does not qualify as a mining operation under this paragraph, as these activities occur prior to any service, maintenance or repair.

446. Paragraph 11(2)(c) precludes from the definition of mining operations the transport of people, equipment or goods to or from the place at which a mining operation is carried on. No entitlement to a fuel tax credit for use in mining operations arises for taxable fuel acquired for use in the transport of people, equipment or goods required for service and maintenance to or from the place where the service, maintenance or repair of transport networks is carried out.

Sundry mining activity

447. The definition of 'mining operations' in paragraph 11(1)(i) states:

> Subject to subsection (2), the expression ***mining operations*** includes:
>
> (i) a sundry mining activity.

448. You are entitled to a fuel tax credit if you acquire taxable fuel for use in a sundry mining activity.

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[173] See paragraphs 288 to 314 of this Ruling for a discussion on solely.

449. Section 18 sets out a number of activities that qualify as mining operations under the category of sundry mining activities. These can broadly be described as:

- the liquefaction of natural gas;
- the reactivation of carbon for use in the beneficiation of ore bearing gold;
- coal stockpile management;
- the generation of electricity solely for, or the provision of electricity solely to, a mining town; and
- the use of fuel at residential premises for specified purposes.

450. Each of these activities is discussed below.

(a) The liquefaction of natural gas

451. Paragraph 18(a) provides:

> The expression sundry mining activity means:
>
> (a) the liquefying of natural gas

452. The expression 'natural gas' in paragraphs 18(a) of the definition of sundry mining activity and paragraph 12(b)[174] of the definition of mining transport activity covers all naturally occurring gases. The chief component of natural gas is methane, which usually makes up between 80% to 95% of the gas, with the remaining components comprising varying amounts of ethane, propane, butane, and other naturally occurring compounds such as nitrogen, oxygen and carbon dioxide.

453. Liquefaction is not synonymous with 'beneficiation'. It is a separate process, involving the use of high pressure and/or refrigeration, carried out after the gas has been beneficiated. In essence, liquefied natural gas is produced by refrigerating natural gas to approximately minus 160 degrees Celsius.

454. The process of liquefaction occurs after beneficiation. In relation to natural gas, as operations for the recovery of minerals cease when the process of beneficiation ceases, the Commissioner considers that other activities that are associated with, but are not liquefying of natural gas, are not activities that are 'mining operations' under either paragraph 11(1)(a) or 11(1)(b).

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[174] Paragraph 12(b) is about the transporting of natural gas from the mining site to the place where that natural gas is liquefied if it is liquefied at a place other than the mining site. See paragraphs 339 to 341 of this Ruling for a discussion on that mining transport activity.

455. For example, not all taxable fuel acquired for use in the construction of a liquefied natural gas processing plant that consists of some components for beneficiation and other components for liquefaction will be eligible for a fuel tax credit. An apportionment would need to be made for taxable fuel used in the construction of that part of the plant that comprises beneficiation components. The taxable fuel used in construction of the remaining components would be considered to be construction of infrastructure for processes that occur after 'recovery of minerals' has ceased. For the period 1 July 2006 to 30 June 2008 (inclusive) there is no entitlement to a fuel tax credit for this taxable fuel, however, from 1 July 2008 there is an entitlement to a half credit.

(b) The reactivation of carbon for use in the beneficiation of ore bearing gold

456. Paragraph 18(b) provides:

> The expression ***sundry mining activity*** means:
>
> (b) the reactivation of carbon for use in the beneficiation of ores bearing gold if the reactivation occurs at the place where a recovery operation referred to in paragraph (b) of the definition of mining operations in subsection 11(1) is carried on

457. Reactivation is a process to restore the adsorption capacity of Granular Activated Carbon (GAC) using a special furnace operating at over 800 degrees Celsius. Reactivated carbon is typically used to adsorb the gold directly from a cyanided pulp in a series of large adsorption tanks. This is known as the carbon-in-pulp process.

458. Reactivation of GAC can be carried out on-site. However, in most cases, it is more efficient to utilise a Reactivation Centre. Under paragraph 18(b), only the reactivation of carbon 'at the place' where the recovery operation referred to in paragraph 11(1)(b) is carried on is a qualifying use. As paragraph 18(b) specifically refers to the reactivation of carbon for use in the beneficiation of ores bearing gold, the reference to 'at the place' where the recovery operation is carried on is a reference to a place where beneficiation of ores that bear gold takes place.

(c) Coal stockpile management

459. Paragraph 18(c) provides:

> The expression ***sundry mining activity*** means:
>
> (c) coal stockpile management for the prevention of the spontaneous combustion of coal if the management is carried out:
>
> (i) by a person who carries on a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1); or

(ii) by a person contracted by that person to carry out the management;

at the place where the mining operation is carried on

460. Coal stockpile management for the prevention of spontaneous combustion of coal usually involves the use of bulldozers to compact the coal on a stockpile.

461. Coal stockpile management also includes coal temperature monitoring, the cutting in and cutting out of coal to spread, cool and compact it, and other activities involved in the compacting of coal.[175] Each of these operations must be undertaken for the prevention of spontaneous combustion for the activity to qualify as a sundry mining activity as coal stockpile management.

462. To be entitled to a fuel tax credit for taxable fuel acquired for use in coal stockpile management, an entity must be able to prove that the reason for the activity was to prevent the spontaneous combustion of coal 'at the place' where a paragraph 11(1)(a) or 11(1)(b) mining operations is carried on. There are no limits as to how many stockpiles may be managed for this purpose.

463. Stockpile management for any other purpose is not eligible as a mining operation under paragraph 18(c). However, other stockpile management activities may qualify as a mining operation under subparagraph 11(1)(b)(ii) as they may be a part of the beneficiation process of a particular mineral or ore bearing minerals.[176]

(d) The generation of electricity solely for, or the provision of electricity solely to, a mining town

464. Paragraph 18(d) provides:

The expression ***sundry mining activity*** means:

(d) generation of electricity solely for, or the provision of electricity solely to, a mining town if:

(i) the existence of the town is necessary to enable a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1) to be undertaken; and

(ii) the generation or provision is carried out by the person who carries on the mining operation

465. To qualify as a mining operation the generation and provision of the electricity must be solely, that is exclusively or only for or to a mining town. Paragraphs 288 to 314 of this Ruling set out the Commissioner's view on how the solely requirement is to be interpreted.

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[175] *Re BHP Australia Coal Ltd and Collector of Customs* Q91/446 AATA No. 9266; (1994) 32 ALD 773 paragraphs 10 to 47.
[176] This is discussed at paragraphs 252 to 285 of this Ruling.

466. ***Mining town*** is defined in section 19 to mean:

> …a town constructed by or on behalf of a person engaged in mining operations, in an area where immediately prior to its construction there was no town, principally to house employees of the person, but does not include a town administered by:
>
> (b) a council that is constituted under local government legislation of a State or Territory; or
>
> (c) an organisation taken to be a council under such legislation.

467. A mining town is, therefore, a purpose-built settlement, constructed by or on behalf of a person who is engaged in mining operations. For the town to be a mining town, it must be constructed mainly to house employees of the entity that carries on the relevant mining operation and it must be constructed in an area where no town previously existed.

468. However, the term 'mining town' does not include a town that is administered by a local council or similar body, even if the town is constructed by the entity engaged in mining operations for the purpose of enabling the relevant mining operations be carried on.[177]

469. Paragraph 18(d) does not require that the electricity be generated at the place where the relevant mining operation is carried on or that it be provided from that place or from a place that is adjacent to that place. However, the existence of the mining town must be necessary to enable a paragraph 11(1)(a) or 11(1)(b) mining operation to be undertaken. From a practical point of view, the mining town would be expected to be located reasonably close to the place where the relevant mining operation is being carried on.[178]

470. For the purposes of paragraph 18(d), the entity that carries on the paragraph 11(1)(a) or 11(1)(b) mining operation must carry out the generation or provision of the electricity. The generation or provision of electricity by a contractor or a subcontractor does not qualify as a mining operation under paragraph 18(d).

471. However, from 1 July 2006, an entitlement to a fuel tax credit for taxable fuel acquired for the use in generating electricity exists directly under section 41-5 of the FT Act.[179] An entitlement to a fuel tax credit for the provision of electricity solely to a mining town arises only if the activity is a mining operation under paragraph 18(d).

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[177] *Energy Resources of Australia v. Chief Executive Officer of Customs* (1998) 81 FCR 139; (1998) 97 LGERA 405; (1998) 26 AAR 487.

[178] In the case of *Collector of Customs v. Cliffs Robe River Iron Associates* (1985) 7 FCR 271; (1985) 7 ALN N269a, the town of Pannawonica was located some five kilometres from the place where mining was being carried on, and this was not deemed excessive for a mining town.

[179] Taxable fuel acquired for use in the generation of electricity is **not** subject to the requirements of items 10 and 11 of Schedule 3 of the Transitional Act.

472. Although not a qualifying use as a sundry mining activity, an entity engaged in mining operations or their contractor or subcontractor may be entitled under section 41-5 of the FT Act to a fuel tax credit for taxable fuel acquired for use in the generation of electricity.

(e) The use of taxable fuel 'at' residential premises

473. Paragraph 18(e) provides:

> The expression ***sundry mining activity*** means:
>
> (e) the use of off-road diesel fuel at residential premises in:
>
> (i) providing food and drink for; or
>
> (ii) providing lighting, heating, air-conditioning, hot water or similar amenities for; or
>
> (iii) meeting other domestic requirements of;
>
> residents of the premises if:
>
> (iv) the use is by a person who carries on a mining operation referred to in paragraph (a) or (b) of the definition of that expression in subsection 11(1); and
>
> (v) the residential premises are situated at the place where the mining operation is carried on, or at a place adjacent to that place.

474. The expression 'residential premises' is defined in section 4 to mean:

> (a) premises used as a house; or
>
> (b) other premises at which at least one person resides;
>
> but does not include:
>
> (c) premises used in the business of a hotel, motel or boarding house or a similar business; or
>
> (d) premises used as a hospital or nursing home or as any other institution providing medical or nursing care; or
>
> (e) premises used as a home for aged person; or
>
> (f) premises used as a boarding school.

475. To qualify as a mining operation under this category, the use of the taxable fuel at residential premises must meet a dual locational test.

476. The first part of this test is the determination of whether the use of the taxable fuel is 'at' residential premises.

477. When considering this issue, the Courts have taken the view that the taxable fuel must be purchased for use at a place that may be reasonably identified with the premises. The plant or generator in which the taxable fuel is used must be appurtenant to the premises and coherent with them, and it should be able to be said that they 'belong' to the premises.[180]

478. In *Collector of Customs, Tasmania v. Flinders Island Community Association*,[181] the Association operated a generator, which supplied electricity to nearby houses located on a housing estate. In relation to the meaning of 'at' residential premises under the diesel fuel rebate scheme, the Court found that the word 'at' required:

> …a close connection between the use and the residential premises but not use within the residential premises. What is a sufficiently close connection must depend upon the circumstances of the particular case… In this regard it appears that the Parliament intended to give a rebate in respect of use of diesel fuel for what might be called home generation of electricity for domestic purposes… It is consistent with that policy, and the use of the word 'at', that the generation takes place in physical proximity to the supplied houses and that the resultant electricity be used only at premises falling within the definition of 'residential premises'.[182]

479. In *Collector of Customs v. Rottnest Island Authority*,[183] the Authority was responsible for generating all electricity for use on the island. Electricity was generated for use in a number of residential premises, in a shopping complex, other shops, a garden golf complex, street lighting and other commercial venues.

480. In relation to the locational test, the Court considered that:

> … the section requires that, because the existence of some appropriate heating or generating plant is clearly contemplated, the location of such a plant be in sufficient proximity to the premises as to enable it reasonably to be identified with the premises. It must be appurtenant to the premises and coherent with them. It must be able to be said of the plant using the fuel that it belongs to the premises even though it be not a part of them.[184]

481. Although the above decisions were in respect of a separate category of eligible activities (diesel fuel purchased for use 'at residential premises') for the purposes of the diesel fuel rebate scheme, the Commissioner considers that the principles established in them are relevant in determining whether the use of taxable fuel is 'at residential premises' under paragraph 18(e) of the definition of 'sundry mining activity'.

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[180] *Collector of Customs v. Rottnest Island Authority* (1994) 119 ALR 406 at 421; (1994) 48 FCR 177 at 193.
[181] *Collector of Customs, Tasmania v. Flinders Island Community Association* (1985) 7 FCR 205; (1985) 60 ALR 717.
[182] *Collector of Customs, Tasmania v. Flinders Island Community Association* (1985) 7 FCR 205 at 213; (1985) 60 ALR 717 at 724.
[183] *Collector of Customs v. Rottnest Island Authority* (1994) 119 ALR 406; (1994) 48 FCR 177.
[184] *Collector of Customs v. Rottnest Island Authority* (1994) 119 ALR 406 at 422; (1994) 48 FCR 177 at 193.

482. The second part of the locational test is to determine whether the premises themselves are 'at the place' at which a paragraph 11(1)(a) or (11)(1)(b) mining operation is carried on, or 'at a place adjacent to that place'.[185]

483. For entitlement to a fuel tax credit for use in a mining operation under paragraph 18(e), the taxable fuel that is used must meet the following criteria:

- the use of the fuel is 'at' the residential premises;
- it is purchased for use in the manner dictated by subparagraphs 18(e)(i), (ii) or (iii), that is, in providing for residents of the premises:
  - food and drink;
  - lighting, heating air conditioning, hot water or similar amenities; or
  - meeting their other domestic requirements;
- the use of the fuel is by a person carrying on a paragraph 11(1)(a) or (11(1)(b) mining operation; and
- the residential premises at which the diesel fuel is used must be located 'at the place' or 'adjacent to that place' where a paragraph 11(1)(a) or 11(1)(b) mining operation is carried on.

484. For the purposes of paragraph 18(e), the entity that carries on the paragraph 11(1)(a) or 11(1)(b) mining operation must use the taxable fuel 'at' the residential premises. The use of taxable fuel by a contractor or a subcontractor does not qualify as a mining operation under paragraph 18(e).

485. Although not a qualifying use as a sundry mining activity, an entity engaged in mining operations or their contractor or subcontractor may be entitled under section 41-5 of the FT Act to a fuel tax credit for taxable fuel acquired for use in the generation of electricity at residential premises.

Activities excluded from 'mining operations'

486. From 1 July 2006 to 30 June 2008 (inclusive) you are not entitled to a fuel tax credit if you acquire taxable fuel for use in an activity that is excluded from the definition of 'mining operations' by subsection 11(2).

487. However, from 1 July 2008 to 30 June 2012 (inclusive) you are entitled to a half credit if you acquire taxable fuel for use in an activity that is excluded from the definition of 'mining operations' by subsection 11(2).

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[185] See paragraphs 315 to 324 of this Ruling for a discussion of 'at the place' and paragraphs 325 to 327 for a discussion of 'a place adjacent to the place'.

488. From 1 July 2012, you are entitled to a full fuel tax credit if you acquire taxable fuel for use in an activity that is excluded from the definition of 'mining operations' by subsection 11(2).

489. As discussed at paragraphs 191 to 198 of this Ruling, certain activities are excluded from 'mining operations' by paragraphs 11(2)(a) to (c) of the definition. The exclusions relate to:

(a) certain quarrying or dredging operations;

(b) the use of vehicles not exceeding 3.5 tonnes gross vehicle mass, other than certain vehicles; or

(c) the transport of people, equipment or goods to or from a place, or a place adjacent to that place, where a mining operation as defined in paragraph 11(1) is or is to be carried on, with certain exceptions.

(a) Certain quarrying or dredging operations

490. Paragraph 11(2)(a) provides:

> The expression ***mining operations*** does not include:
>
> (a) quarrying or dredging operations to the extent that the purpose of the operations is to obtain materials for use in building, road making, landscaping, construction or similar purposes

491. The object of quarrying operations is to generally seek and extract commonly occurring rock, stone, gravel and so on to meet physical requirements rather than a particular mineral composition. The Commissioner considers quarrying to mean the removal of stone, slate or other materials, for use in building, road making, landscaping, construction or similar purposes, from an excavation or pit by cutting or blasting.

492. Dredging involves the use of a machine or equipment to remove sand, silt and mud, usually from the bottom of a waterway. The material obtained by dredging is then carried away by the dredging vessel, by another vessel or is pumped away through a pipe.

493. The exclusion of quarrying or dredging operations depends on the purpose for which such operations are undertaken. It is only when the purpose of the operation is to obtain materials for use in building, road making, landscaping, construction or other similar purpose, that it is excluded under paragraph 11(2)(a) from being a mining operation for the purposes of the energy grants scheme.[186]

[186] The note to subsection 11(2) provides that examples of quarrying or dredging operations include operations for obtaining materials for use as concrete aggregate, road base materials, railway ballast, fill materials, building stone or monumental stone.

494. Quarrying or dredging operations undertaken for the exploration or prospecting for minerals[187] and mining for those minerals (other than to obtain materials for use in building, road making, construction or other similar purpose) are mining operations for the purposes of the energy grants scheme.

495. From 1 July 2008 to 30 June 2012 (inclusive), an entitlement to a half credit exists for taxable fuel acquired for use in quarrying or dredging operations undertaken to obtain materials for use in building, road making, construction or similar purposes. As of 1 July 2012, a full fuel tax credit exists for such quarrying or dredging operations.

(b) The use of vehicles not exceeding 3.5 tonnes gross vehicle mass

496. Paragraph 11(2)(b) provides:

> The expression ***mining operations*** does not include:
>
> (b) the use of a vehicle (other than a fork-lift, front-end loader, tractor or other similar vehicle that is specified in the regulations) not exceeding 3.5 tonnes gross vehicle mass, other than such a vehicle that is extensively modified for use underground while it is so used

497. There is no single factor that is conclusive in identifying a vehicle that has been 'extensively modified for use underground'.

498. As a guide, factors that may be indicative of a vehicle that is extensively modified for underground use include the following:

- the vehicle is locked into low range gearing, that is, it can only operate in 1st, 2nd or 3rd gear;
- significant alterations or modifications are made to the vehicle's bodywork;
- the vehicle is fitted with a speed limiting device;
- the vehicle is fitted with overhead protection;
- the vehicle is fitted with electronic system isolating switches;
- the vehicle is flame proof, has emission controls and is purpose built with electronic shutdown systems; and/or
- the vehicle has been specifically approved for underground use by a State or Territory mining authority.

[187] See section 20 for the definition of 'minerals'. Also see discussion on 'What is a mineral?' at paragraphs 206 to 223 of this Ruling.

499. Paragraph 11(2)(b) applies to vehicles not exceeding 3.5 tonnes gross vehicle mass and are not fork-lifts, front-end loaders or tractors or similar vehicles that are modified for use in an open cut mine. These vehicles are not modified for use underground.

500. If a vehicle is extensively modified for use underground and is used partially underground and partially above ground (including in an open cut mine), an apportionment of the use needs to be made to determine that portion that is not a mining operation because of the operation of paragraph 11(2)(b). It is only the use of the vehicle that is extensively modified for use underground while it is used underground, that qualifies as a mining operation. Any other use of the modified vehicle is not a mining operation.

501. Minor modifications, such as the removal or addition of certain lights, bumpers or doors, do not make a vehicle extensively modified for underground use, regardless of the fact that such modifications may make the vehicle unable to be registered for use on a public road.

502. The service, maintenance or repair of vehicles, the use of which is excluded by paragraph 11(2)(b) from being a mining operation, are also excluded from being a mining operation.[188]

503. From 1 July 2006 to 30 June 2008 (inclusive) you are not entitled to a fuel tax credit if you acquire taxable fuel for use in an activity that is excluded from the definition of 'mining operations' by paragraph 11(2)(b).[189]

504. However, from 1 July 2008 to 30 June 2012 (inclusive) you are entitled to a half credit if you acquire taxable fuel for use in an activity that is excluded from the definition of 'mining operations' by paragraph 11(2)(b).

505. From 1 July 2012, you are entitled to a full fuel tax credit if you acquire taxable fuel for use in an activity that is excluded from the definition of 'mining operations' by paragraph 11(2)(b).

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[188] See discussion on service, maintenance and repair of vehicles at paragraphs 437 to 440 of this Ruling. Service, maintenance or repairs of vehicles under paragraph 17(a) only applies to vehicles used in a mining operation covered by paragraphs 11(1)(a) or 11(1)(b). The use of vehicles covered by paragraph 11(2)(b) is not a mining operation covered by paragraph 11(1)(a) or (b) and therefore such vehicles are not the type of vehicles to which paragraph 17(a) applies.

[189] Nor is there an entitlement to a fuel tax credit for taxable fuel acquired for use in a vehicle with a GVM of 4.5 tonnes or less travelling on a public road.

(c) The transport of people, equipment or goods to or from a place, or a place adjacent to that place, where a mining operation as defined in subsection 11(1) is or is to be carried on

506. Paragraph 11(2)(c) provides:

> The expression **mining operations** does not include:
>
> (c) the transport, by any means, of people, equipment or goods to or from a place where a mining operation referred to in any of the paragraphs in subsection (1) is, or is to be, carried on, or to or from a place adjacent to that place, other than such transport to the extent that it constitutes the activity described in:
>
> (i) the definition of ***mining transport activity*** in section 12; or
>
> (ii) paragraph (c) of the definition of ***mining water activity*** in section 14; or
>
> (iii) paragraph (a) of the definition of ***mining waste activity*** in section 16.

507. Paragraph 11(2)(c) excludes, from the definition of mining operations, the transportation of people, equipment or goods to or from 'a place', being a place where the relevant mining operation is being carried on, or 'a place adjacent to that place'.[190]

508. The paragraph does not apply to transportation activities that are specifically covered by section 12, paragraph 14(c), or paragraph 16(a).

509. However, the paragraph does not exclude operating eligible vehicles, vessels or other transport infrastructure for the transport of people, equipment or goods 'within' a place where a mining operation as defined in subsection 11(1) is carried on.

510. Transport 'to the extent' that it constitutes an activity described in section 12 (mining transport activity), paragraph 14(c) (the supply of water solely for a paragraph 11(1)(a) or 11(1)(b) mining operation) or paragraph 16(a) (the removal of waste products of a paragraph 11(1)(a) or 11(1)(b) mining operation from the place where that mining operation is carried on) is not within the exclusion in paragraph 11(2)(c).

511. The use of the words 'to the extent' in paragraph 11(2)(c) means that apportionment can be made of the transport activities to determine the extent of the transport activity that is excluded under paragraph 11(2)(c) from being a mining operation.

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[190] See paragraphs 315 to 324 of this Ruling for a discussion of 'at the place' and paragraphs 325 to 327 for a discussion of 'a place adjacent to the place'.

512. The views expressed in paragraphs 507 to 511 of this Ruling are supported by the full Federal Court decision in *BHP Billiton Petroleum Pty Ltd v. Chief Executive Officer of Customs*.[191] In that case the issues were:

- whether BHP Billiton was entitled to diesel fuel rebate in respect of diesel fuel used by supply boats to assist in the towing of mobile offshore drilling units (MODU); and
- whether the AAT was entitled to apportion diesel fuel in relation to transport activities giving rise to rebate and those activities not giving rise to the rebate.

513. On the first issue, the Court agreed with the AAT in denying rebate in respect of diesel fuel used in the towing activity. On the second issue, the Court found that the use of the phrase 'to the extent that' in paragraph (z) of the definition of mining operations in subsection 164(7) of the Customs Act called for an apportionment between the transport that was eligible (transport of water and removal of waste) and transport that was not eligible.

The exclusion from the qualifying use of 'in mining operations' of diesel fuel purchased for use in propelling any vehicle on a public road

514. Subsection 53(2) excludes from the qualifying use 'mining operations', diesel fuel purchased for use in propelling any vehicle on a public road.

515. Although not a qualifying use in mining operations, you are entitled to a fuel tax credit under section 41-5 of the FT Act for taxable fuel acquired for use in a vehicle[192] with a GVM greater than 4.5 tonnes, travelling on a public road.[193]

516. The following table illustrates your entitlement to fuel tax credits for vehicles used in mining operations.

[191] *BHP Billiton Petroleum Pty Ltd v. Chief Executive Officer of Customs* [2003] FCAFC 61; (2003) 52 ATR 491.
[192] The term 'vehicle' is not defined and takes its ordinary meaning. It includes a 'road vehicle' as defined in section 4.
[193] Subject to meeting the requirements of section 41-25 of the FT Act.

	Qualifying off-road use	On-road use (travelling on a public road)
Vehicles (other than a fork-lift, front-end loader, tractor or similar vehicle that is specified in Energy Grants regulations) with a GVM ≤ 3.5 tonnes	• From 1 July 2006 to 30 June 2008 – **not** entitled to a full fuel tax credit. • From 1 July 2008 to 30 June 2012 – entitled to a half credit. • From 1 July 2012 – entitled to a full fuel tax credit.	• Not entitled to a fuel tax credit.
Vehicles extensively modified for use underground with a GVM ≤ 3.5 tonnes	• Entitled to a full fuel tax credit only for taxable fuel used in such a vehicle while it is so used underground. • From 1 July 2008 to 30 June 2012 – entitled to a half credit for any use other than underground. • From 1 July 2012 – entitled to a full fuel tax credit for any use in mining operations.	• Not entitled to a fuel tax credit.
Vehicles with a GVM greater than 3.5 tonnes but less than or equal to 4.5 tonnes	• Entitled to a full fuel tax credit.	• Not entitled to a fuel tax credit.[194]
Vehicles with a GVM > 4.5 tonnes	• Entitled to a full fuel tax credit.	• Entitled to a partial fuel tax credit.[195]

517. For the purposes of subsection 53(2) it is necessary to determine what a public road is.

[194] Entitlement to a fuel tax credit exists for diesel vehicles with a GVM equal to 4.5 tonnes acquired before 1 July 2006 – see item 12 of Schedule 3 of the Transitional Act.

[195] You are entitled to a partial credit (fuel tax credit minus the road user charge) unless the travel on a public road is incidental to the vehicle's main use. See section 43-10 of the FT Act.

Roads that are public roads

518. A 'road' is defined in common law as a way from one place to another, which enables passage between the two. It is well established that, under the common law, a 'road' becomes a 'public road' when the owner of the land has unequivocally indicated an intention to dedicate the road for public use, and the public has accepted the proffered dedication.[196]

519. However, in Australia the vast majority of public roads are constructed by government. In *Brodie and Anor v. Singleton Shire Council*,[197] Kirby J observed:

> … from the start, the building of public highways and roads in Australia was a responsibility of government, and eventually of statutory bodies (and not parishes and men thereof as in England…).[198]

520. There are statutory authorities in each state and territory, which are responsible for the construction, management and maintenance of the public road transport infrastructure within their own jurisdictions. Roads which are constructed, managed or maintained by these authorities are public roads. These roads fall into three main categories, being:

- national highways;
- state and territory highways and main roads; and
- local roads and streets.

National highways

521. The roads making up the national highways network are constructed and maintained by the states and territories out of funding provided by the Federal Government. These major highways are easily identifiable. They are public roads for the purposes of the subsection 53(2) mining operations exclusion.

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[196] *Permanent Trustee Company of New South Wales Ltd v. Campbelltown Municipal Council* (1960) 105 CLR 401 at 420-426; [1961] ALR 164 at 174; (1960) 6 LGRA 340 at 353. However, there is a question whether land which is owned by the Crown may be dedicated as a public road by dedication alone without acceptance by the public – see *Attorney-General for the Northern Territory v. Minister for Aboriginal Affairs* (NSW G235 of 1988) unreported decision of Wilcox J, 3 August 1988 at 18-21.

[197] *Brodie and Anor v. Singleton Shire Council* (2001) 206 CLR 512; (2001) 180 ALR 145.

[198] *Brodie and Anor v. Singleton Shire Council* (2001) 206 CLR 512 at 588; (2001) 180 ALR 145 at 198.

State and territory highways and main roads

522. Each state and territory has a statutory authority[199] which is responsible for the construction of highways and main roads within the state or territory. State and territory highways and main roads are the major connecting roads between towns.

523. It is usually the case that the governing statute provides for the formal declaration, proclamation or dedication of the highways and main roads for which the particular state or territory statutory authority is responsible.[200]

524. The Commissioner considers that, in each state and territory, the roads which are constructed and maintained by the state or territory authority which has the primary responsibility for highways and main roads, are public roads for the purposes of the subsection 53(2) mining operations exclusion.

Local roads

525. Within each state and the Northern Territory there are numerous local government authorities with statutory responsibility for the construction and maintenance of local roads within their own areas.

526. Local roads are the smaller connecting roads and suburban streets within the boundaries of a local government area.

527. The powers of local government authorities in each state and the Northern Territory are enumerated in the statutes which create local governments in that state or territory. The legislative powers and responsibilities in each statute apply to each individual local government area within the same state or territory. However, the statutes are not identical and this gives rise to variations according to the state or territory in which a particular local government area is located.

[199] For example, the Road Transport Authority of NSW; the Queensland Department of Main Roads; Main Roads WA; VicRoads; and the Tasmanian Department of Industry, Energy and Resources.

[200] For example, section 13 of the *Roads Act 1993* (NSW), section 23 of the *Transport Infrastructure Act 1994* (Qld), Schedule 2 of the *Transport Act 1983* (Vic), section 7 of the *Roads and Jetties Act 1935* (Tas) and section 13 of the *Main Roads Act 1930* (WA).

528. Although local government statutes do not always provide for dedication or declaration of roads as public roads, such statutes normally vest the ownership of local roads in a local government authority.[201] In Australia, the vesting by statute in local government authorities of fee simple in land over which there are public streets leaves the streets dedicated to the public.[202] As noted by Murray CJ in *Attorney-General; Ex rel Australian Mutual Provident Society v. Corporation of the City of Adelaide*:[203]

> …although the fee simple of all public streets within a municipality is vested in the Corporation of that Municipality, I think it is clear that the Corporation has not an unencumbered estate in the land, and an unrestricted right to use it in any manner it pleases. The surface is a street dedicated to the public, and it is as a street that the Corporation acquires its title to the land… It holds, therefore, subject to the rights of the public to use the street for passing and re-passing, except in so far as those rights may be taken away or limited by statute.[204]

529. The Commissioner considers that, in each local government area, those roads and streets, which are vested in, constructed or maintained by a local government authority for general public usage are public roads for the purposes of the subsection 53(2) mining operations exclusion.

Public roads under the common law

530. If a road is not under the control and management of a state or territory authority which is responsible for the provision of road infrastructure to the public, then whether the road is a 'public road' under the common law is a question of fact.

531. In order to establish that a road has been dedicated as a public road at common law, there must be established an 'unequivocal indication of the intention of the owner of the land to dedicate it to the public as a road'.[205]

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[201] For example, subsection 208(1) of the *Local Government Act 1999 (SA)* provides that 'All public roads in the area of a council are vested in the council in fee simple under the *Real Property Act 1886* (and any land so vested that has not been previously brought under that Act is automatically brought under that Act without further application).'

[202] This may be so even in respect of land held under Torrens title: *Vickery v. Municipality of Strathfield* (1911) 11 SR (NSW) 354 at 363-364; (1911) 28 WN (NSW) 107 – NSWSC – 31/08/1911 at 110-111.

[203] *Attorney-General; Ex rel Australian Mutual Provident Society v. Corporation of the City of Adelaide* [1931] SASR 217.

[204] *Attorney-General; Ex rel Australian Mutual Provident Society v. Corporation of the City of Adelaide* [1931] SASR 217 at 229, followed by Bray CJ in *Kiosses v. Corporation of the City of Henley and Grange* (1971) 6 SASR 186 at 192-193; (1971) 33 LGRA 286 at 292.

[205] *Attorney-General for the Northern Territory of Australia v. Minister for Aboriginal Affairs and Others* (1989) 23 FCR 536 at 542.

532. To establish whether an owner of land has dedicated it as a public road under the common law, some of the matters to be considered are:

- whether there has been a declaration of an intention to dedicate;
- delineation on maps or plans of roads set apart for public use;
- use by the public;
- whether vehicles must be registered to use the road and state or territory traffic laws are applicable while the vehicles use the road; and
- the expenditure of money by public bodies in forming or maintaining the land as a road.

533. When considered with all the relevant evidence, the above matters may amount to an unequivocal indication of the intention of the owner of the land to dedicate it to the public as a road. Where that dedication is accepted by the members of the public as such, the road is a public road.

534. However, the courts have indicated that caution is necessary in determining whether a dedication of a road has been made. In *President of the Shire of Narracan v. Leviston*,[206] Barton J said:

> . . . by placing too liberal a construction in favour of the public and against the landowner upon acts of passage which are tolerated by him, there is a danger lest, in the sparsely settled districts of a country like this, where roads are few and unmade, and mutual concessions on the part of the land owners and the public are necessary, land owners should be put upon the defensive, and be forced to set obstructions in the way of every act which, in a long course of time, might be construed as the assertion of a right of public highway.[207]

535. The comments of Barton J were referred to with approval by Lockhart J in *Attorney-General for the Northern Territory of Australia v. Minister for Aboriginal Affairs and Others*.[208]

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[206] *President of the Shire of Narracan v. Leviston* (1906) 3 CLR 846; (1906) 12 ALR 294.
[207] *President of the Shire of Narracan v. Leviston* (1906) 3 CLR 846 at 871; (1906) 12 ALR 294 at 301.
[208] *Attorney-General for the Northern Territory of Australia v. Minister for Aboriginal Affairs and Others* (1989) 23 FCR 536.

Roads that are not public roads

Roads managed by statutory authorities not having responsibility for highways, main roads and local roads

536. Where a road is constructed or maintained by a statutory authority principally and primarily for the purposes of carrying out the statutory objects of the authority, and any public use of the road is subordinate to those statutory objects, then the road is not a public road.

537. Where such a statutory scheme confers a limited right of public access, which is subordinate to the main objects of the statute, then members of the public have a lesser entitlement to that access than the entitlement they have to use public highways, main roads, local roads and suburban streets. The Commissioner considers that where the public does not have a plenary right of access and use, a road cannot be characterised as a public road.

Roads over privately owned land

538. An owner of private property may permit members of the public to pass over the property. A person may lawfully enter private land where the person has an express or implied invitation, licence, permission, lawful authority or consent of the person in possession of the land.[209] A person who initially enters land with lawful authority becomes a trespasser if the consent of the owner is revoked.[210]

539. The use of a road over private land by members of the public does not create a public road, notwithstanding that the owner of the land does not hinder the use of the road by the public. Private land cannot become a public road without an effective act of dedication by the owner.[211]

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[209] *Lincoln Hunt Australia Pty Ltd v. Willesee* (1986) 4 NSWLR 457 – NSWSC – 13/02/1986.
[210] *Cowell v. Rosehill Racecourse Co Ltd* (1937) 56 CLR 605; [1937] ALR 273; (1937) 11 ALJR 32 – HCA – 22/04/1937, *Barker v. R* (1983) 153 CLR 338; (1983) 47 ALR 1; (1983) 57 ALJR 426.
[211] *Attorney-General for the Northern Territory v. Minister for Aboriginal Affairs and Others* (1989) 23 FCR 536 at 542.

Appendix 2 – Background

This Appendix is provided as information to help you understand the fuel tax credit system. It does not form part of the binding public ruling.

Fuel tax credit system

540. The fuel tax credit system commenced on 1 July 2006. The table below depicts how the fuel tax credit available for different fuel uses will be phased in between 1 July 2006 and 1 July 2012 (inclusive).

Fuel use	*1 July 2006*	*1 July 2008*	*1 July 2011*	*1 July 2012*
On-road use in vehicles with a gross vehicle mass over 4.5 tonnes	All fuels, including petrol – a credit to the extent that the fuel tax paid on the fuel exceeds the road-user charge	Continuing		
In burner applications	All fuels effectively fuel tax-free	Continuing		
Use of fuel other than as fuel	All fuels effectively fuel tax-free	Continuing		
Activities that were previously entitled to an off-road credit under the Energy Grants Scheme	Diesel, and diesel-like fuels – a full credit of the effective fuel tax paid on the fuel	Petrol – a full credit of the effective fuel tax paid on the fuel	Continuing	
Commercial and household electricity generation	All fuels, including petrol – full credit of the effective fuel tax paid on the fuel	Continuing		
All other off-road use	Nil	All fuels – including petrol – 50% of the effective fuel tax paid on the fuel	Biodiesel, ethanol, liquefied petroleum gas, liquefied natural gas and compressed natural gas – full credit of the effective fuel tax paid on the fuel[212]	All fuels – full credit of the effective fuel tax paid on the fuel

[212] From 1 July 2011, the FT Act will provide the framework for the taxation of gaseous fuels (LPG, LNG and CNG).

541. From 1 July 2006, fuel tax credits are claimable by businesses via the BAS. Special transitional arrangements allow certain eligible entities to make a claim for an early payment of fuel tax credits without having to wait for the lodgment of a BAS.[213]

542. Separate claiming arrangements apply to non-business claimants for the generation of electricity for domestic use.

543. Even though the FT Act is a taxing Act,[214] many provisions of the fuel tax credit system and the transitional provisions are beneficial in that they confer benefits on entities that acquire taxable fuel for use in carrying on an enterprise. Having regard to this policy intent, a purposive interpretive approach will be taken in the interpretation of these provisions.

Energy grants claimed under the Fuel Tax Act

544. Entitlement to an energy grant for off-road diesel fuel is limited to fuel purchased or imported between 1 July 2003 and 30 June 2006 inclusive.[215] Entities entitled to an energy grant will have 12 months after that date to claim an energy grant under the *Product Grants and Benefits Administration Act 2000* (PGBA Act) if they were entitled to an off-road credit under the Energy Grants Act. This means that the claim must be made before the earlier of 1 July 2007 and the end of three years after the start of the claim period.[216]

545. Alternatively, a claim for such grants (where off-road diesel fuel is purchased or imported between 1 July 2003 and 30 June 2006) can be made under the FT Act by way of a 'decreasing fuel tax adjustment'.[217]

546. You are not entitled to an energy grant for an off-road credit for diesel fuel, if you have already given the Commissioner a return for a tax period or a fuel tax return period which takes into account a decreasing fuel tax adjustment that relates to the fuel.[218]

547. The transitional provisions allow you to claim a 'decreasing fuel tax adjustment' on your BAS if the adjustment is attributable to the tax period or fuel tax return period that you choose that ends before 1 July 2009.[219] The amount of the adjustment is equal to the amount of off-road credit that you were entitled to under the Energy Grants Act.

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[213] Certain entities may elect for an early payment of a fuel tax credit for taxable fuel acquired between 1 July 2006 and 30 June 2008. See paragraphs 173 to 178 of this Ruling for a full explanation of the early payment of the fuel tax credits.
[214] Paragraph 1.66 of the Revised Explanatory Memorandum to the Fuel Tax Bill 2006 and Fuel Tax (Consequential and Transitional Provisions) Bill 2006.
[215] Subsection 51(2).
[216] See subsection 51(2) (and the Note), and paragraph 15(2)(db) of the PGBA Act.
[217] Item 9 of Schedule 3 of the Transitional Act.
[218] Subsection 15(2A) of the PGBA Act.
[219] Subitem 9(3) of Schedule 3 of the Transitional Act.

548. A 'decreasing fuel tax adjustment' decreases an entity's 'net fuel amount'.[220] That is, a 'decreasing fuel tax adjustment' increases the amount of fuel tax credit an entity is otherwise entitled to.[221]

Energy Grants Scheme

549. For the Commissioner's views in relation to the operation of the energy grants credits scheme in general and the off-road credit entitlements for the qualifying use of 'mining operations' in particular, see Product Grants and Benefits Ruling PGBR 2005/2 Energy Grants: off-road credits for mining operations.

550. Appendix 3 of this Ruling provides a comparison of the energy grants scheme and the fuel tax credit system.

[220] An entity's net fuel amount is worked out using the formula in section 60-5 of the FT Act.
[221] Subsection 44-5(3) of the FT Act.

Appendix 3 – Comparison table

This Appendix is provided as information to help you understand the differences between the energy grants scheme and the fuel tax credit system. It does not form part of the binding public ruling.

551. The following table is a comparison of the energy grants scheme and the fuel tax credit system. The comparison is only in relation to taxable fuel acquired for use in carrying on an enterprise other than in a vehicle, with a GVM of more than 4.5 tonnes, travelling on a public road.

	Energy Grants Scheme	**Fuel tax credit system**
Application of the legislation	Repealed on 1 July 2012	Applies from 1 July 2006 Transitional provisions apply for: • Energy grants arising before 1 July 2006; and • Fuel tax credits arising between 1 July 2006 and 30 June 2012 (phasing out period for the Energy Grants Act).
Description of the claimant	Reference to 'you' or 'person'. In the following Rulings the Commissioner uses the term 'person' to describe the claimant of an energy grant: • PGBR 2004/1 Energy grants: off-road credits for fishing operations; • PGBR 2005/1 Energy grants: off-road credits for forestry; • PGBR 2005/2 Energy grants: off-road credits for mining operations; and • PGBR 2005/3 Energy grants: off-road credits for agriculture.	Reference to 'you' or 'entity' or 'taxpayer'. Note 'you' is not used in provisions that apply only to entities that are not individuals. In this Ruling the Commissioner uses the term 'you' or 'entity' to describe the claimant of a fuel tax credit.
Requirement for registration	A person must be registered for energy grants under section 9 of the PGBA Act.	An entity carrying on an enterprise must be registered for GST or required to be registered for GST.

	Energy Grants Scheme	Fuel tax credit system
Method of claiming	Claiming by phone. Submitting a paper claim form to the Tax Office. Claiming via the internet. Claiming using eGrant – through your fuel supplier or fuel card provider. Claim submitted for client by their tax agent.	Claimed by entities carrying on an enterprise on their BAS. Non-business taxpayer's will claim fuel tax credits in a form approved by the Tax Office. Early payment of the fuel tax credit available to certain entities for taxable fuel acquired between 1 July 2006 and 30 June 2008.
Timing and method of claim for fuel 'purchased or imported' before 1 July 2006	For energy grants relating to fuel purchased or imported before 1 July 2006, the claim must be made before the earlier of 1 July 2007 and the end of 3 years after the start of the claim period. *Alternatively*, a claim may be made under the transitional provisions of the FT Act.	Transitional provisions allow energy grants to be claimed on the BAS as a 'decreasing fuel tax adjustment' for off-road diesel fuel purchased or imported between 1 July 2003 and 30 June 2006 (inclusive).
Terminology in relation to the fuel	Under subsection 53(1) Energy Grants Act you are entitled to an off-road credit if you **'purchase or import'** into Australia off-road diesel fuel for a use by you that qualifies. The phrase 'purchase or import' only applies for credits arising for fuel purchased or imported before 1 July 2006.	Under section 41-5 of the FT Act you are entitled to a fuel tax credit for taxable fuel that you '**acquire, or manufacture in, or import into,** Australia…' Note: in determining whether the transitional provisions apply from 1 July 2006 to 30 June 2012 in relation to the phasing-in of credit entitlements under the Transitional Act, the provisions assume that references in the Energy Grants Act to 'purchase or import into Australia' were instead references to 'acquire or manufacture in, or import into, Australia'.

	Energy Grants Scheme	Fuel tax credit system
Use of fuel	Under section 53 Energy Grants Act you are entitled to an off road credit…for a use by you that qualifies. For example, for use in: • mining operations; • primary production (including agriculture, forestry and fishing); • rail transport; and • marine transport.	Under section 41-5 of the FT Act you are entitled to a fuel tax credit for taxable fuel …to the extent that you do so **for use in carrying on your enterprise**. Carrying on an enterprise has the meaning given by section 195-1 of the GST Act. Transitional provisions phase out the existing grants under the Energy Grants Act between 1 July 2006 and 1 July 2012.
Type of fuel	Entitlement to an off-road credit, and therefore entitlement to an energy grant is for '**off-road diesel fuel**'. No credits provided for the use of petrol.	Fuel tax credit is for '**taxable fuel**'. From 1 July 2008 eligibility for a fuel tax credit extends to petrol used in qualifying activities that were previously eligible for an off-road credit under the Energy Grants Act (or from 1 July 2008 until 1 July 2012 at the rate of half the credit where the entity was not previously eligible for an off-road credit under the Energy Grants Act). From 1 July 2012 a full entitlement is allowed under the FT Act.
Fuel used other than a fuel	For energy grants prior to 1 July 2006: entitlement arose under subsection 53(6) Energy Grants Act, where the use is: • as a solvent; • as a mould agent; • in road construction; or • any other use specified in the regulations.	From 1 July 2006 fuel tax credits can be claimed under section 41-5 of the FT Act. Note: fuel is taken to have been used if it is blended as specified in a determination made under section 95-5 of the FT Act.
Fuel used other than in an internal combustion engine (eg burner applications)	For energy grants prior to 1 July 2006: entitlement arose under subsection 53(7) Energy Grants Act.	From 1 July 2006 fuel tax credits can be claimed for fuel used other than in an internal combustion engine under section 41-5 of the FT Act.

	Energy Grants Scheme	Fuel tax credit system
Terminology in relation to vehicles	Subsection 53(2) excludes an off-road credit for diesel fuel if the use is for the purpose of '**propelling any vehicle**' on a public road (for mining operations), or 'for **propelling a road vehicle**' on a public road (for primary production). Subsection 53(3) excludes an off-road credit for diesel fuel if the use is for the purpose of '**propelling a road vehicle**' on a public road (for rail transport).	Transitional provisions for credits arising between 1 July 2006 and 30 June 2012 excludes fuel for use in '**a vehicle travelling**' on a public road. No reference to 'road' vehicle.
Treatment of alternative fuels	No entitlement for off-road use.	From **1 July 2011 to 30 June 2012** transitional provisions apply to allow a fuel tax credit for acquiring or manufacture in, or importing into, Australia alternative fuel for off-road business use. From 1 July 2012 a fuel tax credit is available under section 41-5 of the FT Act.

Appendix 4 – Detailed contents list

552. The following is a detailed contents list for this Fuel Tax Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

FTD 2006/2; FTD 2006/3; GSTR 2006/3; GSTR 2006/4; MT 2006/1; PGBR 2004/1; PGBR 2005/1; PGBR 2005/2; PGBR 2005/3; TR 2006/10

Subject references:

- acquire
- acquire, or manufacture in, or import into, Australia
- attribution
- apportionment
- apportionment of fuel
- BAS
- beneficiation
- business
- business activity statement
- business purposes
- carrying on your enterprise
- cash
- credit
- decreasing fuel tax adjustment
- diesel fuel
- early payment
- election
- eligible use
- energy grant
- Energy Grants Scheme
- exclusion of certain substances
- exploration
- grants
- half credit
- in
- increasing fuel tax adjustment
- fuel tax adjustment
- fuel tax credit
- fuel tax credit system
- minerals
- mining for minerals
- mining operations
- mining construction activity
- mining transport activity
- mining vehicle activity
- mining waste activity
- mining water activity
- net fuel amount
- off-road diesel fuel
- ore
- place
- place adjacent to that place
- private access road
- private road
- prospecting
- public road
- quarrying or dredging operations
- removal of overburden
- solely
- sundry mining activity
- tax period
- taxable fuel
- transport
- use
- use in a mining operation

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- EGCSA 2003 4
- EGCSA 2003 Pt 2 Div 3 Subdiv B
- EGCSA 2003 11
- EGCSA 2003 11(1)
- EGCSA 2003 11(1)(a)
- EGCSA 2003 11(1)(b)
- EGCSA 2003 11(1)(b)(i)
- EGCSA 2003 11(1)(b)(ii)
- EGCSA 2003 11(1)(c)
- EGCSA 2003 11(1)(d)
- EGCSA 2003 11(1)(e)
- EGCSA 2003 11(1)(f)
- EGCSA 2003 11(1)(g)
- EGCSA 2003 11(1)(h)
- EGCSA 2003 11(1)(i)
- EGCSA 2003 11(2)
- EGCSA 2003 11(2)(a)
- EGCSA 2003 11(2)(b)
- EGCSA 2003 11(2)(c)
- EGCSA 2003 11(3)
- EGCSA 2003 11(3)(b)
- EGCSA 2003 11(4)
- EGCSA 2003 11(5)
- EGCSA 2003 11(6)
- EGCSA 2003 11(7)(a)
- EGCSA 2003 11(7)(b)
- EGCSA 2003 12
- EGCSA 2003 12(a)

- EGCSA 2003 12(a)(i)
- EGCSA 2003 12(a)(ii)
- EGCSA 2003 12(b)
- EGCSA 2003 13
- EGCSA 2003 13(a)
- EGCSA 2003 13(b)
- EGCSA 2003 14
- EGCSA 2003 14(a)
- EGCSA 2003 14(b)
- EGCSA 2003 14(b)(i)
- EGCSA 2003 14(b)(ii)
- EGCSA 2003 14(c)
- EGCSA 2003 15
- EGCSA 2003 15(a)
- EGCSA 2003 15(b)
- EGCSA 2003 15(c)
- EGCSA 2003 15(d)
- EGCSA 2003 15(e)
- EGCSA 2003 16
- EGCSA 2003 16(a)
- EGCSA 2003 16(b)
- EGCSA 2003 17
- EGCSA 2003 17(a)
- EGCSA 2003 17(b)
- EGCSA 2003 17(c)
- EGCSA 2003 18
- EGCSA 2003 18(a)
- EGCSA 2003 18(b)
- EGCSA 2003 18(c)
- EGCSA 2003 18(d)
- EGCSA 2003 18(e)
- EGCSA 2003 18(e)(i)
- EGCSA 2003 18(e)(ii)
- EGCSA 2003 18(e)(iii)
- EGCSA 2003 19
- EGCSA 2003 20
- EGCSA 2003 20(a)
- EGCSA 2003 20(b)
- EGCSA 2003 51(2)
- EGCSA 2003 52
- EGCSA 2003 53
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- EGCSA 2003 53(2)
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