



FUEL TAX ACT 2006 - CORRECTING FUEL TAX ERRORS DETERMINATION (NO. 1) 2012

EXPLANATORY STATEMENT

GENERAL OUTLINE OF INSTRUMENT

1. This instrument is made under:
Section 60-10 of the *Fuel Tax Act 2006*.
2. This determination allows taxpayers to correct errors made in earlier tax periods by including the amounts in calculating their net fuel amount for a later period.
3. The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

DATE OF EFFECT

4. The instrument applies to tax periods commencing on or after 1 July 2012.
5. The instrument ensures that taxpayers will not be disadvantaged if they have already calculated their net fuel amounts for tax periods that commenced on or after 1 July 2012 in the circumstances covered by this determination. Under section 12(2) of the *Legislative Instruments Act 2003* this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth.
6. The legislative instrument ceases to have effect 2 years after it is registered.

WHAT IS THIS INSTRUMENT ABOUT

7. The purpose of this instrument is to set out circumstances in which taxpayers can correct the impact of certain errors that occurred in past tax periods by including the relevant amounts in the calculation of the net fuel amount for a later tax period.
8. These circumstances are:
 - that the taxpayer had deducted from their fuel tax credit an amount of the road user charge for fuel acquired, imported or manufactured to use in a vehicle travelling on a public road but the fuel was not **for** travelling on a public road; and
 - the entitlement to the fuel tax credit has not ceased because of section 105-55 of Schedule 1 of the *Taxation Administration Act 1953* that relates to the time frame for claiming the fuel tax credit; and

- the taxpayer is registered for goods and services tax.

WHAT IS THE EFFECT OF THIS INSTRUMENT

9. The effect of this instrument is to allow taxpayers to correct past errors by including the amounts in calculating the net fuel amount for a later tax period. Without the determination taxpayers would have to revise each individual activity statement for the tax period in which the error has occurred.
10. Compliance cost impact: An assessment of the compliance cost impact indicates that the impact will be minimal for both implementation and ongoing compliance costs. The new instrument is minor or machinery in nature.

BACKGROUND

11. The Administrative Appeals Tribunal decision in *Linfox Australia Pty Ltd v Commissioner of Taxation* [2012] AATA 0517 has clarified the application of the road user charge for fuel used in vehicles travelling on public roads. Prior to the decision, taxpayers who followed the Commissioner's view of the law expressed in a public ruling may have reduced their fuel tax credit claims by the road user charge for all fuel used in a vehicle travelling on a public road, including fuel used to operate a refrigeration unit of a refrigerated trailer. The tribunal decision, which the Commissioner has accepted, was that fuel used to operate a refrigeration unit of a refrigerated trailer was not fuel for use in a vehicle for travelling on a public road.
12. The effect of the decision is that certain uses of fuel associated with vehicles travelling on public road, which have previously been treated by taxpayers as subject to the road user charge, are not subject to the road user charge. This is not limited to refrigerated trailers. The determination does not address the matter of what fuel used is or is not subject to the road user charge.
13. A taxpayer who had followed the Commissioner's view may be entitled to more fuel tax credit than they have included in previous activity statements. This determination is a means to reduce the cost for taxpayers who wish to revise their previously claimed fuel tax credits.

CONSULTATION:

14. The Fuel Schemes Advisory Forum (FSAF) and the Australian Tax Practitioner Forum (ATPF) were consulted on this instrument. The FSAF is a Tax Office Forum designed to facilitate consultation on fuel tax credit and alternative fuel grant issues between the Australian Taxation Office, relevant business groups, statutory bodies, and government departments. The ATPF is an administrative advisory group for the exchange of views between the Australian Tax Office, tax industry professional associations and tax representatives.

15. Both the FSAF and the ATPF supported the instrument.

James O'Halloran
Deputy Commissioner of Taxation
22 November 2012

Legislative references:

Fuel Tax Act 2006

Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The effect of this instrument is to allow taxpayers to correct past errors by including the amounts in calculating the net fuel amount for a later tax period. Without the determination taxpayers would have to revise each individual activity statement for the tax period in which the error has occurred.

An assessment of the compliance cost impact indicates that the impact will be minimal for both implementation and ongoing compliance costs. The new instrument is machinery in nature.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

James O'Halloran
Deputy Commissioner of Taxation
22 November 2012
