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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FUEL TAX BILL 2006

FUEL TAX (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2006

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Treasurer, the Hon Peter Costello MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	*Definition*
ATO	Australian Taxation Office
BAS	business activity statement
Commissioner	Commissioner of Taxation
EGCS	Energy Grants(Credits) Scheme
GST	goods and services tax
GST Act	*A New Tax System (Goods and Services Tax) Act 1999*
TAA 1953	*Taxation Administration Act 1953*

General outline and financial impact

The fuel tax credit system

These Bills provide a single system of fuel tax credits to remove or reduce the incidence of fuel tax levied on taxable fuels, and a framework for the taxation of gaseous fuels from 1 July 2011, when fuel tax is levied on liquefied petroleum gas, liquefied natural gas and compressed natural gas for the first time.

Under the fuel tax credit system, all taxable fuel acquired or manufactured in, or imported into, Australia for use in off-road applications for business purposes will become tax-free over time. This will, for the first time, provide fuel tax relief to businesses involved in a range of activities. For example, businesses involved in manufacturing, quarrying and construction will become entitled to fuel tax relief. Other major beneficiaries will include primary production, mining and commercial power generation. Further, the excise currently levied on burner fuels — such as heating oil and kerosene — and on fuels used in commercial and household electricity generation will be effectively removed from 1 July 2006.

Fuel tax relief will be expanded under the fuel tax credit system for fuel used in road transport by allowing a partial fuel tax credit for all taxable fuels, including petrol, acquired or manufactured in, or imported into, Australia for use on-road for all business purposes in registered vehicles with a gross vehicle mass of more than 4.5 tonnes. The partial credit will be equal to the effective fuel tax rate *minus* a road-user charge.

Concessions, refunds and remissions currently delivered through the excise and customs system for the use of fuel other than fuel in an internal combustion engine, will be replaced by fuel tax credits.

Claiming of fuel tax credits for large claimants and operators of on-road diesel vehicles will be conditional on businesses meeting certain environmental criteria. Businesses claiming more than $3 million per year in fuel tax credits will be required to be members of the Greenhouse Challenge Plus Programme, while diesel heavy vehicles will need to meet one of four emissions performance criteria to be entitled to a fuel tax credit.

Fuel tax credits will be claimed by businesses via the business activity statement (BAS) in the same way as input tax credits are claimed for the

goods and service tax. Business interactions with the Australian Taxation Office (ATO) will be simplified and reduced as businesses will have a single point of contact with the ATO and the necessity of separate claim forms will be removed.

Separate claiming arrangements from the BAS will apply to non-business claimants claiming for household use of fuel in electricity generation.

The administration of the Fuel Tax Bill 2006 will align with the administration of the other indirect taxes under the *Taxation Administration Act 1953*.

Consequential amendments

The following Acts are amended as a consequence of the implementation of the fuel tax credit system:

The *Energy Grants (Credits) Scheme Act 2003*, the *A New Tax System (Goods and Service Tax) Act 1999*, the *Taxation Administration Act 1953*, the *A New Tax System (Luxury Car Tax) Act 1999*, the *A New Tax System (Wine Equalisation Tax) Act 1999*, the *Crimes (Taxation Offences) Act 1980*, the *Freedom of Information Act 1982*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

The Fuel Tax (Consequential and Transitional Provisions) Bill 2006 also repeals the *Fuel Sales Grants Act 2000*, from 1 January 2007, and the *States Grants (Petroleum Products) Act 1965* from 1 July 2007, in accordance with the Government's decision to abolish the Fuel Sales Grants Scheme and the Petroleum Products Freight Subsidy Scheme from 1 July 2006. Claims for outstanding entitlements will be able to be made for a transitional period before the Acts are repealed.

Date of effect: The fuel tax credit system will be phased in, commencing 1 July 2006, with the final changes taking effect on 1 July 2012.

Proposal announced: These Bills give effect to the Government's announcement of 15 June 2004 in the energy white paper, *Securing Australia's Energy Future*, to introduce a single fuel tax credit system to replace the current complex system of fuel tax concessions.

Financial impact: During the transition in which the proposed changes are brought in from 10 July 2006 to 1 July 2012, the measure is expected to cost:

	2006-07 **$m**	***2007-08*** **$m**	***2008-09*** **$m**	***2009-10*** **$m**	***2010-11*** **$m**	***2011-12*** **$m**	***2012-13*** **$m**
Off-road credits	–	–	–330	–360	–380	–410	–860
On-road credits	80	120	160	200	250	290	340
Burner fuel credits	–15	–15	–15	–15	–15	–15	–15
Alternative fuels – grants phase-out	–4	–3	–2	–1	–	–	–
Electricity generation	–100	–110	–70	–70	–80	–80	–
Limestone and clay eligibility changes	–5	–6	–3	–3	–4	–4	–
Total	**–40**	**–20**	**–260**	**–240**	**–230**	**–220**	**–540**

Year of maturity: 2012-2013

A negative sign indicates a cost to the budget (increase in expenditure) a positive number indicates a saving to the budget (decrease in expenditure).

Discrepancies in the table between sums and totals of components are due to rounding.

Compliance cost impact: The fuel tax credit system will lower compliance costs, reduce tax on business and remove the burden of fuel tax from thousands of individual businesses and households.

When the fuel tax credit system is fully implemented there will be a substantial reduction in compliance costs because of the removal of the restrictive and complex eligibility criteria that exist under the Energy Grants (Credits) Scheme. This will lead to a significant reduction in record keeping required to substantiate entitlements. In addition, businesses will no longer have to clarify complex eligibility criteria, including through costly and time consuming litigation.

The claiming of fuel tax credits via the BAS will simplify and reduce business interactions with the ATO as businesses will have a single point of contact and the necessity of separate claim forms will be removed. In

addition, the alignment of fuel tax credit administrative arrangements with the administrative and compliance responsibilities for other indirect taxes will further reduce complexity for business.

Compliance costs for businesses currently claiming energy grants through third parties or receiving fuel effectively excise-free under the excise remission arrangements will be rebalanced, as the end users of fuel, rather than third party fuel suppliers, will claim fuel tax credits directly via the BAS.

The environmental measures applying to on-road diesel vehicles and large fuel users may involve additional compliance costs for some businesses.

Chapter 1
Executive summary

Outline of chapter

1.1 This chapter provides an overview of the key elements of the fuel tax credit system for providing fuel tax relief to businesses and households.

Background: fuel tax reform

1.2 In the energy white paper, *Securing Australia's Energy Future*, the Government announced a major programme of reform to modernise and simplify the fuel tax system. The reform programme will commence on 1 July 2006, with the introduction of a single fuel tax credit system to replace the current complex system of fuel tax concessions.

1.3 The changes will lower compliance costs, reduce tax on business and remove the burden of fuel tax from thousands of individual businesses and households. Under fuel tax reform the effective application of fuel tax will be limited to:

- business use of fuel in on-road applications in motor vehicles with a gross vehicle mass of 4.5 tonnes or less;
- business use on-road in motor vehicles with a gross vehicle mass of more than 4.5 tonnes (with the exception of a carve-out intending to preserve previous entitlements for eligible fuel use in vehicles with a gross vehicle mass of 4.5 tonnes) but only to the extent of the road-user charge;
- for private use on-road in motor vehicles and in certain off-road applications; and
- aviation fuels (where tax is imposed for cost recovery reasons).

1.4 As part of this process, all currently untaxed fuels used in internal combustion engines will be brought into the fuel tax system over time with the intention of imposing fuel tax on fuels when they are used in transport applications.

1.5 Fuel tax will be applied to currently untaxed fuels from 1 July 2011. Effective fuel tax on these fuels will phase in over five equal annual steps commencing on 1 July 2011 and ending on 1 July 2015. The final fuel tax rate applying to these fuels will incorporate a 50 per cent discount on the energy content fuel tax rates that would otherwise apply.

1.6 In developing fuel tax reform, the Government has been guided by a view that, to the greatest extent practical the fuel tax system should:

- apply in a consistent and transparent way to all relevant fuels and fuel users;
- be competitively neutral, avoiding instances where taxed fuels compete with untaxed fuels;
- minimise fuel tax on business inputs;
- minimise compliance and administration costs for business and government; and
- take account of the government's environmental, social and fiscal objectives.

The fuel tax credit system

1.7 These Bills provide for the payment of fuel tax credits to taxpayers to remove or reduce the incidence of fuel tax levied on taxable fuels.

1.8 This system — taxing and crediting — is necessary to deal with the fact that currently fuel tax is paid by the manufacturer or importer of the fuel, generally well before its eventual use (whether in a private vehicle or otherwise). Therefore, the fuel tax is levied under current arrangements on the assumption that the fuel could be used in a taxable way, and credits are allowed to reverse the effect of the tax when it becomes clear that the fuel will be put to a non-taxable use covered by the legislation.

1.9 From 1 July 2006 fuel tax credits will be claimable by businesses via the business activity statement (BAS) in the same way as goods and service tax (GST) input tax credits. Business interactions with

the Australian Taxation Office (ATO) will be simplified and reduced as businesses will have a single point of ATO contact and the necessity of separate claim forms will be removed.

1.10 Separate claiming arrangements will apply to non-business claimants claiming for household use of fuel in electricity generation.

The current arrangements for providing fuel tax relief

1.11 Fuel tax concessions are currently provided under the *Energy Grants (Credits) Scheme Act 2003* and the remission, refund and rebate provisions in the *Excise Act 1901* and the *Customs Act 1901*. The Government's intention is for the free rate applied to certain drummed and marked fuels not used as a fuel to be removed from 1 July 2006.

The Energy Grants (Credits) Scheme

1.12 The Energy Grants (Credits) Scheme provides a grant for the use of diesel fuel (and alternative fuels in the case of the on-road credit) in activities that are eligible for an off-road credit and an on-road credit. No credits are provided for the use of petrol.

1.13 Eligibility for the off-road credit under the Energy Grants (Credits) Scheme is restricted to the business use of diesel and diesel-like fuels (such as fuel oil and burner fuels) in specified activities. These activities mainly occur in mining, primary production and rail and marine transport. Other activities include the generation of electricity at retail/hospitality and residential premises, and the use of fuel at hospitals, nursing homes and aged persons homes.

1.14 Eligibility for the on-road credit is confined to the use of diesel and specified alternative fuels (liquefied petroleum gas, liquefied natural gas, compressed natural gas, biodiesel and ethanol). Its purpose is to reduce transport costs, particularly for regional and rural Australia where costs are more pronounced. It is also intended to maintain the pre-GST price relativities between diesel and alternative fuels by providing a credit for the use of specified alternative fuels in applications that are eligible for a diesel on-road credit. Eligibility for the on-road credit is restricted to the use of eligible fuels in vehicles weighing:

- over 20 tonnes gross vehicle mass operating in all areas; and
- between 4.5 tonnes gross vehicle mass and 20 tonnes gross vehicle mass only when operating outside of or across defined metropolitan boundaries. The metropolitan

boundaries do not apply to emergency vehicles, primary producers and buses using alternative fuels.

Remission, refunds and rebates

1.15 Section 78 of the *Excise Act 1901* allows remissions, rebates and refunds of excise duty in prescribed circumstances and subject to prescribed conditions and restrictions. A similar provision is contained in the *Customs Act 1901*.

1.16 A remission is a mechanism that allows holders of a remission certificate to obtain prescribed fuel products fuel tax-free for use in prescribed circumstances. Remission and refunds commonly relate to solvent and burner fuel applications, kerosene for some specific fuel uses, and diesel and petrol substitutes for non-fuel uses.

These Bills and the fuel tax credit system

1.17 The Fuel Tax Bill 2006 combines in one piece of legislation, the means of providing fuel tax relief to businesses and households. It is intended that from 1 July 2011, this Bill will also provide the legislative basis for taxing certain liquefied and compressed gaseous fuels, when fuel tax is levied on liquefied petroleum gas, liquefied natural gas and compressed natural gas for the first time.

1.18 The fuel tax credit reforms will be phased in, commencing 1 July 2006, with the final changes taking effect on 1 July 2012.

1.19 Table 1.1 provides an overview of how fuel tax will apply when the reforms are fully implemented from 1 July 2012.

Table 1.1

<table>
<tr><th colspan="3">Business use</th><th colspan="2">Private use</th></tr>
<tr><td rowspan="2">Use on roads</td><td>gross vehicle mass ≤4.5 tonnes</td><td>Full fuel tax payable</td><td colspan="2" rowspan="2">Full fuel tax payable</td></tr>
<tr><td>gross vehicle mass >4.5 tonnes</td><td>Fuel tax payable up to the amount of the road-user charge, the rest is offset by a fuel tax credit</td></tr>
<tr><td rowspan="3">Other use</td><td colspan="2" rowspan="3">Fuel tax fully offset by a fuel tax credit</td><td>Electricity generation</td><td>Fuel tax fully offset by a fuel tax credit</td></tr>
<tr><td>Burner applications and non-fuel uses</td><td>Effectively fuel tax-free via a fuel tax credit to business suppliers</td></tr>
<tr><td>Other</td><td>Full fuel tax payable</td></tr>
</table>

1.20 Fuel tax will continue to be levied on aviation fuels as the tax is not imposed for general revenue raising reasons but as a method of cost recovery for various services and oversights of the aviation industry. A levy will also continue to be collected on certain lubricant oils under the *Product Stewardship (Oil) Act 2000*. This non-hypothecated levy assists in offsetting the cost of benefits paid to oil recyclers as an incentive to undertake increased recycling of waste oil.

Application of the fuel tax credit system

Use of fuel in off-road applications

1.21 Under the fuel tax credit system, all fuel acquired or manufactured in, or imported into, Australia for use in off-road applications for business purposes will become tax-free over time. In this context, tax-free treatment occurs through a credit of tax paid — that is, the fuel is effectively tax-free (for convenience, the term 'tax-free' when used in this explanatory memorandum means an 'effectively fuel tax-free

status' — it does not refer to an exemption from fuel tax or a zero actual rate of tax).

Fuel for electricity generation

1.22 Businesses and households will be entitled to claim a fuel tax credit for fuel tax payable on all fuels acquired or manufactured in, or imported into, Australia for use in electricity generation from 1 July 2006.

Fuel for burner applications and non-fuel uses

1.23 All fuels acquired or manufactured in, or imported into, Australia for use other than in an internal combustion engine will be effectively fuel tax-free from 1 July 2006. Use of fuel other than in an internal combustion engine includes:

- fuel used in burner applications such as heating (use as a fuel);
- diesel fuel used in the manufacture of explosives, in the calcination process for the production of alumina and as a flocculent in coal washeries; and
- non-fuel uses such as use as a solvent or in the manufacture of products such as paint and certain solvents, cleaning agents and the like.

1.24 Under fuel tax reform, all of the current mechanisms for delivering fuel tax-free treatment for petroleum products will be removed by 30 June 2006 and from 1 July 2006 fuel tax will apply to all petroleum products, including blends of petroleum products suitable for use in an internal combustion engine. Effective fuel tax-free treatment for these products where used other than as a fuel in an internal combustion engine will be delivered by a fuel tax credit to either the user of the fuel, or at another point in the supply chain, depending on whether the use is business or private.

1.25 For the business use of petroleum products as burner fuels or in non-fuel uses, the effective fuel tax-free treatment will be delivered through a fuel tax credit to the business as the end user of the product.

1.26 Where a petroleum product is used as an ingredient in the manufacture of another product that cannot be used as a fuel in an internal combustion engine, for example, paint and certain solvents, printing inks, cleaning agents, adhesives and the like, the manufacturer (eg, a paint manufacturer) will be entitled to a fuel tax credit on the petroleum component. Where the product cannot be used as a fuel in an internal

combustion engine, the Commissioner of Taxation (Commissioner) is not required to issue a determination under section 95-5 that the product being a blend of fuel no longer constitutes a fuel.

1.27 In order that private users of these products will not have to enter the fuel tax credit system, a fuel tax credit will apply further up the supply chain with the benefit passed on in the price of the product, ensuring that the product is effectively fuel tax-free for these users. For products used as burner fuels, such as kerosene and heating oil, the distributor will be entitled to claim a fuel tax credit for fuel sold to a private household. For products used in non-fuel applications, such as kerosene used as a solvent, a fuel credit would be given to the packager of such products, packaged in containers of a certain size for resale in retail outlets.

Other uses of fuel in off-road applications

1.28 From 1 July 2006 a fuel tax credit will apply to the acquisition or manufacture in, or importation into, Australia of diesel and diesel-like fuels in applications that currently qualify for an off-road credit under the Energy Grants (Credits) Scheme.

1.29 From 1 July 2008 the acquisition or manufacture in, or importation into, Australia of taxable fuel for use in other off-road applications will become eligible for a 50 per cent fuel tax credit of the fuel tax paid on the fuel. At the same time the acquisition, manufacture or importation into Australia of petrol will become eligible for a 100 per cent fuel tax credit of the fuel tax paid for all uses that were previously eligible for an off-road credit under the Energy Grants (Credits) Scheme.

1.30 It is intended that alternative fuels such as biodiesel, domestically-produced ethanol, liquefied petroleum gas, compressed natural gas and liquefied natural gas begin to incur effective fuel tax from 1 July 2011. From that date the acquisition, manufacture or importation into Australia of these fuels for use in off-road business applications will become eligible for a fuel tax credit equivalent to the amount of fuel tax paid on the fuel.

1.31 Table 1.2 shows the effective fuel tax rates applicable to alternative fuels during the period from 1 July 2011 to 1 July 2015.

Table 1.2

Fuel type	***1 July 2011***	***1 July 2012***	***1 July 2013***	***1 July 2014***	***1 July 2015***
Biodiesel (cents per	3.8	7.6	11.4	15.3	**19.1**

litre)					
Ethanol (cents per litre)	2.5	5.0	7.5	10.0	**12.5**
Methanol (cents per litre)	1.7	3.4	5.1	6.8	**8.5**
Liquefied petroleum gas (cents per litre)	2.5	5.0	7.5	10.0	**12.5**
Liquefied natural gas (cents per litre)	2.5	5.0	7.5	10.0	**12.5**
Compressed natural gas (cents per m^3)	3.8	7.6	11.4	15.2	**19.0**

1.32 The acquisition or manufacture in, or importation into, Australia of all taxable fuels will qualify for a fuel tax credit of the effective fuel tax paid on the fuel when they are used in off-road business applications from 1 July 2012.

Use of fuel in on-road applications

1.33 From 1 July 2006 the metropolitan boundaries governing eligibility for on-road credits for heavy vehicles under the Energy Grants (Credits) Scheme will be removed. This will expand fuel tax relief for fuel used in road transport by allowing a partial fuel tax credit for all taxable fuels — including petrol — acquired or manufactured in, or imported into, Australia for use on-road for all business purposes in registered vehicles with a gross vehicle mass of more than 4.5 tonnes. The partial credit will be equal to the fuel tax rate *minus* a road-user charge.

1.34 The road-user charge is set in accordance with the National Transport Commission's heavy vehicle charging determination process. The fuel tax-based charge will be adjusted annually in a similar fashion to the way that the States and Territories adjust registration fees for heavy vehicles. Changes to the charge will be made by varying the level of fuel tax credit paid for fuel used in heavy vehicles.

1.35 The grant available as an on-road credit under the Energy Grants (Credits) Scheme for fuel used in vehicles of 4.5 tonnes is grandfathered by a proposed transitional provision that provides a fuel tax credit to fuel acquired after 30 June 2006 and is used in vehicles of 4.5 tonnes where the vehicle was acquired before 1 July 2006.

Grants for alternative fuels under the Energy Grants (Credits) Scheme

1.36 Fuel grants will continue to apply from 1 July 2006 to 30 June 2010 under the Energy Grants (Credits) Scheme for the purchase for use of alternative fuels (biodiesel, ethanol, liquefied petroleum gas, liquefied natural gas and compressed natural gas) in registered vehicles with a gross vehicle mass of over 4.5 tonnes. The grant rates payable in respect of these fuels will be reduced to zero in five equal annual steps commencing on 1 July 2006 and concluding on 1 July 2010.

1.37 Table 1.3 shows the alternative fuel grant rates that will apply under the Energy Grants (Credits) Scheme during the phasing-out period.

Table 1.3

Fuel type	***1 July 2006***	***1 July 2007***	***1 July 2008***	***1 July 2009***	***1 July 2010***
Biodiesel (cents per litre)	14.808	11.106	7.404	3.702	0.000
Ethanol (cents per litre)	16.647	12.485	8.324	4.162	0.000
Liquefied petroleum gas (cents per litre)	9.540	7.155	4.770	2.385	0.000
Liquefied natural gas (cents per litre)	6.504	4.878	3.252	1.626	0.000
Compressed natural gas (cents per m^3)	10.094	7.570	5.047	2.523	0.000

Fuel tax credits for alternative fuels under these Bills

1.38 As fuel tax on alternative fuels is levied at a 50 per cent discount to the full energy content rate, the tax rates for fuels other than petrol and diesel are expected to be below the road-user charge for the foreseeable future. Users of these fuels in on-road applications will not be entitled to a fuel tax credit until the rate exceeds the road-user charge.

How will fuel blends be treated?

1.39 The treatment of fuel blends, and the entity able to claim a fuel tax credit relating to a fuel blend, will depend on whether or not the blend can be used as a fuel in an internal combustion engine.

1.40 The term 'use' in section 41-5 is intended to cover use of the fuel to make a blend that cannot be used as a fuel in an internal combustion engine. In most instances it will be self evident whether the blend can be used as a fuel, but to ensure certainty in cases where it is not self evident, the Commissioner is able to make a determination under section 95-5 that a blend of a fuel and another product does not constitute a fuel.

Fuel blends that can be used in an internal combustion engine

1.41 Use of a fuel to make a fuel blend that can be used as a fuel in an internal combustion engine does not constitute use of the fuel by the manufacturer of the blend. In these circumstances, the end user of the blend will be entitled to claim the fuel tax credit for any fuel tax on the constituents of the blend.

1.42 If the Commissioner has issued a determination under section 95-5 that the blend no longer constitutes a fuel, the manufacturer of the blend (and not the end user) is entitled to claim the fuel tax credit for any fuel tax paid on the constituents of the blend. This is because it is the manufacturer who uses the taxable fuel. If the blend the manufacturer produces is determined to not constitute a fuel it is no longer a taxable fuel and no fuel tax credit is available to purchasers and end users of the product. Some examples of types of fuel blends where the Commissioner may determine that the fuel blend no longer constitutes a fuel are certain solvents, fuel additives and fuel injector cleaners.

Fuel tax credits applying to fuel blends

1.43 Where a fuel blend meets a particular fuel standard, for instance petrol or diesel, it is treated as having fuel tax paid on it at the rate applicable to the unblended fuel covered by the standard. For fuel blends where one of the constituents attracts fuel tax at a discounted rate, such as a blend of diesel and biodiesel, the result of this treatment would actually be a fuel tax credit in excess of the fuel tax actually embedded in the price of the fuel. Where a fuel blend does not meet a fuel standard, the amount of fuel tax credit will not be more than the actual fuel tax embedded in the price of the fuels that make up the blend.

Fuel blends that cannot be used in an internal combustion engine

1.44 Use of a fuel to make a fuel blend that cannot be used as a fuel in an internal combustion engine constitutes fuel use that entitles the manufacturer of the blend to a credit for any fuel tax paid on the constituents of the blend. In such instances the end user will have no entitlement to a fuel tax credit. Generally the efficacy of use of a fuel blend in an internal combustion engine is clear, for example, paint and certain solvents, cleaning agents, printing inks, and adhesives cannot be used as a fuel in an internal combustion engine. However, in less certain circumstances, the Commissioner can determine that the blend no longer constitutes a fuel.

Timetable for the implementation of fuel tax reform

1.45 The new fuel tax credit system will commence on 1 July 2006. Table 1.4 depicts how the fuel tax credit available for different fuel uses will be phased in over the period of the reform ending 1 July 2012.

Table 1.4

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 (Credits) 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	All fuels, including petrol — full credit of the effective fuel tax paid on the fuel	Continuing		

Fuel use	*1 July 2006*	*1 July 2008*	*1 July 2011*	*1 July 2012*
generation				
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	All fuels — full credit of the effective fuel tax paid on the fuel

Environmental measures

1.46 As a supplement to measures already in place for addressing the environmental impact of fuel use, the Government will introduce two new measures to ensure that those businesses receiving fuel tax credits meet appropriate environmental standards. These environmental measures are:

- the requirement for large fuel users to be a member of the Greenhouse Challenge Plus Programme; and
- compliance with emissions performance criteria by vehicles using diesel fuel in on-road applications.

Membership of the Greenhouse Challenge Plus Programme

1.47 Businesses claiming over $3 million each year in fuel tax credits will need to be members of the Greenhouse Challenge Plus Programme. Under this programme member businesses must measure their greenhouse gas emissions, develop action plans for greenhouse gas abatement and report to the Government on their actions.

Compliance with emission performance criteria

1.48 Operators of diesel vehicles with a gross vehicle mass of more than 4.5 tonnes are required to meet an emissions performance criterion to be entitled to a fuel tax credit. The vehicle must either:

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

1.49 These criteria are designed to ensure that the operators of diesel vehicles have an incentive to make sure their vehicle meets the emissions standard set under the *National Environment Protection (Diesel Vehicle Emissions) Measure.*

1.50 Vehicles used in carrying out a primary production business that are used primarily on an agricultural property are exempt from compliance with the performance criteria, as these vehicles do not generally contribute to urban air quality problems.

Legislative design of the fuel tax credit system

1.51 These Bills will provide fuel tax relief to businesses and householders. It will also provide a system for the taxation of certain liquefied and compressed gaseous fuels that are locally produced or imported, from 1 July 2011, when fuel tax begins to be phased in for liquefied petroleum gas, liquefied natural gas and compressed natural gas.

1.52 Under these Bills, fuel tax relief will be provided in the form of a fuel tax credit for fuel tax embedded in the price of the fuel. The fuel tax credit for businesses will be expected to be claimed on the BAS and will be offset against an entity's other tax liabilities. A separate claiming mechanism applies to non-business taxpayers.

1.53 Under these Bills, an entity will self-assess their entitlement to a fuel tax credit as they currently do for the purpose of other indirect taxes.

1.54 Under the fuel tax credit system the accounting and reporting arrangements for business users of fuel align, as far as possible, with the

existing arrangements under the GST law. This generally means that if a taxpayer is a business, they:

- have to be registered for the GST to claim a fuel tax credit;
- claim their fuel tax credits on the BAS in the same way that they claim GST input tax credits;
- apply the same tax periods for fuel tax credits as they apply for the GST;
- attribute their fuel tax credits to the same tax period as the GST input tax credit for the acquisition or importation of the fuel; and
- are subject to special GST rules applying to the way that their business is organised (eg, grouping) for the purpose of fuel tax credits.

Coherent principles approach to tax design

1.55 These Bills are drafted using the coherent principles approach to tax design. This approach delivers on the Government's commitment, as part of the *A New Tax System* proposal in 1998, to design the tax laws using general principles in preference to long and detailed provisions.

1.56 Under coherent principles, the operative legislative provisions that implement the policy are expressed as principles. They prescribe the legislative outcome rather than the mechanism that produces it, and typically avoid the detail that appears in more traditional legislative design approaches.

1.57 The term 'coherent' means that the reader should find the principles cogent. They may be abstract, but they should convey an idea that is meaningful to a reader who is familiar with the subject, even if the principle's full scope is not immediately evident. This approach aims to:

- help the reader make sense and order out of the law;
- capture the essence of the intent of the law, so that it is clear on first approach;
- write the law in a non-technical style, avoiding the use of expressions that can only be understood by referring to definitions or other lower level rules; and

- make the law intuitive or obvious to someone who understands its intent and context.

1.58 The advantages offered by principled-based tax law is that it:

- is conceptually clearer and usually shorter;
- promotes long-term certainty, by providing a framework for working out how the law applies to developments that were not contemplated at the time the law was written; and
- makes the law more stable, with less need for modifications and changes.

1.59 At times, a coherent principle may be wider in its application than the policy intent, for example, it may encompass more situations than desired. Rather than modifying the principle in a way that results in a loss of coherence, carve-outs from the operation of the principle are used.

1.60 Alternatively, a principle may not cover a situation that needs to be treated in a similar way. An add-on to the principle is therefore identified, unless there is a coherent way of reforming the principle at a higher level.

1.61 The aim is for the principles to be consistent with the 'benchmark' tax principles and that deviations for the benchmark be made explicitly. This results in more coherent outcomes in the law.

1.62 The coherent principles approach can accommodate detailed or specific rules when they are needed. However, such rules will not be provided as a matter of course. The principles can be unfolded (providing detail about how the principles will apply in a particular case) in the law itself, in the regulations, but mostly in this explanatory memorandum.

1.63 After enactment, the law will continue to be unfolded, where necessary, through practical application of the law, including, as is currently the case, by rulings made by the Commissioner.

Administration and compliance regime

1.64 These Bills will operate under the general compliance and administrative umbrella of the *Taxation Administration Act 1953* (TAA 1953). Matters such as the operation of the running balance accounts, the public and private rulings system, taxation objections, reviews and appeals and the collection and recovery of tax-related liabilities are administered under this legislation.

1.65 The administration of the Fuel Tax Bill 2006 will align with the administration of certain other indirect tax laws (the GST, luxury car tax and the wine equalisation tax) under a new part in the Schedule to the TAA 1953. This part will be modelled on the current indirect tax provisions in Part VI of the TAA 1953. This means that entities will generally have the same rights and obligations in relation to the Fuel Tax Bill 2006 as they have for these other indirect tax laws.

1.66 The legislation proposing to implement the fuel tax credit system, is taxing legislation and should be interpreted as such.

Chapter 2
Fuel tax credits for businesses and households

Outline of chapter

2.1 This chapter explains the rules that apply to fuel tax credits:

- The basic rules deal with a taxpayer's entitlement to a fuel tax credit, working out the amount of a fuel tax credit and when an increasing or decreasing fuel tax adjustment must be made.

- The special rules deal with the application of the Greenhouse Challenge Plus Programme if a taxpayer claims more than $3 million in fuel tax credits in a financial year, and claiming a fuel tax credit if a taxpayer is a goods and services tax (GST) instalment payer.

- The common rules deal with working out a taxpayer's net fuel amount and the requirement to provide a return for each tax period or fuel tax return period, attribution rules, and rules about the way that the GST rules for particular entities apply under the fuel tax law.

Context of reform

2.2 In the energy white paper, *Securing Australia's Energy Future*, the Government announced a major programme of reform to modernise and simplify the fuel tax system. The reform programme will commence on 1 July 2006, with the introduction of a single fuel tax credit system to replace the current complex system of fuel tax concessions.

2.3 When fully implemented, the fuel tax credit system will ensure that generally fuel tax is only levied on:

- the business use of fuel in travelling on a public road in motor vehicles with a gross vehicle mass of 4.5 tonnes or less;

- the business use of fuel in motor vehicles with a gross vehicle mass of more than 4.5 tonnes (with the exception of a carve-out intending to preserve previous entitlements for eligible fuel use in vehicles with a gross vehicle mass of 4.5 tonnes) but only to the extent of the road-user charge;

- the private use of fuel in vehicles and in certain off-road applications; and

- aviation fuels (where tax is imposed for cost recovery reasons).

Summary of new law

2.4 These Bills provide fuel tax relief to business and householders and sets up a framework for the taxation of gaseous fuels, both locally produced and imported, from 1 July 2011, when fuel tax begins to be phased in for liquefied petroleum gas, liquefied natural gas, and compressed natural gas.

2.5 The fuel tax credit system will provide fuel tax relief in the form of a fuel tax credit for fuel tax embedded in the price of the fuel. The fuel tax credit will be claimed by business entities on their business activity statement (BAS) and will be offset against an entity's other tax liabilities. Non-business entities will claim fuel tax credits in a form approved by the Commissioner of Taxation (Commissioner).

2.6 Under the fuel tax credit system, all fuels including petrol acquired or manufactured in, or imported into Australia for use other than on a public road for business purposes will become tax-free over time.

2.7 Fuel tax relief for fuel used in road transport is provided by allowing a partial fuel tax credit for all taxable fuels (including petrol) acquired or manufactured in, or imported into Australia for use on a public road for all business purposes in registered vehicles with a gross vehicle mass of more than 4.5 tonnes. The partial credit will be equal to the fuel tax rate *minus* a road-user charge.

2.8 The fuel tax credit system introduces two measures for addressing the environmental impact of fuel use. These environmental measures are the requirement for large fuel users to be a member of the Greenhouse Challenge Plus Programme and compliance with emissions performance criteria by vehicles using fuel in travelling on a public road.

2.9 Accounting and reporting arrangements for business users under the fuel tax credit system will align, as far as possible, with the existing arrangements under the GST law. Generally, this means that a business taxpayer will:

- have to be registered for the GST to claim a fuel tax credit;
- claim fuel tax credits on the BAS in the same way that they claim GST input tax credits;
- apply the same tax periods for fuel tax credits as they apply for the GST;
- attribute fuel tax credits to the same tax period as the GST input tax credit for the acquisition or importation of the fuel; and
- be subject to special GST rules applying to the way that their business is organised, for the purpose of fuel tax credits.

Detailed explanation of new law

Division 40 — Object of Chapter 3

2.10 The object of the fuel tax credit system is to establish a single system of fuel tax credits to reduce or remove the incidence of fuel tax on business inputs and the household use of fuel in electricity generation and heating. The intention is that fuel tax is effectively only applied to the private use of fuel in motor vehicles and other equipment powered by internal combustion engines and the business use of fuel used on-road in light vehicles. ***[Section 40-5]***

Division 41 — Fuel tax credits for business taxpayers and non-profit bodies

Fuel tax credit for fuel to be used in carrying on an enterprise

2.11 A taxpayer is entitled to claim a fuel tax credit for taxable fuel that they acquire or manufacture in, or import into, Australia that they propose to use in carrying on their enterprise. ***[Section 41-5]***

2.12 A taxpayer, however is only entitled to claim a fuel tax credit if they are registered for the GST. This condition does not apply to a non-profit body for fuel it intends to use in an emergency services vehicle or vessel.

2.13 If the taxpayer does not subsequently use the fuel in carrying on their enterprise, they must make an adjustment to their fuel tax credit. Fuel tax adjustments are discussed in paragraphs 2.89 to 2.97.

Meaning of key terms used in the Bills

Meaning of fuel tax

2.14 'Fuel tax' means duty that is payable on fuel under the *Excise Act 1901* or the *Customs Act 1901* and the respective Tariff Acts ***[section 110-5]***. Where duty that is otherwise payable on fuel has been remitted, or the duty that has been paid is refunded, the fuel tax payable on the fuel is zero.

2.15 Fuel tax does not include a percentage of duty that is ad valorem duty — that is duty that is expressed as a percentage of the value of the fuel for the purposes of section 9 of the *Customs Tariff Act 1995*. ***[Section 110-5]***

Meaning of taxable fuel

2.16 'Taxable fuel' means fuel on which Customs or Excise duty is payable ***[section 110-5]***. This arrangement — taxing and crediting — is necessary to deal with the fact that fuel tax is paid by the manufacturer or importer of the fuel, well before it is used. Therefore, the fuel tax is levied on the assumption that the fuel could be used in a taxable way, and credits are granted to reverse the effect of the tax when it becomes clear that the fuel will be put to a non-taxable use — that is, used by a taxpayer in carrying on their enterprise.

2.17 If a taxpayer acquires fuel through a fuel retailer or fuel distributor they can assume that fuel tax is payable on the fuel as it will have been entered for home consumption. However, if a taxpayer uses fuel in carrying on their enterprise, and it is also fuel that they have manufactured or imported, they will not be entitled to a fuel tax credit unless the fuel has been entered for home consumption.

2.18 Fuel tax will continue to be collected on certain fuels that are subject to Excise or Customs duty but are outside the scope of fuel tax reform. These fuels are specifically excluded from the definition of 'taxable fuel' in section 110-5. There is no entitlement to a fuel tax credit for the use of:

- certain imported and locally produced lubricant oils that are subject to a levy under the Product Stewardship (Oil) Programme. This non-hypothecated levy assists in offsetting the costs of benefits paid to oil recyclers as an incentive to undertake increased recycling of used oil ***[section 110-5]***; and

- oil extracted in areas under Australian control on which crude oil excise is levied. Crude oil excise is designed to obtain payment in return for the extraction of the community's resources ***[section 110-5]***.

2.19 The definition of 'taxable fuel' in section 110-5 refers to items 15 and 17 of the Schedule to the *Excise Tariff Act 1921*. The numbering of these items will change from 1 July 2006 as a result of a review of that Schedule, and it is proposed that the Fuel Tax Bill 2006 will be amended to reflect the new numbering.

Meaning of 'Australia'

2.20 The term 'Australia' has the same meaning in this Bill as it has in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The term excludes any external Territory but includes installations such as oil rigs. ***[Section 110-5]***

2.21 There is no entitlement to a fuel tax credit for fuel acquired or manufactured in, or imported into Australia's external Territories. For example, if a taxpayer uses fuel in carrying on an enterprise in the Territory of the Christmas Islands or the Territory of the Cocos (Keeling) Islands, they will not be entitled to a fuel tax credit. This is because fuel tax is not levied in these Territories.

Enterprises that are carried on outside Australia

2.22 There is an entitlement to a fuel tax credit for fuel that is acquired or manufactured in, or imported into, Australia for use in carrying on an enterprise outside Australia, including outside the 12 mile nautical limit of the Australian Territorial Sea. When a ship departs from an Australian port and makes a voyage which includes passage through international waters before returning to an Australian port, this does not constitute an international voyage for the purposes of

the *Customs Act 1901* and fuel tax is payable on the fuel acquired or manufactured in, or imported into Australia for use on the journey.

2.23 As an example, some fishing operations are conducted in international waters according to international agreements to which Australia is a party. The Australian Fishing Zone extends to 200 nautical miles from the Australian coastline and includes waters surrounding the external Territories. The Australian Navy also conducts operations outside the 12 mile nautical limit. If voyages do not have a place outside Australia as their destination and are treated as domestic voyages, then fuel tax is payable on the fuel and there is a corresponding entitlement to a fuel tax credit.

Meaning of 'carrying on an enterprise'

2.24 A taxpayer 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.

2.25 In accordance with section 195-1 of the GST Act, carrying on an enterprise includes doing anything in the course of the commencement or termination of the enterprise. 'Enterprise' is defined very broadly in the GST Act. The most common example of an enterprise is a business. A hobby or recreational activity where there is no reasonable expectation of profit or gain is specifically excluded from being an enterprise.

2.26 If a government entity is registered for the GST, the fuel tax law will apply to it in the same way as the fuel tax law applies to an entity that is carrying on an enterprise. ***[Section 70-30]***

Registered for the GST or required to be registered for the GST

2.27 Division 23 of the GST Act provides who must be registered for GST and who may be registered. A taxpayer can only become registered for GST if they are carrying on an enterprise or intend to carry on an enterprise from a particular date.

2.28 Under the GST Act, entities with a low annual turnover ($50,000 or less for a business entity or $100,000 or less for a non-profit body) may choose whether or not to register for the GST. However, a taxpayer is only entitled to a fuel tax credit if they are registered for the GST or required to be registered for the GST. ***[Subsection 41-5(2)]***

2.29 Under the GST Act, a taxpayer that is not registered for the GST cannot claim input tax credits for the GST they pay on business inputs, including fuel. Under the fuel tax credit system they will also forfeit their entitlement to claim a fuel tax credit if they choose to remain unregistered.

Non-profit bodies that operate an emergency vehicle or vessel

2.30 A non-profit body with an annual turnover of $100,000 or less that purchases fuel for use in an emergency vehicle or vessel, will not be required to register for the GST to claim a fuel tax credit.
[Subsection 41-5(3)]

2.31 A non-profit body includes an entity that is exempt from income tax under the following provisions of the *Income Tax Assessment Act 1997*:

- section 50-5 (charity, education, science and religion);
- section 50-10 (community service);
- section 50-15 (employees and employers);
- section 50-40 (primary and secondary resources, and tourism); and
- item 9.1 or 9.2 of section 50-45 (sports, culture and recreation).

2.32 A vehicle or vessel that provides emergency services is a vehicle or vessel that is designed and permanently fitted out and equipped for the purposes of preventing and fighting fires, or emergency response or search and rescue operations. It must have external markings that clearly identify it as an emergency vehicle — for example, a siren, flashing/warning lights or other appropriate marking.

Meaning of the term 'use'

2.33 The term 'use' is intended to take its ordinary meaning and apply in a broad sense, as long as the use of the fuel is within the confines of the conduct of carrying on an enterprise. For example, 'use' will include use of fuel that is acquired or manufactured in, or imported into Australia by a taxpayer, but actually used by a contractor in carrying on the taxpayer's enterprise as long as the taxpayer is not taken to have sold the fuel to the contractor as part of their contract.

2.34 Fuel is 'used' if it ceases to exist after an action to use it, either as a fuel or in the production of another thing. As such, a sale of fuel is

not a use of the fuel and a taxpayer will not be considered to have used fuel if they sell the fuel to another entity. For example, an oil company would be entitled to a fuel tax credit for fuel that they acquire or manufacture in, or import into Australia for use in exploration for, or the extraction of a petroleum product. They would not be entitled to a fuel tax credit for the product that they actually extract, refine and sell to a distributor or retail outlet.

2.35 The term 'use' is also intended to cover the blending of fuel with other products to create a fuel blend that no longer constitutes a fuel that can be used as a fuel in an internal combustion engine. Where a fuel blend cannot be used as a fuel in an internal combustion engine, the manufacturer of the blend, and not the end user, is entitled to claim a credit for any fuel tax paid on the constituents of the blend. Some examples of these types of blend are paint and certain solvents, printing inks, cleaning agents, adhesives and the like. For the discussion on fuel blends that can be used as a fuel in an internal combustion engine, refer to paragraphs 1.41 and 1.42.

2.36 In circumstances where it is unclear whether certain blends constitute a fuel that can be used as a fuel in an internal combustion engine, the Commissioner is able to make a determination that blends of fuel and other products do not constitute a fuel. In these circumstances the manufacturer of the fuel blend and not the end user is considered to have used the fuel and is entitled to claim a fuel tax credit for any fuel tax paid on the constituents of the blend. ***[Section 95-5]***

2.37 'Use' will also include the loss of fuel through evaporation and temperature changes in the course of carrying on a taxpayer's enterprise.

Section 41-10 — Fuel tax credit for fuel to be sold or packaged

2.38 Section 41-10 is intended to provide fuel on an effectively fuel tax-free basis for use by private users:

- in home heating ***[subsection 41-10(1)]***;
- for use other than in an internal combustion engine (eg, as a solvent) ***[subsection 41-10(2)]***.

2.39 A fuel tax credit will be provided to the sellers and packagers of these fuels rather than requiring the private users to register to claim the fuel tax credit. It is expected that the fuel tax-free status of these fuels will be reflected in the price of the fuel to the private end user.

2.40 A taxpayer will be entitled to a fuel tax credit if they:

- make a taxable supply of kerosene or heating oil to a private entity, and they have a reasonable belief that the fuel will be used for home heating ***[subsection 41-10(1)]***; or

- package kerosene, mineral turpentine or white spirit, or prescribed fuels in containers to make a taxable supply of the fuel for use other than in an internal combustion engine. The fuel must be packaged in containers of a size to be prescribed in regulations ***[subsection 41-10(2)]***.

Meaning of taxable supply

2.41 The term 'taxable supply' has the same meaning in the Fuel Tax Bill 2006 as it does in the GST Act. ***[Section 110-5]***

Example 2.1

Tony runs a fuel distribution company. His company makes taxable supplies of heating oil to private residences in the Canberra area. Tony reasonably believes that the heating oil will be used for private purposes because he delivers the fuel into tanks that are attached to the sides of his customer's houses. Tony is entitled to claim a fuel tax credit for the supply of the heating oil because it is reasonable to believe it will be used for domestic heating.

Tony also packages kerosene and mineral turpentine in containers of a prescribed capacity which he sells to hardware stores. These containers of fuel are then sold by the hardware stores to retail customers. Tony is able to claim a fuel tax credit for the fuel that he packages.

No fuel tax credit if another entity was previously entitled to a credit

2.42 The intention of section 41-15 is that only one entity is entitled to a fuel tax credit. A taxpayer is not entitled to a fuel tax credit for taxable fuel if it is reasonable to conclude that another taxpayer was entitled to a fuel tax credit on the same fuel ***[subsection 41-15(1)]***. This situation arises if a reasonable person in the position of the taxpayer would conclude that another taxpayer was entitled to a fuel tax credit on that fuel.

Example 2.2

Chris acquires kerosene from his local hardware store in containers of capacity less than a size prescribed by the regulations, for use in his business. Chris is not entitled to claim the fuel tax credit for the fuel as the packager would be entitled to claim the credit under section 41-10.

It is reasonable for Chris to conclude that another entity had previously been entitled to a fuel tax credit on the fuel when he acquired it, because it was packaged in a container of capacity less than a prescribed size.

If Chris had acquired the fuel from a distributor in a container larger than the prescribed capacity, it would be reasonable for him to conclude that another entity had not previously been entitled to the fuel tax credit, and he would be entitled to claim a fuel tax credit on the acquisition of the fuel.

2.43 In the situation of an entity providing fuel for use by a contractor or sub-contractor, the contractual terms agreed to by the parties would assist to determine whether a particular supply of fuel constituted a taxable supply in the course of carrying on the entity's business and the reasonableness of a contractor or sub-contractor to conclude that the entity had already claimed a credit with respect to the fuel.

Example 2.3

XL Ltd, a manufacturing company engages Joe, a transport contractor to transport goods it manufactures from its factory to its distributor. Joe's contract requires XL Ltd to provide him with diesel fuel for a stated price. XL Ltd cannot claim the fuel tax credit as they have made a taxable supply of the diesel fuel to Joe and the fuel is not used in its enterprise. If XL Ltd had claimed a fuel tax credit as it purchased the fuel with the intention at using it in its enterprise, then it would need to make an increasing fuel tax credit adjustment. As the contract clearly provides for the sale of the fuel, Joe can claim the fuel tax credit.

Example 2.4

Deep Mines Ltd (Deep Mines) engages DY Ltd to carry out earthmoving works on its mining lease. The contract is for services rendered and for the use of DY Ltd's earthmoving equipment only and specifies that Deep Mines will provide fuel from its bulk storage tank for carrying out the work. As DY Ltd's contract agreement makes no provision for the taxable supply of fuel, it is not reasonable to conclude without contacting Deep Mines, that the contract takes into account consideration for the fuel supplied. DY Ltd therefore is not entitled to claim a fuel tax credit on the fuel supplied by Deep Mines.

2.44 If it is reasonable to conclude that another entity was entitled to a fuel tax credit, but had made an increasing fuel tax adjustment in respect of the credit, a taxpayer acquiring the fuel will still be entitled to claim the credit ***[subsection 41-15(2)]***. An increasing fuel tax adjustment increases a taxpayer's net fuel tax amount, where a taxpayer received too much fuel tax credit because they claimed for what was an eligible use of fuel at the time they obtained the fuel but then applied it in a way that would have

entitled them to a lesser fuel tax credit had that been their original intended use. Such an adjustment ensures that a fuel tax credit is claimed only once on a particular fuel and an increasing fuel tax adjustment can allow a further entity to claim a credit for that fuel. Fuel tax adjustments are explained in paragraphs 2.89 to 2.97.

2.45 It is reasonable for a taxpayer acquiring fuel to conclude that an increasing fuel tax adjustment has been made by a previous entity if the taxpayer is, for example, a related entity to the entity that made the adjustment and the taxpayer acquiring the fuel has access to the other entity's accounting records.

Example 2.5

Mulholland Co. buys fuel from its subsidiary company, Mini-Mul Fuels. Mini-Mul Fuels had bought the fuel to use in their business but subsequently sold it to Mulholland Co. for Mulholland Co. to use in their business. Mini-Mul Fuels claimed a credit for that fuel but makes an increasing fuel tax adjustment in its next BAS to take account of the sale that would not have given rise to the fuel tax credit paid to them. Mulholland Co. can claim a credit for the business use of the fuel because as a parent company it is reasonable to conclude that Mini-Mul Fuels made an increasing adjustment.

2.46 A taxpayer will be denied a fuel tax credit if they are aware that a credit has not been claimed in respect of the fuel and another entity higher in the distribution chain will be allowed a decreasing adjustment in respect of the fuel.

No fuel tax credit for fuel to be used in light vehicles on a public road

2.47 If a taxpayer acquires or manufactures in, or imports fuel into, Australia to use in a vehicle with a gross vehicle mass of 4.5 tonnes or less on a public road, they will not be entitled to a fuel tax credit, subject to the transitional rule governing vehicles with a gross vehicle mass of 4.5 tonnes mentioned in paragraph 1.35. ***[Section 41-20]***

2.48 The break point of 4.5 tonnes or less gross vehicle mass aligns eligibility for a fuel tax credit with the additional licensing conditions that must be met in all Australian jurisdictions to drive a vehicle of this mass or greater and the *Australian Design Rules* for heavy vehicles. In addition, the *Heavy Vehicle Charges Determination* that establishes the road-user charges for heavy vehicles applies to vehicles over 4.5 tonnes.

2.49 The term 'gross vehicle mass' takes its ordinary meaning as the gross vehicle mass, or if the vehicle is a prime mover, the gross combination mass as accepted by the authority that registered the vehicle,

whether that is a state authority or the vehicle is registered under the *Federal Interstate Registration Scheme*.

What is a public road?

2.50 A road is a ***public road*** if it is:

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

2.51 A road is not a public road if it is 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;
- forestry road;
- private access road for use in a mining operation; or
- road that has not been dedicated as a public road over privately owned land.

What is a forestry road?

2.52 A ***forestry road*** is a road within a forest or plantation which is constructed and maintained primarily and principally for the purposes of providing access to an area to facilitate forestry activities (eg, to facilitate trees to be planted or tended in the area, or timber felled in the area to be removed) and for related forestry management activities.

What is a private access road for use in mining operations?

2.53 A ***private access road for use in mining operations*** is a private road which is constructed and maintained by a person who carries on a mining operation for the purposes of providing access to or from either a mining operation or a place at which beneficiation of minerals or mineral ores occurs.

No fuel tax credit for fuel to be used in motor vehicles that do not meet environmental criteria

2.54 A taxpayer is not entitled to a fuel tax credit for the use of fuel in a diesel motor vehicle travelling on a public road unless the vehicle meets one of a number of environmental criteria. The criteria are intended to encourage the owners and operators of diesel heavy motor vehicles to properly maintain their vehicles in order to reduce exhaust emissions of particulates, smoke and smog-forming pollutants to acceptable levels.

2.55 The criteria are only intended to apply to motor powered road vehicles. They are not intended to apply to vehicles that are not road vehicles.

2.56 If a taxpayer owns or operates a diesel heavy motor vehicle they need to demonstrate that the vehicle meets one of four environmental performance criteria in order to qualify for a fuel tax credit. The criteria are that the vehicle is either:

- registered as a vehicle manufactured on or after 1 January 1996;
- registered in an audited maintenance programme that is accredited by the Transport Secretary;
- meets Rule 147A of the *Australian Vehicle Standards Rules 1999*; or
- complies with a maintenance schedule endorsed by the Transport Secretary.

[Schedule 2, subsection 41-25(1)]

2.57 The Transport Secretary has the power to determine appropriate maintenance schedules that allow vehicle operators to demonstrate their vehicle is not likely to be a high polluter and to accredit an audited maintenance programme. ***[Paragraph 41-25(1)(d)]***

2.58 Taxpayers claiming fuel tax credits for fuel used on a public road will self-assess their compliance with the environmental performance criteria. However, written records must be kept to prove the validity of a claim. The Commissioner may inspect those records as part of any compliance programme.

Vehicles used primarily on an agricultural property

2.59 Motor vehicles used in carrying on a primary production business that are primarily used on an agricultural property do not have to

comply with the environmental criteria ***[subsection 41-25(2)]***. A vehicle is considered to be used 'primarily' on an agricultural property where, in carrying on a primary production business, the vehicle, for example, is used to transport the primary produce to and from the market, or crosses property that is not defined as agricultural property when travelling from or onto agricultural property.

No fuel tax credit for fuel to be used in aircraft

2.60 If a taxpayer acquires or manufactures in, or imports fuel into Australia that is classified in the Schedule to the *Excise Tariff Act 1921* or the Schedule to the *Customs Tariff Act 1995* as fuel for use in aircraft, they will not be entitled to a fuel tax credit ***[section 41-30]***. These fuels include kerosene for use in aircraft (known as aviation kerosene, aviation turbine fuel, avtur or Jet A1) and gasoline for use in aircraft (known as aviation gasoline or avgas). Fuel tax imposed on these fuels used in aviation is not imposed for general revenue-raising reasons but rather as a method of cost recovery for various services and oversight of the aviation industry. Fuel tax on aviation fuels is not within the scope of fuel tax reform and therefore the fuels are not eligible for a fuel tax credit.

2.61 If however, a taxpayer acquires, manufactures or imports other taxable fuels for use in an aircraft in carrying on their enterprise, for example diesel, they will be entitled to a fuel tax credit under section 41-5.

Division 42 — Fuel tax credit for domestic electricity generation

2.62 A taxpayer is entitled to a fuel tax credit for fuel acquired or manufactured in, or imported into Australia to be used by them in generating electricity for domestic use ***[section 42-5]***. This can be electricity that the taxpayer generates for their own domestic use as well as electricity that they generate for domestic use by others as long as the taxpayer generating the electricity is not carrying on an enterprise (if a taxpayer is in the business of generating electricity or generates electricity for use in an enterprise, they are entitled to a fuel tax credit under section 41-5).

2.63 Where a taxpayer who is entitled to a fuel tax credit under section 42-5 does not carry on an enterprise, they will claim fuel tax credits in a form approved by the Commissioner. If a taxpayer generates electricity for domestic purposes and also carries on an enterprise, they can claim fuel tax credits for both on the BAS.

2.64 The term 'domestic' indicates that the generation of the electricity is for use in a home, house or household and is therefore of a

domestic nature. The term is also intended to cover situations where certain parts of the home are occupied for professional purposes.

Example 2.6

Susanna lives on a 500 acre property, 120 kilometres from the nearest big town, and carries out a primary production business. She uses a diesel-powered generator to produce electricity for two homes on her property — the home she lives in and the home her parents live in. She is entitled to claim a fuel tax credit for the diesel she acquires to use in her generator because the fuel is acquired for use in domestic electricity generation (her entitlement arises under section 42-5).

Susanna uses another diesel generator to power the shearing shed and several other outbuildings used in her primary production business. Susanna is also entitled to claim a fuel tax credit for the diesel she acquires for use in this generator because she has acquired the fuel to carry on her enterprise (her entitlement arises under section 41-5). Susanna claims both fuel tax credits on her BAS.

2.65 If fuel is used to generate electricity for recreational purposes, for example use in a caravan, tent or yacht, no fuel tax credit entitlement arises as the fuel is not used for domestic electricity generation. However, there will be an entitlement to a fuel tax credit if the caravan or yacht is the taxpayer's main or permanent place of residence.

Division 43 — Working out a taxpayer's fuel tax credit

Fuel tax credits are based on the effective fuel tax payable

2.66 The amount of any fuel tax credit payable on fuel is based on the amount of effective fuel tax that is payable on the fuel ***[subsection 43-5(1)]***. The reason for this is that some fuels, for example domestically-produced ethanol and biodiesel, pay fuel tax at the same rate as diesel and petrol, but the amount of fuel tax effectively payable is reduced by a grant under the *Energy Grants (Cleaner Fuels) Scheme Act 2004* or a subsidy paid by the Department of Industry, Tourism and Resources.

2.67 The meaning of fuel tax and taxable fuel are discussed in paragraphs 2.14 to 2.19.

2.68 The intention, therefore, is that the fuel tax credit is based on the effective fuel tax payable rather than the amount of fuel tax payable on the importation or manufacture of the fuel. For example, biodiesel is currently taxed at 38.143 cents per litre and producers receive a cleaner fuel grant equivalent to the tax on the fuel, making the effective fuel tax on the fuel zero. As no effective fuel tax has been paid there is no entitlement to a fuel tax credit for the use of the fuel.

2.69 The amount of 'effective fuel tax' is calculated using a formula that reduces the 'fuel tax amount' by the amount of any 'grant or subsidy' that was or would be payable on the fuel by the Commonwealth. ***[Subsection 43-5(2)]***

2.70 For a business taxpayer the amount of effective fuel tax is worked out at the rate of fuel tax, grant and subsidy in force at the beginning of the tax period to which the credit is attributed. ***[Subsection 43-5(2)]***

2.71 For a non-business taxpayer the amount of effective fuel tax is worked out at the rate of fuel tax, grant and subsidy in force on the day the Commissioner receives a return relating to the fuel. ***[Subsection 43-5(2)]***

Example 2.7

MCH Mining Ltd acquires 10,000 litres each of diesel and biodiesel on 28 August 2006 for use in eligible mining activities not on a public road. MCH Mining Ltd is registered for the GST and has monthly tax periods. On 1 August 2006, fuel tax is payable on diesel and biodiesel at the rate of 38.143 cents per litre. As there is no grant or subsidy amount payable on the production of diesel, the amount of the fuel tax credit payable on the diesel is 38.143 cents per litre. For the 10,000 litres of diesel, MCH Mining Ltd is entitled to claim a fuel tax credit of $3,814.

As a cleaner fuel grant is payable for the biodiesel at the rate of 38.143 cents per litre, the effective fuel tax payable on the biodiesel is reduced to zero. The amount of fuel tax credit payable on the biodiesel is therefore also zero.

2.72 Where a fuel blend meets a particular standard, for example B5 (a blend of 5 per cent biodiesel and 95 per cent diesel) meets the diesel standard, it is treated as having fuel tax paid at the rate applicable to the unblended fuel covered by the standard. For fuel blends where one of the constituents attracts fuel tax at a discounted rate, such as a blend of diesel and biodiesel, the result of this treatment will be a fuel tax credit in excess of the effective fuel tax embedded in the fuel. Where a fuel blend does not meet a fuel standard, the amount of fuel tax credit is not more than the actual fuel tax paid on the fuels that make up the blend.

Example 2.8

MCH Mining Ltd also acquires 10,000 litres of B5 on 28 August 2006 that meets the diesel fuel standard for use in eligible off-road mining activities. MCH Mining Ltd is entitled to claim a fuel tax credit at the diesel rate of 38.143 cents per litre for the blend.

MCH Mining Ltd also purchases 10,000 litres of B20 (a blend consisting of 80 per cent diesel and 20 per cent biodiesel) on 28 August 2006 that does not meet the diesel fuel standard, for use in an eligible mining activity not on a public road. MCH Mining Ltd is entitled to claim a fuel tax credit of 38.143 cents per litre in respect of the diesel portion of the blended fuel and zero cents per litre for the biodiesel portion of the blended fuel.

Exclusions from grant or subsidy amount

2.73 The following grants are paid for reasons other than to offset the fuel tax payable on a fuel and therefore do not reduce the amount of the taxpayer's fuel tax credit:

- a grant under the *Biofuels Capital Grants Program*. This programme provided one-off capital grants for projects that provide new or expanded biofuels production capacity;

- grants for on-road alternative fuel under the *Energy Grants (Credits) Scheme Act 2003*. These grants apply for the purchase of biodiesel, ethanol, liquefied petroleum gas, liquefied natural gas and compressed natural gas and will be phased out in the period from 1 July 2006 to 30 June 2010;

- grants under the *Energy Grants (Cleaner Fuels) Scheme Act 2004*. These grants are those payable for low sulphur Premium unleaded petrol, and those intended to be payable from 1 January 2007 to importers and manufacturers of diesel with less than 10 parts per million sulphur to encourage the production of the fuel; and

- a benefit paid to waste oil recyclers and for eligible uses of specific oils under the *Product Stewardship (Oil) Act 2000*.

[Subsection 43-5(3)]

Reducing the amount of a taxpayer's fuel tax credit

2.74 The amount of any fuel tax credit will be reduced to the extent that fuel tax is imposed to fund a cleaner fuel grant and, for use in vehicles travelling on a public road, by the amount of the road-user charge.

2.75 The Government announced in the 2003-04 Budget, that from 1 January 2007, the fuel tax on diesel will increase for a period of two years to fund a cleaner fuel grant for diesel with less than 10 parts per million sulphur. This initiative, including the additional fuel tax rates

required to fund the proposal, will be reviewed in the period prior to implementation to ensure that it aligns with the timing of the new fuel standards and market conditions.

2.76 A fuel tax credit for the acquisition, manufacture or importation of diesel, will be reduced in the years that the cleaner fuel grant applies to the extent that the Minister for Revenue and Assistant Treasurer determines that fuel tax is imposed on the fuel to fund that grant. ***[Section 43-10]***

2.77 The reduction will apply for business taxpayers at the rate of fuel tax applicable at the beginning of the tax period to which the fuel tax credit is attributable. ***[Paragraph 43-10(6)(a)]***

2.78 For non-business taxpayers, the reduction will apply at the rate of fuel tax applicable on the day the Commissioner receives the taxpayer's return. ***[Paragraph 43-10(6)(b)]***

Road-user charge

2.79 The amount of fuel tax credit for fuel used in travelling on a public road is reduced by the amount of the road-user charge determined by the Transport Minister ***[subsection 43-10(3)]***. If the road-user charge is greater than the effective fuel tax rate for fuel, the fuel tax credit will be zero.

2.80 The amount of a taxpayer's fuel tax credit is not reduced by the amount of the road-user charge if their vehicle's travel on a public road is incidental to its main use. Incidental use of fuel may occur when a vehicle that is used almost exclusively off a public road, is moved a short distance from one off-road location to another via a public road or is operating incidentally on a public road. ***[Subsection 43-10(4)]***

Example 2.9

> Phil is a farmer. In order to move between parts of his property when he is harvesting crops he has to drive his combine harvester on a public road. As the main use of the combine harvester is off-road, the travel that occurs on a public road is considered incidental and Phil does not have to reduce the amount of fuel tax credit by the amount of the road-user charge for part of the use of fuel for travelling on a public road.

2.81 The road-user charge will be set in accordance with the National Transport Commission's heavy vehicle charging determination process. The fuel tax based charge will be adjusted annually in a similar fashion to the way that the States and Territories adjust registration fees

for heavy vehicles. Changes to the charge will be made by varying the level of fuel tax credit paid for fuel used in heavy vehicles.

2.82 The fuel tax credit for a business taxpayer will be reduced by the rate of the road-user charge applicable at the beginning of the tax period to which the fuel tax credit is attributable. ***[Paragraph 43-10(6)(a)]***

2.83 For a non-business taxpayer, the fuel tax credit will be reduced by the rate of road-user charge applicable on the day the Commissioner receives a return. ***[Paragraph 43-10(6)(b)]***

2.84 The Minister for Transport will determine the amount of the road-user charge. ***[Subsection 43-10(5)]***

2.85 The road-user charge for petrol and alternative fuels will be the same as for diesel.

Apportioning fuel between eligible and ineligible uses

2.86 If a taxpayer acquires, manufactures or imports fuel for both eligible and ineligible activities, they will need to apportion the use of that fuel between eligible and ineligible uses to determine the amount of the fuel that is eligible for a fuel tax credit. Taxpayers may use the deductive or constructive methods of calculation to establish the amount of fuel eligible for a fuel tax credit depending on circumstances and pattern of fuel usage.

2.87 Under the constructive method, taxpayers calculate the quantity of fuel eligible for a fuel tax credit in a tax period by adding the amounts of fuel acquired or imported that were used or are intended to be used in each eligible activity.

2.88 Under the deductive method, taxpayers deduct from the fuel acquired or imported, the quantity of fuel that was used or is intended to be used in each ineligible activity to arrive at the quantity of fuel that is eligible for a fuel tax credit.

Division 44 — Increasing and decreasing fuel tax adjustments

2.89 A taxpayer need only acquire or manufacture in, or import into Australia, taxable fuel with the intention of using it for an eligible purpose to become entitled to a fuel tax credit — they will not need to have actually used the fuel.

2.90 A taxpayer may acquire, manufacture or import fuel with the intention of using it for a particular purpose but subsequently use the fuel for a different purpose. If the amount of the fuel tax credit that would have arisen had the taxpayer originally known of this different purpose differs from the amount the taxpayer is actually entitled to (based on their

intended purpose), the taxpayer will have a fuel tax adjustment. ***[Subsection 44-5(1)]***

2.91 The amount of the fuel tax adjustment will be the difference between the amount that the taxpayer was entitled to and the amount the taxpayer would have been entitled to if their intended use was what they actually used it for. ***[Subsection 44-5(2)]***

2.92 An adjustment occurs as a result of the fuel being used for a different purpose than was intended at the time of acquisition, import or manufacture. In general, a mistake refers to the claiming of a fuel tax credit when no entitlement, or a different entitlement, existed. An example of a mistake is an arithmetic error resulting in the taxpayer claiming a fuel tax credit in excess of the fuel tax credit available on fuel they acquired during the tax period.

2.93 There are two types of fuel tax adjustments — increasing and decreasing. An increasing fuel tax adjustment increases a taxpayer's net fuel tax amount. A taxpayer will have an increasing fuel tax adjustment if they have received too much fuel tax credit ***[subsection 44-5(4)]***. A decreasing fuel tax adjustment decreases a taxpayer's net fuel tax amount. A taxpayer will have a decreasing fuel tax adjustment if they have received too little fuel tax credit ***[subsection 44-5(3)]***.

2.94 Fuel tax adjustments can arise in a number of ways. It may be that the activity in which a taxpayer actually uses the fuel is different from that which was intended. For example if fuel, or some of it, is used for a private purpose or the consumption of the fuel results in a different fuel tax credit amount being applicable to the actual use.

Example 2.10

> Kate is a primary producer. On 1 September 2006, she acquires 10,000 litres of diesel to use in her combine harvester. The fuel tax credit rate for diesel is 38.143 cents per litre so Kate claims a fuel tax credit of $3,814 in her BAS for the quarterly tax period ending 30 September 2006. During November, Kate uses 100 litres of the diesel in her one tonne utility that she uses for driving to and from town. As she is not entitled to claim a fuel tax credit for the use of fuel in a vehicle with a gross vehicle mass of 4.5 tonnes or less on a public road, Kate has to make an increasing fuel tax adjustment on her BAS for the quarterly tax period ending 31 December 2006 for an amount of $38.14.

2.95 A taxpayer will also need to make a fuel tax adjustment where the fuel is not used. For example, a supply of fuel that a taxpayer has paid for or been invoiced for, is cancelled or not delivered or the fuel is lost, stolen or otherwise disposed of. ***[Section 44-10]***

Attribution rule for fuel tax adjustments

2.96 Taxpayers will attribute fuel tax adjustments to the tax period or return period in which they become aware of the adjustment.
[Subsection 65-10(1)]

2.97 The test of when a taxpayer becomes aware that an adjustment is necessary is an objective test rather than a test based on the subjective understanding of the taxpayer. This means they will be taken to become aware of a fuel tax adjustment when all the facts necessary to make a reasonable person aware are known to them.

Example 2.11

Following from Example 2.10, it is reasonable to conclude that Kate became aware that an adjustment would be necessary with respect to the fuel when she put the fuel in her one tonne utility. Had that been her original intended use of the fuel, she would not have been entitled to a fuel tax credit.

Example 2.12

Marando Fuel Co. acquires fuel on 1 December 2006 that is stored in its bulk storage tanks. Fuel from the tanks is used for various activities that are eligible and ineligible uses for the purposes of fuel tax credit claims. In Marando Fuel Co.'s next tax period, ending 31 December 2006, the company claims a fuel tax credit for half the quantity of the fuel purchased, based on an apportionment of fuel use between eligible and ineligible activities. The amount claimed is an estimate calculated by reference to the company's historical usage patterns and its intention to continue this usage pattern. However, the company's January 2007 records of the actual use in the company's equipment show that less than the estimated half of the quantity of the fuel purchased on 1 December 2006 was used in eligible activities. It would have been reasonable for Marando Fuel Co. to have been aware of the need to make an increasing fuel tax adjustment when they obtained the records showing a lesser portion of fuel was applied to eligible uses.

Division 45 — The Greenhouse Challenge Plus Programme

2.98 Receipt of fuel tax credits by large energy users is conditional on those entities being members of the Greenhouse Challenge Plus Programme. The Government recognises that making greenhouse management a core element of business is important to finding cost-effective solutions to the long-term greenhouse response. Membership of the Greenhouse Challenge Plus Programme signals an expectation that large energy users will participate in an active partnership

with government to address climate change. The programme complements the Government's other energy and greenhouse gas abatement measures addressing large energy users. Information about the Greenhouse Challenge Plus Programme can be found on the website of the Australian Greenhouse Office.

2.99 A taxpayer will not be able to claim a total of more than $3 million of fuel tax credits in a financial year unless at the time they make the claim they are a member of the Greenhouse Challenge Plus Programme. ***[Subsection 45-5(1)]***

2.100 Where a taxpayer becomes a member of the Greenhouse Challenge Plus Programme they will be entitled to claim fuel tax credits for taxable fuel they acquired or manufactured in, or imported into Australia, before they joined the programme, by making a decreasing fuel tax adjustment for the amount of fuel tax credit that they were previously not entitled to take into account. ***[Subsection 45-5(2)]***

2.101 The decreasing fuel tax adjustment is attributed to the tax period in which the taxpayer becomes a member of the programme. ***[Subsection 65-10(2)]***

2.102 The decreasing fuel tax adjustment will take into account the credits the taxpayer was previously not entitled to up to five years prior to the end of the financial year in which they became a member of the programme.

Example 2.13

Tom's Transport has monthly tax periods and is not a member of the Greenhouse Challenge Plus Programme for most of the 2006-07 financial year. Tom's Transport makes the following claims for fuel tax credits on its BAS:

Month ending	***Fuel tax credits claimed***	***Total fuel tax credit (year to date)***
31 July 2006	$650,000	$650,000
31 August 2006	$250,000	$900,000
30 September 2006	$350,000	$1,250,000
31 October 2006	$175,000	$1,425,000
30 November 2006	$80,000	$1,505,000
31 December 2006	$450,000	$1,955,000
31 January 2007	$210,000	$2,165,000
28 February 2007	$350,000	$2,515,000
31 March 2007	$410,000	$2,925,000

30 April 2007	$270,000	$3,195,000
31 May 2007	$280,000	$3,475,000
30 June 2007	$175,000	$3,650,000

In April, total claims for fuel tax credits for the financial year exceed the $3 million threshold for membership of the Greenhouse Challenge Plus Programme. Tom's Transport will be entitled to claim a fuel tax credit of only $75,000 for April, being the difference between the total fuel tax credits to 31 March 2006 of $2,925,000 and the threshold of $3 million.

On 2 May 2007, Tom's Transport joins the Greenhouse Challenge Plus Programme. When they lodge their BAS for May, they make a decreasing fuel tax adjustment for an amount of $195,000, being the remaining amount of fuel tax credit that it was not entitled to claim in April. Tom's Transport's total claim in May is equal to $195,000 (the decreasing fuel tax adjustment) plus the fuel tax credit entitlement of $280,000 for May.

Application of the Greenhouse Challenge Plus Programme to GST branches, GST groups and GST joint ventures

GST branches

2.103 As a GST branch is not treated as a separate entity for fuel tax credit purposes, the $3 million threshold for entities operating through branches will be calculated as the sum of fuel tax credits received by the parent and all of its branches. If the criterion applies, then the entity (parent and branches) will be required to join the Greenhouse Challenge Plus Programme in order to be entitled to payment of fuel tax credits.

GST groups

2.104 As a GST group is treated as a single entity for fuel tax credit purposes, the $3 million threshold for entities operating within an approved GST group, will be calculated as the sum of fuel tax credits received by the group as a whole. If the criterion applies, then the group member claiming fuel tax credits on behalf of the group (as the representative member of the GST group) will be required to join the Greenhouse Challenge Plus Programme and enter into a Greenhouse Challenge Plus Programme agreement on behalf of all entities within the group in order to be entitled to payment of fuel tax credits.

GST joint ventures

2.105 The $3 million threshold for a GST joint venture will be calculated as the sum of fuel tax credits received by the joint venture operator on behalf of the joint venture. If the criterion applies, then the

joint venture operator will be required to join the Greenhouse Challenge Plus Programme on behalf of the GST joint venture.

2.106 Where a joint venture operator consolidates its claims in relation to a number of GST joint ventures, the $3 million threshold will apply separately to each GST joint venture within the consolidated claim, rather than to the total of fuel tax credits received by GST joint ventures covered by the consolidated claim. The joint venture operator will need to ensure that all the GST joint ventures that exceed the $3 million threshold are included in Greenhouse Challenge Plus Programme agreements.

Coverage under existing Greenhouse Challenge Plus agreements

2.107 Where a GST group or joint venture operator is already a member of the Greenhouse Challenge Plus Programme or is part of a group of entities whose parent entity is already a member of the Greenhouse Challenge Plus Programme, then there may be no need for the GST group or joint venture operator to take out a separate Greenhouse Challenge Plus membership. However, any Greenhouse Challenge Plus agreement must cover the activities of the GST group or joint venture(s).

Division 46 — Instalment taxpayers

2.108 Taxpayers that are GST instalment payers, must treat each GST instalment quarter as if it were a tax period ***[subsection 46-5(1)]***. This means that they will work out their fuel tax credits on a quarterly basis, instead of on an annual basis as they do for GST ***[subsection 46-5(2)]***.

2.109 GST instalment payers may choose to not lodge a return for any of the four quarters. However, in situations where there is an increasing fuel tax adjustment, the instalment taxpayer is required to lodge a return for the last quarter, with lodging a return in the preceding quarters remaining optional. For each quarter that a GST instalment payer does make a claim, they must give their return to the Commissioner on or before the day they would be required to pay the GST instalment to the Commissioner for the quarter. Some instalment payers are only required to pay two GST instalments per year. If these taxpayers choose to make a claim for either of the first two quarters, they must give their return to the Commissioner on or before the day they would have been required to pay their GST instalment for the quarter had they instead paid four instalments per year. ***[Subsection 46-5(3)]***

2.110 GST instalment payers that are required to give a return to the Commissioner for the last GST instalment quarter in a financial year must do so on or before the day they would be required to pay the GST instalment to the Commissioner for the quarter. ***[Subsection 46-5(5)]***

2.111 If a GST instalment payer chooses not to give a return to the Commissioner for a quarter, any fuel tax credit or fuel tax adjustment that occurs in that quarter will be attributable to the first quarter thereafter for which they give the Commissioner a return. ***[Subsection 46-5(4)]***

Example 2.14

Greg owns and operates a dairy farm and is a GST instalment payer. As a primary producer, Greg is entitled to average his income for income tax purposes and is therefore also entitled to pay only the last two GST instalments. However, for the purposes of the fuel tax law Greg can work out his fuel tax credits for a financial year on a quarterly basis. Greg can choose whether to lodge a return for any of the first three quarters, but must lodge a return for the last quarter if he has an increasing fuel tax adjustment in the financial year.

Division 60 — Net fuel amounts

2.112 A taxpayer's net fuel amount is how much they must pay to the Commissioner (if positive), or that the Commissioner must pay to them (if negative). It is worked out using the formula in section 60-5. The net fuel amount is the total fuel tax attributable to the tax period or fuel tax return period, *less* the fuel tax credits that are attributable to the period. The net fuel amount is decreased or increased by any fuel tax adjustments that are attributable to the tax period or fuel tax return period ***[subsection 60-5(1)]***. Fuel tax adjustments are discussed in paragraphs 2.89 to 2.97.

2.113 The attribution rules tell taxpayers to which tax period or fuel tax return period they attribute their fuel tax credits. The attribution rules are discussed in paragraphs 2.127 to 2.139.

2.114 The inclusion of total fuel tax in the formula is necessary so that when fuel tax is imposed under the Fuel Tax Bill 2006, entities that have fuel tax obligations will be able to calculate their net fuel tax amount. The figure for total fuel tax will be zero in all cases to begin with, until fuel tax begins to be levied on gaseous fuels under this Bill in 2011.

2.115 If a taxpayer's net amount for a tax period or a return period is greater than zero, the net amount is the amount they must pay to the Commissioner for that tax period or return period. The net fuel amount will be greater than zero if the fuel tax payable and increasing fuel tax adjustments for a tax period or a return period *exceed* the fuel tax credits and decreasing fuel tax adjustments for the period.

Example 2.15

Berkley Fuels Pty Ltd is registered for the GST and has monthly tax periods. Their total fuel tax amount for August 2006 is zero. They have total fuel tax credits of $6,000 and $7,000 worth of increasing fuel tax adjustments. Their net fuel amount for the period is $1,000. They pay this amount to the Commissioner when they lodge their return for August 2006.

It is August 2011 and Berkley Fuels Pty Ltd has a total fuel tax amount of $20,000 because they are now liable for fuel tax on their liquefied petroleum gas. They have, similar to their activities in August 2006, total fuel tax credits of $6,000 and $7,000 worth of increasing fuel tax adjustments. Their net fuel amount for the period is $21,000, that they pay to the Commissioner when they lodge their return for August 2011.

2.116 If a taxpayer's net amount for a tax period or fuel tax return period is less than zero, the net fuel amount, (expressed as a negative amount) is the amount the Commissioner must pay to them for the period. The net fuel amount will be less than zero if the fuel tax credits and decreasing fuel tax adjustments for the period *exceed* the fuel tax and increasing fuel tax adjustments for the period.

Example 2.16

Continuing the previous example, in the tax period September 2006, Berkley Fuels Pty Ltd has a total fuel tax amount of zero and total fuel tax credits of $7,500. They have no adjustments. Their net amount for the tax period is –$7,500. The Commissioner pays this amount to Berkley Fuels Pty Ltd after they have lodged their return for the period, assuming that they have no other tax debts that this amount could be offset against.

In September 2011, Berkley Fuels Pty Ltd has a total fuel tax amount of $6,000 because they are now liable for fuel tax on their liquefied petroleum gas. They have fuel tax credits totalling $7,500 and no fuel tax adjustments for the month. Their net fuel amount for the tax period is –$1,500. Assuming Berkley Fuels Pty Ltd has no other tax debts against which this amount could be offset, the Commissioner pays them $1,500 after they lodge the return for September 2011.

2.117 If a taxpayer's net fuel amount for the tax period or the return period is zero, they do not have to pay anything to the Commissioner for that period, and the Commissioner does not have to pay anything to them for that period.

Example 2.17

Continuing the previous example, in the next tax period Berkley Fuels Pty Ltd have a total fuel tax amount of $10,000 and total fuel tax credits of $4,600. They have a decreasing adjustment of $5,400. Their net fuel amount for the tax period is zero. They still need to lodge a return for the tax period but no payment or refund relating to fuel tax is necessary.

Division 61 — Returns, refunds and payments

Refunds

2.118 The Commonwealth is obliged to pay a taxpayer any amounts of fuel tax credits that remain after they have netted off their fuel tax, fuel tax credits and fuel tax adjustments for a tax period or return period ***[subsection 61-5(1)]***. A taxpayer is entitled to be paid the amount when they have given the Commissioner a return ***[subsection 61-5(2)]***.

2.119 The Commonwealth is not obliged to pay a taxpayer's refund if they have a liability arising under another Act administered by the Commissioner. The Commissioner may apply a taxpayer's refund to the liability and pay them any remaining refund. The Commissioner may also be required to pay a tax refund to the Child Support Registrar or Centrelink in order that it be applied against other Commonwealth debts.

2.120 If a taxpayer does not have a liability under another Act administered by the Commissioner, the Commissioner is generally required to pay them any amount by which the taxpayer's net amount for a tax period is less than zero.

Payments

2.121 A taxpayer is obliged to pay the Commissioner an amount of fuel tax or an amount resulting from an increasing fuel tax adjustment that remains after fuel tax credits and decreasing fuel tax adjustments have been netted off against their fuel tax. A taxpayer must pay the amount on or before the day that they are required to give the Commissioner a return. ***[Section 61-10]***

Returns

2.122 A taxpayer must provide a return for each tax period or fuel tax return period, so that the Commissioner knows how much to collect or refund. Different rules may apply to instalment taxpayers, as discussed in paragraphs 2.108 to 2.111.

2.123 A business taxpayer must give a return to the Commissioner for each tax period. This return will form part of the BAS. Generally, the return must be given to the Commissioner on or before the 21st or 28th day (depending on the taxpayer's BAS cycle) following the end of the tax period to which the return relates or such other period as the Commissioner allows (depending on electronic or paper lodgement by a tax or non-tax agent). ***[Subsection 61-15(1)]***

2.124 A non-business taxpayer must give the Commissioner a return by the 21st day after the end of the fuel tax return period, which is the period specified in the return. ***[Subsections 61-15(2) and 61-20(1)]***

2.125 A non-business taxpayer must end a fuel tax return period within 90 days or a longer period if allowed by the Commissioner, if they become aware that they have an increasing fuel tax adjustment. ***[Subsection 61-20(2)]***

2.126 The question of when a taxpayer becomes aware that an adjustment is necessary, is an objective test rather than a test based on the subjective understanding of the taxpayer. This means the taxpayer will be taken to become aware of a fuel tax adjustment when all the facts necessary to make a reasonable person aware are known to the taxpayer.

Division 65 — Attribution rules

Attribution rule for fuel acquired or imported

2.127 The tax period to which a business taxpayer's fuel tax credit is attributable depends on whether they account for GST on a cash basis or an accrual basis.

2.128 If a taxpayer accounts for GST on a cash basis, an input tax credit for a creditable acquisition it makes is attributable to the tax period in which it provides consideration for that acquisition. A taxpayer will therefore attribute fuel tax credits for an acquisition of fuel to the tax period in which they pay for the fuel.

2.129 If a taxpayer accounts for GST on an accrual basis, an input tax credit for a creditable acquisition it makes is attributable to the tax period in which:

- it provides any consideration for the acquisition; or
- an invoice for the acquisition is issued (an invoice is a document notifying an obligation to make a payment and can include a tax invoice),

whichever is the earlier.

2.130 A taxpayer will attribute fuel tax credits for acquisitions of fuel to the same tax period in which:

- it provided any consideration for the supply of fuel; or
- an invoice for the supply of fuel is issued,

whichever is the earlier. ***[Paragraph 65-5(1)(a)]***

2.131 If a taxpayer does not hold a valid tax invoice when it lodges a GST return for a tax period mentioned above, both the input tax credit and the fuel tax credit cease to be attributable to this period. Instead, the input tax credit and the fuel tax credit become attributable to the first tax period for which the taxpayer gives the Commissioner a GST return at a time when the taxpayer does hold the tax invoice.

2.132 Subsection 29-10(4) of the GST Act allows an entity to postpone the attribution of an input tax credit. If, under this provision, attribution of an input tax credit is postponed to a later tax period, the corresponding fuel tax credit will also become attributable to this later period.

2.133 An input tax credit for a creditable importation is attributable to the period in which the taxpayer pays the GST on the importation, regardless of whether it accounts for GST on a cash or non-cash basis. The fuel tax credit for an importation of fuel will also be attributable to this period.

2.134 If a taxpayer's business involves providing supplies that are input taxed, they cannot normally claim input tax credits for the GST payable on the business inputs that relate to that supply. Under the fuel tax law, a taxpayer is however entitled to claim a fuel tax credit for taxable fuel that they acquire or import. A taxpayer will attribute the fuel tax credit to the same tax period that an input tax credit would have been attributable to, had they been allowed to claim an input tax credit in respect of the acquisition or importation of the fuel ***[paragraph 65-5(1)(b)]***. The tax period to which they attribute the fuel tax credit for an acquisition of fuel will depend on whether they account for the GST on a cash or accrual basis.

2.135 Non-business taxpayers become entitled to a fuel tax credit in the fuel tax return period in which they acquire or import the fuel. The meaning of 'fuel tax return period' is discussed in paragraphs 2.122 to 2.126.

Attribution rule for fuel a taxpayer manufactures

2.136 The point in time at which a taxpayer who manufactures fuel becomes entitled to a fuel tax credit is the tax period or return period in which the fuel was entered for home consumption. 'Entered for home consumption' means to enter the fuel in accordance with the relevant provisions of the *Excise Act 1901* or the *Customs Act 1901* and is the taxing point at which excise and customs duty applies. ***[Subsection 65-5(3)]***

Later attribution rule for fuel tax credits

2.137 Taxpayers may choose to postpone the attribution of a fuel tax credit to a later period. This can assist taxpayers, for example, in cases where they are not aware they hold a tax invoice in respect of a creditable acquisition until after they have lodged their BAS for a tax period. In these circumstances, the GST Act allows them to postpone the attribution of the input tax credit to any tax period after they hold a tax invoice, subject to the four-year time limit before a fuel tax credit claim expires. ***[Subsection 65-5(4)]***

Attribution rules for fuel tax adjustments

2.138 Increasing or decreasing fuel tax adjustments arising because the fuel is used differently than intended or is not used at all, are attributed to the tax period or fuel tax return period in which the taxpayer became aware of the adjustment. ***[Subsection 65-10(1)]***

2.139 A decreasing fuel tax adjustment arising after a taxpayer joins the Greenhouse Challenge Plus Programme, is attributed to the tax period in which they became a member of the programme. ***[Subsection 65-10(2)]***

Division 70 — Special rules about entities

2.140 The GST Act provides special rules that tailor the operation of the GST to the way particular entities are organised. If a special GST rule applies to the way a taxpayer's business is organised, the same rule will generally apply to them for fuel tax credits.

Application of the fuel tax law to GST groups

2.141 Entities may form a GST group subject to the approval of the Commissioner. If two or more taxpayers are approved as a GST group, they are treated as a single entity for fuel tax credit purposes. This means that under the fuel tax credit system the representative member of the group will be entitled to claim fuel tax credits that relate to acquisitions or importations of fuel for the group. ***[Section 70-5]***

GST joint ventures

2.142 Under the fuel tax credit system, the operator of a joint venture will be entitled to any fuel tax credits in respect of acquisitions or importations of fuel it makes on behalf of the other joint venturers for the purpose of the joint venture. ***[Section 70-5]***

Entry and exit history rules

Entry history rule

2.143 From the time that a particular entity starts to be treated as a single entity (ie, a GST group or a GST joint venture), that single entity inherits the history of any fuel that the particular entity brings with them into the single entity. ***[Subsection 70-10(1)]***

Example 2.18

K Co and M Co form a GST group to provide on-road freight transport. Prior to forming the group, K Co acquires fuel for use in off-road applications in its primary production enterprise and claims a fuel tax credit. The fuel is then used by the group in its transport business. The group is taken to have acquired the fuel for the purposes for which K Co acquired it. The resulting increasing fuel tax adjustment (because of the road-user charge payable) for the different use of the fuel will be made by the group, rather than by K Co.

Exit history rule

2.144 From the time that a particular entity ceases to be treated as a single entity (ie, a GST group or a GST joint venture), that particular entity inherits the history of any fuel that they take with them from the single entity. ***[Subsection 70-10(2)]***

Example 2.19

Patrick, Michael and Tony are farmers who, together with Meixner Trust, operate as a GST group. They acquire fuel for use in tractors and other farm machinery. When Patrick decides to leave the group, he takes a portion of the fuel and uses it for non-business purposes. Patrick is taken to have acquired the fuel for the purposes that the group acquired it. The resulting increasing fuel tax adjustment for the different use of the fuel will be made by Patrick, rather than by the group.

Application of fuel tax law to religious practitioners and religious institutions

2.145 Under the GST law, activities performed by a religious practitioner, as a religious practitioner of a religious institution, will be taken to be the activities of the religious institution (and not the activities of the religious practitioner). Consequently, a religious practitioner will not carry on an enterprise by performing these activities. The result is that these religious practitioners will not be eligible (or need) to register for the GST for these activities. The same rule will apply to these entities under the fuel tax law. ***[Section 70-20]***

Application of fuel tax law to GST branches, resident agents and non-profit sub-entities

GST branches

2.146 Some business entities operate through a divisional or branch structure. Their normal accounting practice may be to account on a branch or divisional basis and amalgamate their accounts once a year. As these entities are able to register branches separately for GST, each branch accounts for the input tax credits on the creditable acquisitions and importations that it makes. Similarly, under the fuel tax credits system each branch will claim fuel tax credits for the acquisitions or importation of fuel, separately from their parent entity. However, the parent entity still bears legal responsibility and is required to lodge a return in relation to each of its GST branches for each tax period. ***[Section 70-30]***

Resident agents acting for non-residents

2.147 Under the GST law, non-residents can register for the GST if they are carrying on an enterprise. If a non-resident entity is registered for the GST and has a resident agent, the resident agent is required to be registered from when he or she starts acting as the agent. The resident agent is required to be registered because they are liable for the GST on taxable supplies and taxable importations made by the non-resident

through them. The resident agent is entitled to input tax credits on creditable acquisitions and creditable importations that the non-resident makes through them. The resident agent also has any adjustments that relate to those supplies, acquisitions or importations. Under the Fuel Tax Bill 2006, fuel tax credits on the acquisition, manufacture or importation of fuel will be claimed by the resident agent and not by the non-resident. ***[Section 70-30]***

Non-profit sub-entities

2.148 The GST law allows certain non-profit entities to choose to treat separately identifiable sections of their organisation as though they are separate entities for GST purposes. These are called non-profit sub-entities. A non-profit sub-entity is also treated as a separate entity for the purposes of fuel tax law.

2.149 The GST law also allows a registered non-profit sub-entity to choose to group with the core entity or with other registered non-profit sub-entities if they meet the general requirements for grouping in Division 48 of the GST Act. This enables an organisation to effectively eliminate the GST effects of transactions between grouped members. The same rule will apply to these entities under the fuel tax law. ***[Section 70-30]***

Incapacitated entities

2.150 Where an incapacitated entity (including an entity that is bankrupt, liquidated or in receivership) has a representative (defined in the GST Act), provisions of the GST law govern the registration of the representative as a representative of the incapacitated entity. The GST law also aligns the tax periods of a registered representative with those applying to the incapacitated entity and sets out rules for adjustments the representative makes for supplies, acquisitions and importations made by the incapacitated entity made before the representative was appointed.

2.151 Section 70-25 applies the same registration requirements to representatives of incapacitated fuel tax credit claimants and the fuel tax adjustments the representative makes in relation to the incapacitated entities' prior activities would follow the same arrangements as adjustments they make for GST purposes. ***[Section 70-25]***

Division 75 — Anti-avoidance

2.152 The anti-avoidance provisions in the Fuel Tax Bill 2006 is based on the anti-avoidance provisions in the GST Act. Their purpose is to prevent schemes that are designed to obtain fuel tax benefits by taking advantage of the fuel tax law in circumstances other than those intended by the fuel tax law.

2.153 The anti-avoidance provisions apply to schemes which seek to reduce or delay paying fuel tax or increase or bring forward a refund of fuel tax.

Explanation of the provisions

2.154 The anti-avoidance provisions can be divided into two parts. They are:

- the criteria for the application of the anti-avoidance provision — **[S*ubdivision 75-A*]**; and
- the provisions dealing with the consequences of the anti-avoidance provisions applying — ***[Subdivision 75-B]***.

2.155 These provisions apply where an entity (referred to as the avoider) has obtained fuel tax benefits from a scheme, and it is concluded that the dominant purpose of the scheme (or part of the scheme) is to give an entity a fuel tax benefit, or a principal effect of a scheme (or part of a scheme) is to give the avoider a fuel tax benefit. ***[Subsection 75-5(1)]***

2.156 Three requirements must be satisfied before the anti-avoidance provisions apply:

- there must be a scheme;
- an entity must obtain a fuel tax benefit from the scheme:
  - the concept of a fuel tax benefit will cover reducing the fuel tax payable, increasing a refund, delaying payment of fuel tax and bringing forward a refund of fuel tax; and
- it is reasonable to conclude, taking into account a list of relevant factors, that:
  - the sole or dominant purpose of an entity that entered into or carried out the scheme (or part of the scheme) was to obtain a fuel tax benefit for any entity; or

- a principal effect of the scheme (or part of the scheme) was to obtain a fuel tax benefit for the avoider.

2.157 If the anti-avoidance provisions apply, the Commissioner can make the scheme ineffective for fuel tax purposes. The Commissioner can do this by making a declaration that has the effect of negating the fuel tax benefit obtained by the avoider under the scheme. ***[Subdivision 75-B]***

2.158 The Commissioner can also make a declaration that has the effect of compensating an entity that is disadvantaged by the scheme or part of the scheme, if:

- a declaration has been made against the avoider in relation to the scheme or part of the scheme; and
- the Commissioner considers it fair and reasonable that the disadvantage be negated or reduced.

2.159 In making any declaration in this Division, the Commissioner can disregard the scheme and reconstruct the events that took place.

2.160 Decisions made under Division 75 will be reviewable fuel tax decisions, and will be subject to rights of objection under the *Taxation Administration Act 1953* (TAA 1953).

Explanation of the specific rules — Subdivision 75-A

2.161 There are three requirements that must be satisfied before Division 75 will apply (see paragraph 2.156).

Requirement 1: There must be a scheme

2.162 'Scheme' has the meaning given by subsection 165-10(2) of the GST Act and means:

- any express or implied arrangement, agreement, understanding, promise or undertaking. An arrangement, agreement, understanding, promise or undertaking will still come within the definition of 'scheme' even if it is not, or is not intended to be, enforceable by legal proceedings; or
- any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

Requirement 2: An entity must get a fuel tax benefit from a scheme

2.163 The concept of an entity getting a 'fuel tax benefit' from a scheme is defined in subsection 75-10(1).

2.164 An entity gets a fuel tax benefit when it:

- does not pay fuel tax or pays less fuel tax;
- obtains payment or increased payment of a refund;
- pays fuel tax later; or
- gets a refund earlier.

[Subsection 75-5(1)]

2.165 An 'amount' includes a nil amount — see the definition of 'amount' in section 110-5. As a consequence the proposed anti-avoidance rules apply where:

- an amount payable by an entity is reduced to zero or nil because of a scheme ***[subsection 75-10(1)(a)]***; or
- an amount payable to the entity is increased from zero or nil because of a scheme ***[subsection 75-10(1)(b)]***.

2.166 The two outcomes described in paragraph 2.165 cover the cases where, because of a scheme, a net amount payable by the entity to the Commissioner becomes a refund payable by the Commissioner to the entity, that is:

- the part of the fuel tax benefit involving the actual amount payable by the entity to the Commissioner (ie, zero or nil) is reduced from the amount that should have been paid ***[subsection 75-10(1)(a)]***; or
- the part of the fuel tax benefit involving the actual amount payable by the Commissioner to the entity is increased from the amount that should have been paid (ie, zero or nil) ***[subsection 75-10(1)(b)]***.

<u>What connection does there need to be between the fuel tax benefit and the scheme?</u>

2.167 An entity will get a fuel tax benefit from a scheme if a fuel tax benefit should not have arisen, or could not reasonably be expected to

have arisen, apart from the scheme or part of the scheme. ***[Subsection 75-10(1)]***

2.168 This involves an enquiry into what would have occurred if the scheme or part of the scheme had not been entered into or carried out.

2.169 An entity that gets a fuel tax benefit from a scheme, even if the entity claims it would not have entered into any type of transaction had the actual scheme not been entered into, can still have that fuel tax benefit negated. ***[Subsection 75-10(2)]***

An entity can get benefits from part of a scheme

2.170 Fuel tax benefits may arise from a single transaction. To ensure that the anti-avoidance provisions apply appropriately and effectively to a fuel tax benefit arising from a single transaction, specific rules provide that a fuel tax benefit can arise from part of a scheme. ***[Subsection 75-10(1)]***

2.171 The fact that a fuel tax benefit can arise from part of a scheme is reflected throughout the Fuel Tax Bill 2006 dealing with anti-avoidance.

Requirement 3: The purpose or effect of the scheme was to obtain a fuel tax benefit

2.172 The final requirement for the application of Division 75 is that the purpose or the effect of the scheme or part of the scheme was to obtain a fuel tax benefit. ***[Paragraph 75-5(1)(c)]***

2.173 This requires one of two tests to be satisfied — either the purpose test or the effect test.

What is the purpose test?

2.174 This third requirement is satisfied if it is reasonable to conclude an entity entered into or carried out the scheme or part of the scheme with the sole or dominant purpose of that entity or another entity getting a fuel tax benefit from the scheme. ***[Subparagraph 75-5(1)(c)(i)]***

2.175 For the purposes of this test, the entity whose purpose is determined:

- is the entity which entered into or carried out the scheme or part of the scheme, alone or with others; but
- need not be the avoider.

2.176 The dominant purpose is the ruling, prevailing or most influential purpose.

What is the effect test?

2.177 Alternatively, this third requirement is satisfied if a principal effect of the scheme or part of the scheme is that the avoider got the relevant fuel tax benefit. ***[Subparagraph 75-5(1)(c)(ii)]***

2.178 The test is different from the purpose test in that it applies specifically to the avoider and the fuel tax benefit obtained by the avoider.

2.179 For this test, a principal effect is an important effect, as opposed to merely an incidental effect.

What matters are to be considered in determining purpose or effect?

2.180 The matters outlined below are taken into account in coming to a reasonable conclusion about the purpose or effect of the scheme or part of the scheme. ***[Subsection 75-15(1)]***

2.181 The matters apply to parts of a scheme in the same way as they apply to a scheme. ***[Subsection 75-15(2)]***

2.182 The matters to be considered are:

- the manner in which the scheme or part of the scheme was entered into or carried out ***[paragraph 75-15(1)(a)]***. The terms 'manner', 'entered into' and 'carried out' are terms that allow various matters to be taken into account. The terms are not given any restricted meaning. 'Manner' would include consideration of the way in which, and method or procedure by which, the particular scheme or part of the scheme in question was established. The scheme or part of the scheme for these purposes would be the particular means adopted by an entity to obtain the fuel tax benefit;

- the form and substance of the scheme or part of the scheme ***[paragraph 75-15(1)(b)]***. This matter will specifically include considering the legal rights and obligations involved in the scheme or part of the scheme ***[subparagraph 75-15(1)(b)(i)]*** and the economic and commercial substance of the scheme ***[subparagraph 75-15(1)(b)(ii)]***. Both of these issues will be important in considering 'purpose' or 'effect' of the scheme;

- the purpose or object of these Bills, the *Excise Act 1901*, the *Excise Tariff Act 1921*, the *Customs Act 1901*, the *Customs Tariff Act 1995*, the *Energy Grants (Credits) Scheme Act 2003* and the GST Act (to the extent that they are relevant) and any relevant provisions of those Acts ***[paragraph***

75-15(1)(c)]. Benefits are derived under avoidance schemes contrary to the purpose or object of the law. The purpose or object of the law is therefore a relevant consideration. Whether or not the purpose or object of these Bills or any relevant provision is expressly stated will not affect the relevance of this matter;

- the timing of the scheme or part of the scheme ***[paragraph 75-15(1)(d)]***. This matter may be particularly relevant in cases where the fuel tax benefit involves timing benefits;

- the period over which the scheme or part of the scheme is entered into or carried out ***[paragraph 75-15(1)(e)]***;

- the effect that these Bills have in relation to the scheme or part of the scheme ***[paragraph 75-15(1)(f)]***;

- any change in the avoider's financial position that results, or may reasonably be expected to result from the scheme or part of the scheme ***[paragraph 75-15(1)(g)]***;

- any change in the financial position of an entity connected to the avoider that results, or may reasonably be expected to result ***[paragraph 75-15(1)(h)]***. A connected entity is an entity that has or had a connection or dealing with the avoider, whether or not that connection or dealing is or was of a family, business or other nature;

- any other consequence for the avoider or a connected entity of the scheme or part of the scheme having been entered into or carried out ***[paragraph 75-15(1)(i)]***;

- the nature of the connection or dealing between the avoider and a connected entity ***[paragraph 75-15(1)(j)]***. This matter will include considering whether any dealing between the avoider and the connected entity was at arm's length;

- the circumstances surrounding the scheme or part of the scheme ***[paragraph 75-15(1)(k)]***. This allows an enquiry into matters and events prior to an entity entering into or commencing a scheme or part of a scheme; and

- any other relevant circumstances ***[paragraph 75-15(1)(l)]***. This ensures any relevant circumstance not otherwise covered is taken into account.

Does it matter where the scheme is entered into or carried out?

2.183 The fact that any part of a scheme is entered into or carried out outside of Australia does not affect the application of Division 75. ***[Subsection 75-5(2)]***

Explanation of the specific rules — Subdivision 75-B: the Commissioner may negate effects of schemes

2.184 Subdivision 75-B makes the outcome of a 'scheme' to which this Division applies ineffective.

The Commissioner can make declarations making an avoider's fuel tax benefits ineffective

2.185 If Division 75 applies to a scheme, the Commissioner can make a declaration negating the avoider's fuel tax benefit. The declaration can state that the avoider's net amount for a specified tax period or return period is, and at all times has been, a particular amount. ***[Section 75-40]***

2.186 Declarations made by the Commissioner under this section will be reviewable fuel tax decisions.

The Commissioner can make declarations compensating an entity other than the avoider

2.187 The Commissioner can also make a declaration compensating an entity other than the avoider for a fuel tax disadvantage that entity has got from the scheme. ***[Section 75-45]***

2.188 Three conditions must be satisfied before the Commissioner can make such a declaration for a particular entity (referred to as 'the loser'):

- the Commissioner must have made a declaration in relation to the avoider's fuel tax benefit ***[paragraph 75 -45(1)(a)]***;
- the Commissioner considers the loser gets a fuel tax disadvantage from the scheme ***[paragraph 75-45(1)(b)]***. A 'fuel tax disadvantage' from a scheme is defined in subsection 75-45(2); and
- the Commissioner considers it fair and reasonable to adjust or negate the loser's fuel tax disadvantage ***[paragraph 75-45(1)(c)]***.

2.189 The Commissioner's declaration can compensate for the fuel tax disadvantage by stating that the loser's net amount for a specified tax period or return period is, and at all times has been, a particular amount. ***[Subsection 75-45(3)]***

2.190 The declaration cannot have the effect of placing the loser in a more favourable position for fuel tax than the loser would have been in apart from the scheme or part of the scheme ***[subsection 75-45(4)]***. A reference to a 'net amount' under the declaration not being less than the net amount would have been apart from the scheme or part of the scheme covers the case of a refund not being greater than it would have been apart from the scheme or part of a scheme.

2.191 An entity can request in writing that the Commissioner make a compensating declaration for that entity. The Commissioner must decide whether to grant the request, and give the entity written notice of the decision. ***[Paragraph 75-45(5)]***

2.192 Any declaration made, as well as any decision not to make a declaration by the Commissioner, is a reviewable fuel tax decision. Objections can be lodged against the declaration as set out in Division 3 of Part IVC of the TAA 1953.

The Commissioner can disregard any part of the scheme in making declarations

2.193 The Commissioner can disregard the scheme or any part of the scheme in making a declaration to negate an avoider's fuel tax benefit, or to negate or reduce a loser's fuel tax disadvantage, arising from that scheme or part of that scheme. ***[Section 75-55]***

2.194 The Commissioner may do all or any of the following:

- treat an event that actually happened as not having happened at all ***[paragraph 75-55(a)]***, as having happened at a particular time or as having involved particular action by a particular entity ***[paragraph 75-55(c)]***;

- treat an event that did not actually happen as having happened, and if appropriate, as having happened at a particular time or as having involved particular action by a particular entity ***[paragraph 75-55(b)]***.

2.195 This allows the Commissioner to disregard the scheme or part of the scheme and reconstruct the events that took place. The reconstruction is linked to finding the most economically equivalent transaction to the scheme or part of the scheme.

Amounts are payable in accordance with the declaration

2.196 A declaration negating a fuel tax benefit, or negating or reducing a fuel tax disadvantage has effect according to its terms. ***[Section 75-50]***

2.197 Adjustments to amounts payable by the entity to the Commissioner because of a declaration, are payable under Division 61 of the Bill, which deals with payments by an entity of net amounts for a tax period and GST on taxable importations to the Commissioner.

2.198 Adjustments to amounts payable by the Commissioner to the entity because of a declaration, are payable under Division 61 of the Bill, which deals with refunds by the Commissioner of net amounts to an entity.

Other administrative matters

One declaration can cover several tax periods or importations

2.199 Statements relating to various tax periods or return periods can be included in a single declaration. ***[Section 75-60]***

A copy of a declaration must be given to the entity affected

2.200 The Commissioner must provide a copy of a declaration to the entity whose net amount for a tax period or return period is stated in the declaration. ***[Subsection 75-65(1)]***

2.201 Failure to satisfy this requirement does not affect the validity of the declaration ***[subsection 75-65(2)]***. The requirement is formal in nature and does not nullify the operation of the Division to any scheme or part of a scheme.

Division 95 — Miscellaneous provisions

Section 95-5 — Determination of blends that no longer constitute fuels

2.202 An entity may produce blends of fuel products with other products, for use other than as a fuel — for example, for use as a solvent. If the blend can be used as a fuel, the end user will claim a fuel tax credit for that fuel under section 41-5. Some of these blends incorporate the addition of non-excisable products to fuels — for example, a non-excisable product such as methyl ethyl ketone is blended with toluene, a fuel, to make thinners. At some point in time the non-excisable product makes up a sufficient component of the blend, so that the end product does not present a significant risk of substitution as fuel.

2.203 The Commissioner may determine by legislative instrument that such a fuel blend does not constitute a fuel ***[subsection 95-5(1)]***. If the Commissioner has made such a determination then the producer of the blend is considered to have used the fuel, rather than the end user, and is entitled to a fuel tax credit.

2.204 There are several factors that the Commissioner must take into consideration when making the determination ***[subsection 95-5(3)]***. The factor that he must give greatest weight to is the risk that the blend may be used as a fuel and the resulting financial impact on the Commonwealth ***[paragraph 95-5(3)(d)]***.

Section 95-10 — Application of this law to the Commonwealth

2.205 Fuel tax liability may not extend to the Commonwealth and there are certain 'untaxable Commonwealth entities' that take the definition in the GST law. To ensure that Commonwealth entities are also effectively covered by the fuel tax regime, a notional entitlement to fuel tax credits subsists with these Commonwealth entities, and fuel tax adjustments (explained in paragraphs 2.89 to 2.97) are made notionally.

2.206 The Minister for Finance and Administration is authorised to give written directions as to the transfer of moneys in Commonwealth entities' accounts and anything else in relation to notional fuel tax credit entitlements and adjustments.

2.207 A written direction given by the Minister for Finance and Administration under this provision is not a legislative instrument as it does not fall within the definition given in section 5 of the *Legislative Instruments Act 2003*. ***[Section 95-10]***

Section 95-100 — Regulations

2.208 The Governor-General is authorised to make regulations prescribing matters that are either required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to an Act. ***[Section 95-100]***

Chapter 3
Transitional and consequential provisions

Outline of chapter

3.1 Schedules 1 to 3 to the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 amend the:

- *Fuel Sales Grants Act 2000*;
- *Energy Grants (Credits) Scheme Act 2003*;
- *Product Grants and Benefits Administration Act 2000*;
- *States Grants (Petroleum Products) Act 1965*; and
- Fuel Tax Bill 2006,

to provide transitional arrangements for the fuel tax credit system canvassed in the Fuel Tax Bill 2006.

Context of reform

A fuel tax credit system

3.2 As part of the Government's fuel tax system reform, a single fuel tax credit system is implemented from 1 July 2006 to replace the existing complex system of grants and rebates.

Existing schemes of fuel tax relief

3.3 Fuel grants affected by the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 exist under the *Energy Grants (Credits) Scheme Act 2003* and the *Fuel Sales Grants Act 2000* that are administered under the *Product Grants Benefits Administration Act 2000*. A states-administered scheme also exists under the *States Grants (Petroleum Products) Act 1965*.

3.4 The Energy Grants (Credits) Scheme (EGCS) provides an energy grant for the use of diesel fuel (and alternative fuels in the case of

the on-road credit) in activities that are eligible for an off-road credit and an on-road credit.

3.5 Eligibility for the off-road credit under the EGCS is restricted to the business use of diesel and diesel-like fuels (such as fuel oil and burner fuels) in specified activities. These activities mainly occur in mining, primary production and rail and marine transport. Other activities include the generation of electricity at retail/hospitality and residential premises, and the use of fuel at hospitals, nursing homes and aged persons homes.

3.6 Eligibility for the on-road credit is confined to the use of diesel and specified alternative fuels (liquefied petroleum gas, liquefied natural gas, compressed natural gas, biodiesel and ethanol). Its purpose is to reduce transport costs, particularly for regional and rural Australia where costs are more pronounced. It is also intended to maintain the pre-GST (goods and services tax) price relativities between diesel and alternative fuels by providing a credit for the use of specified alternative fuels in applications that are eligible for a diesel on-road credit. Eligibility for the on-road credit is restricted to the use of eligible fuels in vehicles weighing:

- over 20 tonnes gross vehicle mass operating in all areas;
- between 4.5 tonnes and 20 tonnes gross vehicle mass only when operating outside of or across defined metropolitan boundaries. The metropolitan boundaries do not apply to emergency vehicles, primary producers and buses using alternative fuels.

3.7 The Fuel Sales Grants Scheme provides a fuel sales grant for the sale of gasoline or diesel (not used as an aviation fuel) that is sold in a non-metropolitan or remote area after 30 June 2000.

3.8 The *States Grants (Petroleum Products) Act 1965* gives financial assistance to users of petroleum-based fuels in designated remote regional and rural locations in Australia who would otherwise have to pay higher prices for fuels due to the additional costs in transporting and distributing fuel to those locations.

Phased changes

3.9 The Fuel Tax Bill 2006 implements the Government's decision that a fuel tax credit system commence from 1 July 2006. That Bill sets out the general principle that a taxpayer is entitled to a fuel tax credit for fuel acquired or manufactured in, or imported into, Australia for use in carrying on their enterprise, as well as setting out further rules affecting eligibility and how credits are claimed.

3.10 The Fuel Tax (Consequential and Transitional Provisions) Bill 2006 provides for the phased implementation of the fuel tax credit system to particular uses of fuel at certain times from 1 July 2006 to 1 July 2012, when the final changes are in place.

3.11 The Fuel Tax (Consequential and Transitional Provisions) Bill 2006 also provides for the phasing out of the existing grants schemes between 1 July 2006 and 1 July 2010, while allowing outstanding claims to be made, before abolishing these schemes by 1 July 2012.

Timeframe of the transitional provisions

The fuel tax credit system

3.12 The fuel tax credit system applies from 1 July 2006 to fuels acquired or manufactured in, or imported into, Australia.

Application of current schemes

3.13 Entitlement to a fuel sales grant is limited to sales of fuel to end users occurring before 1 July 2006. Taxpayers entitled to a fuel sales grant have six months after that to claim outstanding entitlements.

3.14 Entitlement to an energy grant for diesel is limited to fuel purchased or imported before 1 July 2006. Taxpayers entitled to an energy grant will have 12 months after that to claim outstanding entitlements under the EGCS.

3.15 Entitlement to an energy grant for alternative fuels purchased or imported for eligible on-road activities is limited to fuel purchased before 1 July 2010. Taxpayers entitled to an energy grant for on-road alternative fuel are provided with a 12-month transitional period to claim outstanding entitlements under the EGCS.

Eligibility for a fuel tax credit

3.16 Between 1 July 2006 and 30 June 2012, a taxpayer who would have been eligible for an off-road credit under the EGCS is entitled to a fuel tax credit.

3.17 From 1 July 2006, a taxpayer is entitled to a fuel tax credit for the on-road business use of all taxable fuels (generally, fuels subject to excise and customs duty) in vehicles weighing over 4.5 tonnes gross vehicle mass. Any pre-existing entitlement to a grant for fuel use in vehicles weighing 4.5 tonnes gross vehicle mass, acquired before 1 July 2006, is preserved in the fuel tax credit system.

3.18 From 1 July 2008, eligibility for a fuel tax credit for currently eligible off-road activities expands to include petrol.

3.19 From 1 July 2008, eligibility for a fuel tax credit extends to diesel or petrol used in off-road business activities currently ineligible for an energy grant. This takes the form of a half credit until 1 July 2012, when it becomes a full credit.

3.20 From 1 July 2011, coinciding with bringing alternative fuels into the fuel tax system, a taxpayer acquiring or importing an alternative fuel for off-road business use is entitled to claim a fuel tax credit.

When do the current schemes finish?

3.21 The Fuel Sales Grants Scheme and the Petroleum Products Freight Subsidy Scheme cease to operate from 1 January 2007 and 1 July 2007 respectively. The EGCS phases out from 1 July 2006, before ceasing to operate on and from 1 July 2012.

Detailed explanation of new law

3.22 The purpose of the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 is to provide a seamless transition to the fuel tax credits system during the period from 1 July 2006 to 1 July 2012 by ensuring existing claimants are preserved and by setting out arrangements for outstanding claims arising out of the current grants systems.

3.23 In the transitional period, entitlement to a fuel tax credit is progressively phased in and entitlements under the Fuel Sales Grants Scheme, the EGCS and the Petroleum Products Freight Subsidy Scheme cease to arise from 1 July 2006.

Fuel Sales Grants Scheme

3.24 A fuel sales grant under the *Fuel Sales Grants Act 2000* applies only to fuel sales before 1 July 2006. ***[Schedule 1, item 1, paragraph 7(c) of the Fuel Sales Grants Act 2000]***

3.25 Fuel sales grant claims under the *Product Grants and Benefits Administration Act 2000* must be lodged with the Commissioner of Taxation (Commissioner) before 1 January 2007, even if 1 January 2007 is within the three-year claiming period from the start of the claim period. ***[Schedule 1, items 2 and 3, and paragraph 15(2)(da) of the Product Grants and Benefits Administration Act 2000]***

3.26 The Fuel Sales Grants Scheme ceases to operate on 1 January 2007 and the *Fuel Sales Grants Act 2000* is repealed from that date. References in the *Product Grants and Benefits Administration Act 2000* to fuel sales grants are deleted in accordance with the repeal of the *Fuel Sales Grants Act 2000*. ***[Schedule 1, items 4 to 8, section 8 (item 1 in the table), subsection 9(3), paragraph 15(2)(da) and subparagraphs 47(3)(c)(ia) and (d)(ia) of the Product Grants and Benefits Administration Act 2000]***

Petroleum Products Freight Subsidy Scheme

3.27 The Petroleum Products Freight Subsidy Scheme, administered by the States and Territories, ceases to apply to fuel sales and deliveries of petroleum products after 30 June 2006.

3.28 The Fuel Tax (Consequential and Transitional) Bill 2006 repeals the *State Grants (Petroleum Products) Act 1965* on 1 July 2007, allowing outstanding claims to be made until 30 June 2007. ***[Schedule 2, items 1 to 5]***

Energy Grants (Credits) Scheme

3.29 Entitlement to an energy grant for an on-road credit or an off-road credit for diesel applies only to diesel fuel purchased or imported before 1 July 2006. ***[Schedule 3, items 2 to 5, and sections 40 and 51 of the Energy Grants (Credits) Scheme Act 2003]***

3.30 Energy grant claims for diesel under the *Product Grants and Benefits Administration Act 2000* must be lodged with the Commissioner before 1 July 2007, even if 1 January 2007 is within the three-year claiming period from the start of the claim period. ***[Schedule 3, items 3, 5 and 6, notes to sections 40 and 51 of the Energy Grants (Credits) Scheme Act 2003 and paragraphs 15(2)(db) and 15(2)(e) of the Products Grants and Benefits Administration Act 2000]***

3.31 An alternative mechanism, under the Fuel Tax Bill 2006, allows an entitlement for an on-road or an off-road credit for diesel fuel

purchased or imported between 1 July 2003 and 30 June 2006 to be claimed as a decreasing fuel tax adjustment. ***[Schedule 3, items 3, 5 and 9, and notes to sections 40 and 51 of the Energy Grants (Credits) Scheme Act 2003]***

3.32 The amount of the adjustment is equivalent to the amount of the credit that would have been payable under the *Energy Grants (Credits) Scheme Act 2003*. ***[Schedule 3, item 9]***

3.33 Only one claim can be made with respect to the fuel, through either of the claiming avenues described in paragraphs 3.29 to 3.32. ***[Schedule 3, items 7 and 9, and subsection 15(2) of the Product Grants and Benefits Administration Act 2000]***

Example 3.1

On 26 June 2006 Maxwell buys diesel fuel for use in cultivating his potato crops and is entitled to an off-road credit under the *Energy Grants (Credits) Scheme Act 2003*. Maxwell may make a claim in one of two ways. He can claim a grant from the Commissioner through the current claiming mechanism under the *Product Grants and Benefits Administration Act 2000* or, alternatively, he can claim a credit under the fuel tax credit system by making a decreasing fuel tax adjustment on his business activity statement (BAS). If he wishes to use the current claiming mechanism, he must do so before 1 July 2007. Alternatively, if he does not wish to make a claim under the *Product Grants and Benefits Administration Act 2000* before 1 July 2007 he may claim a credit of an equivalent amount under the fuel tax credit system provided the adjustment is made for a tax period that ends before 1 July 2009.

3.34 Entitlement to an energy grant for an on-road credit for on-road alternative fuel use continues for alternative fuels acquired or imported before 1 July 2010. ***[Schedule 3, items 13 to17, and section 15 of the Product Grants and Benefits Administration Act 2000]***

3.35 Similar to the transitional arrangements for outstanding claims for energy grants for diesel use, a claimant has a 12-month period up to and including 30 June 2011 in which to lodge a claim with the Commissioner for an energy grant under the *Product Grants and Benefits Administration Act 2000* with respect to on-road alternative fuel. ***[Schedule 3, item 13, and paragraph 15(2)(da) of the Products Grants and Benefits Administration Act 2000]***

3.36 An alternative claiming mechanism also exists under the Fuel Tax Bill 2006 where a taxpayer can make a decreasing fuel tax adjustment, of an amount equivalent to the amount of the credit that would have been payable under the *Energy Grants (Credits) Scheme Act 2003*, for the eligible use of on-road alternative fuel acquired or imported before 1 July 2010. ***[Schedule 3, item 17]***

3.37 Only one claim can be made with respect to the fuel, through either of the claiming avenues described in paragraphs 3.34 to 3.36 ***[Schedule 3, items 15 to 17, and subsection 15(2A) of the Product Grants and Benefits Administration Act 2000]***

Phasing in of new credit entitlements — 1 July 2006

3.38 When the fuel tax credit system commences on 1 July 2006, a taxpayer is only entitled to a credit for fuel for use in a vehicle travelling on a public road (including incidental use in relation to the vehicle) and for certain specified off-road activities. ***[Schedule 3, items 10 and 11]***

3.39 A taxpayer using fuel off-road in generating electricity, other than as a fuel, as a fuel in an internal combustion engine, or as heating oil, is entitled to a credit. ***[Schedule 3, items 10 and 11]***

3.40 In addition, a taxpayer using diesel fuel for travel on-road that is not a public road, in an activity that would have given rise to an on-road credit under the *Energy Grants (Credits) Scheme Act 2003* (but for on-road use other than on a public road), is eligible for a credit as though the travel on-road were travel on a public road. ***[Schedule 3, items 10 and 11]***

3.41 However, where the fuel use is in vehicles of gross vehicle mass over 4.5 tonnes, the amount of fuel tax credit a claimant is entitled to from 1 July 2006 is decreased by the amount of the road-user charge, in accordance with the general entitlement rules of the fuel tax credit system.

Example 3.2

Malicia's Transport Pty Ltd has a contract to transport munitions to a large defence training area. After driving to this training area on public roads, trucks must travel long distances on roads around the training area to deliver munitions to different areas before leaving. As all of this transport activity would have been eligible for an energy grant under the EGCS, the company is entitled to a fuel tax credit for the diesel fuel it acquires after 1 July 2006 for use in the same activity. For the purposes of calculating the amount of fuel tax credit entitlements, the fuel is treated as if it had been purchased for use in a vehicle travelling on a public road. The amount that Malicia's Transport Pty Ltd can claim as a fuel tax credit will therefore take into account any applicable road-user charge.

3.42 A taxpayer using diesel in an activity that would have given rise to an off-road credit under the *Energy Grants (Credits) Scheme Act 2003* is eligible for a credit. ***[Schedule 3, items 10 and 11]***

Example 3.3

Maloney's Transport Pty Ltd transports logs from a forest coupe to a saw mill for processing. As the company's transportation of logs on private roads is forestry, and forestry was an eligible activity of primary production under the EGCS, Maloney's Transport Pty Ltd would have been entitled to an off-road credit. From 1 July 2006, the company is eligible for a fuel tax credit for the diesel fuel it acquires for the same activity of transporting logs on private roads.

Phasing in of new credit entitlements — 1 July 2008 to 1 July 2012

3.43 Entitlement to a credit under the Fuel Tax Bill 2006 broadens from 1 July 2008 to include circumstances where taxpayers acquire or manufacture in, or import into, Australia diesel or petrol that would not have been eligible for an energy grants off-road credit under the EGCS. This is initially a half credit from 1 July 2008 and becomes a full credit from 1 July 2012. ***[Schedule 3, item 11]***

Example 3.4

Madagascar Earthmoving Contractors currently uses diesel to power earthmoving equipment used in civil construction activities. Civil construction activities are not eligible for an off-road credit under the *Energy Grants (Credits) Scheme Act 2003*. Madagascar Earthmoving Contractors is eligible for a credit of 50 per cent for fuel it buys from 1 July 2008 for use not on a public road in civil construction. From 1 July 2012, the company is eligible for a full credit for the fuel it buys.

3.44 From 1 July 2011, when effective fuel tax begins to be imposed on alternative fuels, a taxpayer is eligible for a full credit for acquiring, manufacturing or importing any alternative fuel for use off-road. ***[Schedule 3, item 11]***

3.45 The *Energy Grants (Credits) Scheme Act 2003* is repealed on 1 July 2012 when the fuel tax credit scheme has been fully implemented. References in the *Product Grants and Benefits Administration Act 2000* to energy grants credits are also deleted in accordance with the repeal of the *Energy Grants (Credits) Scheme Act 2003*. ***[Schedule 3, items 13 to 16B, sections 5, 8 and 27A, and subsections 9(4) and 27(1A) of the Product Grants and Benefits Administration Act 2000]***

Credits for vehicles of 4.5 tonnes

3.46 The Fuel Tax (Consequential and Transitional Provisions) Bill 2006 grandfathers entitlements that previously existed under the *Energy Grants (Credits) Scheme Act 2003* for the on-road use of diesel

fuel in vehicles with a gross vehicle mass of 4.5 tonnes. A credit applies to certain uses of diesel fuel in a vehicle with a gross vehicle mass of 4.5 tonnes where the taxpayer has acquired the vehicle prior to 1 July 2006. This entitlement continues under the fuel tax credit scheme beyond when the EGCS is abolished. ***[Schedule 3, item 12]***

Example 3.5

Mustafa bought his 12-seater mini bus (gross vehicle mass 4.5 tonnes) in January 2006. He uses it for his business of transporting passengers and has been entitled to claim an on-road credit for the diesel fuel he purchases for use in his mini bus. From 1 July 2006 Mustafa is entitled to a fuel tax credit for diesel fuel for use in the mini-bus for travelling on a public road, for incidental use in relation to the vehicle and for any other use that would have previously entitled him to an on-road credit.

Mining activities under the Energy Grants (Credits) Scheme

3.47 The definition of 'minerals' in the *Energy Grants (Credits) Scheme Act 2003* is amended by the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 to clarify that it does not include minerals produced from a synthetic production process or from a manufacturing process. This amendment reflects the intention that 'mining operations' should only cover the extraction of naturally occurring minerals, and the synthetic production of minerals (eg, producing methane at landfill sites) is not intended to be eligible for an off-road credit. ***[Schedule 4, items 1 and 2, and section 20 of the Energy Grants (Credits) Scheme Act 2003]***

3.48 The amendments in the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 also reflect the intention to exclude from the ambit of 'mining operation' the extraction of limestone or other materials for use in the manufacture of products or materials for use in building, roadmaking, landscaping, construction or similar purposes. ***[Schedule 4, item 3, and section 20 of the Energy Grants (Credits) Scheme Act 2003]***

3.49 After 30 June 2008, however, a broadening of the fuel tax credit eligibility criteria affords quarrying, manufacturing and construction industries a 50 per cent fuel tax credit. By 1 July 2012, when the fuel tax reforms have been fully implemented, fuel tax for fuel used in off-road business uses is fully offset by a credit.

Example 3.6

Michael's Mining Ltd quarries limestone for land cultivation purposes. Under the current EGCS, the diesel Michael's Mining Ltd uses in quarrying qualifies for an off-road credit. Meredith's Mining Co., on the other hand, quarries limestone for cement making. Unlike Michael's Mining Ltd's activity, this use is for manufacturing and construction purposes and is not eligible for an off-road credit and currently incurs the full fuel tax rate. However, from 1 July 2008 Meredith's Mining Co. will be able to claim a half credit under the fuel tax credit system and, from 1 July 2012 can claim a full credit.

Application and transitional provisions

3.50 The fuel tax credit system created by the Fuel Tax Bill 2006 takes effect by phased implementation from 1 July 2006 to 30 June 2012.

Consequential amendments

Amendments to streamline legislation in the transitional period

3.51 Provisions of the Fuel Tax Bill 2006 and the *Product Grants and Benefits Administration Act 2000* are amended by the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 to accommodate the phasing in of the new credit system and phasing out of the current grants systems during the transitional period of the fuel tax credit reform until 1 July 2012. Amendments remove references to provisions that no longer apply as certain phase-in or phase-out timeframes are met. ***[Schedule 3, items 17 to 29, notes to subsection 41-5(1), section 41-15 and subsection 65-10(1), paragraph 43-5(3)(b) and section 110-5 of the Fuel Tax Bill 2006, and sections 5, 15, 16A and 27A of the Product Grants and Benefits Administration Act 2000]***

Miscellaneous amendments

3.52 Minor amendments to the *Product Grants and Benefits Administration Act 2000* correct a technical error in the definition of 'scheme,' so that criteria as to whether a 'scheme' exists appear as alternate conditions. ***[Schedule 4, item 2, and subsection 34(3) of the Product Grants and Benefits Administration Act 2000]***

3.53 The Fuel Tax (Consequential and Transitional Provisions) Bill 2006 also repeals provisions of the *Product Grants and Benefits Administration Act 2000* referring to other provisions in that Act that no

longer operate. The amendments are retrospective from the date those other provisions ceased operating. ***[Schedule 4, items 3, 5 and 6, and subsection 53(2) of the Product Grants and Benefits Administration Act 2000]***

Chapter 4
Administration

Outline of chapter

4.1 Schedule 5 to the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 includes amendments to various Commonwealth Acts as a consequence of the Fuel Tax Bill 2006. They primarily amend the *Taxation Administration Act 1953* (TAA 1953) to provide the administrative arrangements for the Fuel Tax Bill 2006.

4.2 The Fuel Tax Bill 2006 operates under the general compliance and administrative umbrella of the TAA 1953, generally aligning with the administrative arrangements for other indirect tax laws (governing goods and services tax (GST), luxury car tax and wine equalisation tax).

Context of reform

4.3 The introduction of the fuel tax credit system is the first of a number of fuel tax measures announced in the Government's June 2004 white paper, *Securing Australia's Energy Future*.

4.4 The introduction of the fuel tax credit system, providing fuel excise relief for a wide range of businesses and households, was announced in the Treasurer's Press Release No. 48 of 15 June 2004. Further details can be found in Chapter 1 of this explanatory memorandum.

4.5 The fuel tax credit system is a single system to replace all existing rebates and subsidies. Unlike the various current systems, the single system will utilise the administrative system applying to other indirect tax laws.

4.6 As part of the Government's commitment to improving the quality of the taxation laws and consistent with its aim of establishing an integrated tax code[1], Part VI of the TAA 1953 is rewritten using the Tax Law Improvement Project drafting style and relocated into the Schedule to that Act.

[1] See Chapter 4 of *Tax Reform: not a new tax, a new tax system.*

Summary of new law

4.7 The Fuel Tax Bill 2006 operates under the general compliance and administrative system contained in the TAA 1953 consistent with other taxation laws administered by the Commissioner of Taxation (Commissioner).

4.8 Schedule 5 to the Fuel Tax (Consequential and Transitional Provisions) Bill 2006 applies the administrative rules applying to other indirect tax laws, to the proposed fuel tax credits scheme.

4.9 The amendments to the TAA 1953 incorporate a rewrite of Part VI (administration of GST, wine equalisation tax and luxury car tax) in the Tax Law Improvement Project drafting style. The rewritten version simplifies the expression of the law, making it easier to understand and comply with.

Detailed explanation of new law

Amendments to the *Taxation Administration Act 1953*

4.10 The amendments to the TAA 1953, implement the administrative arrangements for the Fuel Tax Bill 2006. In general, the administrative rules for the fuel tax law is the general administration rules that apply to all taxes administered by the Commissioner and the specific administration rules that apply to other indirect tax laws. This chapter broadly explains how those provisions apply to this Bill.

4.11 The administration rules for indirect taxes have been rewritten and relocated into Schedule 1 to the TAA 1953. The rewrite does not change the existing outcomes for indirect taxes. Therefore, this chapter does not explain the general operation of the rewritten provisions.

4.12 Some issues have been raised about the operation of the current indirect tax administration provisions. This Bill does not address those issues. They are being considered separately.

4.13 It should also be noted that on 16 December 2004 the Government announced its agreement to Recommendation 7.2 of the *Report on Aspects of Income Tax Self Assessment*, resulting in Treasury undertaking a review into the possible application of the recommendations, contained in the report, to all federal taxes. When that review is completed, the Government will consider whether any changes may be required to the administrative provisions for indirect taxes.

General administration

4.14 The Commissioner has the general administration of the Fuel Tax Bill 2006. The Commissioner therefore has all the rights, powers, responsibilities and obligations provided to the administrator of such laws under statute and common law. ***[Schedule 5, item 49, section 356-5 in Schedule 1 to the TAA 1953]***

4.15 The Commissioner's annual report must include, a report on the workings of the Fuel Tax Bill 2006, including any breaches or evasions of that law. ***[Schedule 4, item 45, section 352-5 in Schedule 1 to the TAA 1953]***

Assessments

4.16 Consistent with the administration of other indirect tax laws under the TAA 1953, a taxpayer's entitlement to refunds or obligation to make payments under the Fuel Tax Bill 2006 ordinarily arises without any formal assessment process being undertaken by the Commissioner.

4.17 It may occasionally be necessary for the Commissioner to issue an assessment of a taxpayer's net fuel amount for a tax period (or fuel tax return period for a non-business taxpayer). For example, the Commissioner may make an assessment if:

- a taxpayer fails to lodge a return;
- the Commissioner believes that amounts stated in a return are incorrect; or
- the taxpayer asks the Commissioner to make an assessment (eg, because they are unsure of their entitlements or obligations under the law).

4.18 The Commissioner can also make an assessment of a *part* of a net amount. This might be an assessment of the first three months of a taxpayer's tax period, if that taxpayer had annual tax periods.

Summary of the rules on assessments

4.19 Unlike income tax, the assessment process for indirect taxes is not necessary to make a liability under an indirect tax law due and payable. The assessment process for indirect taxes, amongst other things, establishes a mechanism for resolving disputes between taxpayers and the Commissioner over the application of the indirect tax law.

4.20 An assessment of a taxpayer's net fuel amount (or a part of that amount) may be made by the Commissioner with or without a request by

the taxpayer. If the Commissioner makes an assessment, the taxpayer must be notified of that assessment.

4.21 The Commissioner may amend an assessment at any time but there are time limits on collecting debts and making refunds.

4.22 The procedure for reviewing assessments are the standard taxation review procedures in Part IVC of the TAA 1953, which allow taxpayers to seek a review by the Commissioner and appeal to the Administrative Appeals Tribunal.

Detailed rules on assessments

4.23 The Commissioner can make an assessment at any time of a taxpayer's net fuel amount, or a part of the taxpayer's net fuel amount. An assessment covers no more than a single tax period (or fuel tax return period for non-business taxpayers). ***[Schedule 5, item 41, section 105-5 in Schedule 1 to the TAA 1953]***

4.24 A taxpayer can also ask the Commissioner to make an assessment of their net fuel amount, for a tax period or fuel tax return period. ***[Schedule 5, item 41, section 105-10 in Schedule 1 to the TAA 1953]***

4.25 Generally, a taxpayer can only ask for an assessment within four years after their tax period (or fuel tax return period for non-business taxpayers). Assessments made outside the four years would generally not have any effect as the Commissioner would be unable to recover outstanding amounts or pay any refunds otherwise owing. ***[Schedule 5, item 41, subsection 105-10(2) in Schedule 1 to the TAA 1953]***

4.26 A taxpayer who is dissatisfied with their assessment may seek a review by lodging an objection in accordance with the procedures set out in Part IVC of the TAA 1953.

4.27 A taxpayer's liability to pay, and the Commissioner's obligation to refund an amount under the fuel tax law arise independently of any assessment. That is, those liabilities or refunds do not depend on there being an assessment. ***[Schedule 5, item 41, section 105-15 in Schedule 1 to the TAA 1953]***

4.28 The Commissioner must provide a notice of any assessment made to the taxpayer. However, if the Commissioner fails to provide the notice to the taxpayer, it will not invalidate the assessment. ***[Schedule 5, item 41, subsection 105-20(1) in Schedule 1 to the TAA 1953]***

Amended assessment

4.29 The Commissioner may amend an assessment at any time. An amended assessment replaces any earlier assessment made. Despite being able to amend an assessment at any time, the Commissioner may be time barred from either collecting debts or making refunds (see paragraphs 4.36 and 4.37). ***[Schedule 5, item 41, section 105-25 in Schedule 1 to the TAA 1953]***

4.30 A taxpayer who is dissatisfied with their amended assessment may seek a review by lodging an objection in accordance with the procedures set out in Part IVC of the TAA 1953.

Multiple assessments

4.31 If a taxpayer ever receives two or more inconsistent assessments for the same tax period, the latest assessment overrides all earlier assessments to the extent of the inconsistency. ***[Schedule 5, item 41, section 105-30 in Schedule 1 to the TAA 1953]***

Electronic transmission

4.32 Where a taxpayer supplies the Commissioner with business activity statements (BAS) electronically, the Commissioner may provide any notice of assessment to the taxpayer by electronic transmission. ***[Schedule 5, item 41, subsection 105-20(2) in Schedule 1 to the TAA 1953]***

Recovery

4.33 The standard collection and recovery rules contained in Part 4-15 of Schedule 1 to the TAA 1953 apply to the Fuel Tax Bill 2006. These rules apply to all laws administered by the Commissioner.

4.34 The rules about running balance accounts and applications of payments and credits contained in Part IIB of the TAA 1953 apply to the Fuel Tax Bill 2006, as they do to all other taxation laws the Commissioner administers.

4.35 The application of the running balance account system to the fuel tax law means that amounts that are owed to a taxpayer at the end of each tax period (or fuel tax return period for non-business taxpayers) can be applied by the Commissioner to reduce a taxpayer's other tax liabilities. This means that refunds will generally only be made where the taxpayer has no debts owing to the Commissioner.

4.36 The general time limits applying to the recovery of unpaid amounts for indirect taxes apply to the fuel tax law. Taxpayers will

generally not be required to pay any amount owing under the fuel tax law if the amount remains unpaid four years after it first become payable. Similarly, taxpayers will lose their entitlement to fuel tax credits if they have not received a refund within four years after the end of their tax period. ***[Schedule 5, item 41, sections 105-50 and 105-55 in Schedule 1 to the TAA 1953]***

4.37 Those time limits do not apply in the case of fraud or evasion. They also cease to apply where either the Commissioner or the taxpayer has notified the other of an amount owing or an entitlement to a refund or credit within the time limit. ***[Schedule 5, item 41, sections 105-50 and 105-55 in Schedule 1 to the TAA 1953]***

Penalties

4.38 The standard penalty rules applying to taxation laws also apply to the fuel tax law. These penalties include the charges and administrative penalties contained in Part 4-25 in Schedule 1 to the TAA 1953.

General interest charge

4.39 Taxpayers who fail to pay a debt owing under the fuel tax law are subject to the general interest charge. ***[Schedule 5, item 41, section 105-80 in Schedule 1 to the TAA 1953]***

4.40 The general interest charge also applies to overpayments of fuel tax credits by the Commissioner. The general interest charge would generally apply from the date of the overpayment. This is the current treatment for overpayments of input tax credits under the GST law. Penalties may also apply to some of these overpayments.

Credit interest

4.41 Generally, if the Commissioner takes longer than 14 days to refund an amount owing under the fuel tax law, the Commissioner will be required to pay the taxpayer interest. The taxpayer will not be entitled to interest if the Commissioner has allocated the refund to pay other outstanding tax debts of the taxpayer. The provisions governing the payment of interest are contained in the *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

Special rules for certain entities

4.42 The special rules about entities that are not individuals that apply to other indirect tax laws also apply to the fuel tax law. The rules accommodate entities such as corporations, partnerships and trusts (common entities) as well as arrangements that are particular to indirect

taxes (eg, GST groups and GST joint ventures). ***[Schedule 5, item 52, Division 444 in Schedule 1 to the TAA 1953]***

4.43 The rules include creating joint and several liability for partners in a partnership, members of a GST group or participants in a GST joint venture and making directors responsible for certain obligations of a corporation.

Evidence

4.44 The rules about evidence that apply to other indirect tax laws also apply to the fuel tax law. Those rules specify the evidentiary effect of certain documents. They ensure that the primary avenue for a dissatisfied taxpayer to appeal a decision of the Commissioner is to dispute the amount of the liability (under Part IVC of the TAA 1953) rather than disputing the procedures followed in creating relevant documents. ***[Schedule 5, item 41, Subdivision 105-E in Schedule 1 to the TAA 1953]***

Reviewable decisions

4.45 A taxpayer who is dissatisfied with an assessment or an amended assessment of their net fuel amount (or a component of their net fuel amount) can object against that assessment (or amended assessment) following the procedures set out in Part IVC of the TAA 1953 ***[Schedule 5, item 41, section 105-40 in Schedule 1 to the TAA 1953]***. In accordance with section 14ZW of the TAA 1953, objections against these assessments must be lodged within four years after the end of the relevant tax period or within 60 days of the relevant assessment, whichever is the later.

4.46 The mechanisms for objecting against a taxation decision and, ultimately, appealing against it, are set out in Part IVC of the TAA 1953.

4.47 A taxpayer can also object against decisions made by the Commissioner under the general anti-avoidance rules contained in Division 75 of the Fuel Tax Bill 2006. ***[Schedule 5, item 41, section 112-50 in Schedule 1 to the TAA 1953]***

Other

4.48 The same rules that protect the confidentiality of taxpayers' information and allow the Commissioner to access premises and gather information for other indirect tax laws also apply to the fuel tax law. ***[Schedule 5, items 46 to 49, sections 353-10 and 353-15 and Subdivision 355-5 in Schedule 1 to the TAA 1953]***

4.49 Taxpayers must keep records substantiating their claims for fuel tax credits. The evidence needed to substantiate a claim for an input tax credit under the GST law (eg, a tax invoice) is generally sufficient to

substantiate a claim for a fuel tax credit on the same transaction. ***[Schedule 5, item 51, section 382-5 in Schedule 1 to the TAA 1953]***

Rulings

4.50 The generic expanded rulings system contained in Divisions 357 to 361 of Schedule 1 to the TAA 1953 applies to the Fuel Tax Bill 2006. This new system commenced on 1 January 2006. A further review is under way to determine whether it should be extended to cover all other indirect taxes (see paragraph 4.13). ***[Schedule 5, item 50, section 357-55 of Schedule 1 to the TAA 1953]***

4.51 Public or private rulings issued by the Commissioner relating to the fuel tax law will generally be binding on the Commissioner. Other types of advice, as well as the Commissioner's general administrative practice, may also prevent the Commissioner from applying penalties and interest where taxpayers have relied on that information. Further information on the proposed rulings system can be found in the explanatory memorandum to the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005.

Effect of the administrative provisions on the Crown

4.52 The fuel tax law is intended to bind the Crown (in each of its capacities). That is, the Crown is entitled to fuel tax credits and must comply with the obligations imposed under that law.

4.53 The Crown (in each of its capacities) is also generally bound by the provisions in the TAA 1953 (especially, Schedule 1 to that Act). Therefore, the Crown is required to comply with obligations under the general administrative rules in the TAA 1953 (such as record keeping rules, the Commissioner's access and information gathering powers and the collection and recovery rules).

4.54 There are special rules in the fuel tax law that apply to the Commonwealth. Because the Commonwealth cannot tax itself, those rules allow the Minister for Finance and Administration to put in place directions about, amongst other things, the transfer of monies between accounts to give effect to Parliament's intention that the effect of the fuel tax law be applied to the Commonwealth and its untaxable entities. Despite those rules, the other obligations in the fuel tax law do apply to the Commonwealth.

Minor consequential amendments

4.55 A number of corrections to cross-references have been made to these Commonwealth Acts:

- *Administrative Decisions (Judicial Review) Act 1997*;
- *A New Tax System (Goods and Services Tax) Act 1999*;
- *A New Tax System (Goods and Services Tax Transition) Act 1999*;
- *A New Tax System (Wine Equalisation Tax) Act 1999*;
- *A New Tax System (Luxury Car Tax) Act 1999*;
- *Crimes (Taxation Offences) Act 1980*;
- *Freedom of Information Act 1982*;
- *Income Tax Assessment Act 1936*;
- *Income Tax Assessment Act 1997*;
- TAA 1953; and
- *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

[Schedule 5, items 59 to 174]

4.56 Some of the above Acts have also been amended to include appropriate references to the Fuel Tax Bill 2006.

4.57 Terms used in Schedule 1 to the TAA 1953 are defined in the Dictionary to the *Income Tax Assessment Act 1997*. Definitions of new defined terms created for the rewrite of the indirect administration provisions have been added to that Dictionary. ***[Schedule 5, items 5 to 38]***

4.58 As part of the rewrite of the TAA 1953 some of the offences have been rewritten as strict liability offences or contain elements of strict liability. These offences include:

- recording or disclosing indirect tax information obtained as an employee of the Commonwealth, a delegate of the Commissioner, or while performing services for the Commonwealth, and obtained under an indirect tax law;
- an entity that is required to keep or retain records pertaining to indirect taxing or crediting (such as transactions or calculations) but does not; and

- an occupier of land or premises that is accessed by the Commissioner (for the purpose of the indirect tax laws) and the occupier does not provide reasonable facilities or assistance to the Commissioner.

4.59 These provisions, which relate to access, confidentiality and the keeping of records, require the application of a standard of strict liability. The provisions are consistent with the current Commonwealth practice of establishing liability regardless of the element of fault as they relate to matters that are purely a question of fact or purely a question of law, where intention is not relevant. ***[Schedule 5, items 46 to 51]***

4.60 Additionally, as part of the rewrite, the provisions have been redrafted to take account of the introduction of the *Legislative Instruments Act 2003*. Where decisions of the Commissioner are of an administrative nature, the provisions expressly provide that the decision is not a legislative instrument. Other provisions have also been rewritten as a result of necessary language changes resulting from the transition to the new regime.

Conversion table of new law/old law provisions

4.61 Conversion Tables 4.1 and 4.2 cross-reference the sections in the new law with the corresponding sections in the previous law.

Table 4.1: Conversion table: old law to new law

Old law	***New law***
Part VI of the TAA 1953	
Division 1	
19	105-1 in Schedule 1 to the TAA 1953
20	995-1(1) of the *Income Tax Assessment Act 1997*
Division 2	
22	105-5 in Schedule 1
23	105-10 in Schedule 1
24	105-15 in Schedule 1
25	105-20 in Schedule 1
26	105-25 in Schedule 1
27	105-30 in Schedule 1
Division 3	
35	105-50 in Schedule 1

Old law	***New law***
36	105-55 in Schedule 1
37	105-60 in Schedule 1
39	105-65 in Schedule 1
Division 4	
40	105-80 in Schedule 1
46A	105-85 in Schedule 1
Division 5	
50	444-30 in Schedule 1
51	444-80 in Schedule 1
52	444-5 in Schedule 1
52A	444-85 in Schedule 1
53	444-90 in Schedule 1
54	444-70 in Schedule 1
56	444-10 in Schedule 1
57	444-15 in Schedule 1
Division 6	
59	105-100 in Schedule 1
60	105-105 in Schedule 1
61	105-110 in Schedule 1
Division 7	
62	105-40, 110-50 and 111-50 in Schedule 1
Division 7A	
62A	111-60 in Schedule 1
Division 7B	
62B	105-120 in Schedule 1
62C	105-125 in Schedule 1
Division 8	
63	356-5 in Schedule 1
64	352-5 in Schedule 1
65	353-10 in Schedule 1
66	353-15 in Schedule 1
67	105-140 in Schedule 1
68	355-5 in Schedule 1
69	105-145 in Schedule 1
70	382-5 in Schedule 1

Table 4.2: Conversion table: new law to old law

New law	***Old law***
105-1 in Schedule 1 to the TAA 1953	19 of the TAA 1953
105-5 in Schedule 1	22
105-10 in Schedule 1	23
105-15 in Schedule 1	24
105-20 in Schedule 1	25
105-25 in Schedule 1	26
105-30 in Schedule 1	27
105-40 in Schedule 1	62
105-50 in Schedule 1	35
105-55 in Schedule 1	36
105-60 in Schedule 1	37
105-65 in Schedule 1	39
105-80 in Schedule 1	40
105-85 in Schedule 1	46A
105-100 in Schedule 1	59
105-105 in Schedule 1	60
105-110 in Schedule 1	61
105-120 in Schedule 1	62B
105-125 in Schedule 1	62C
105-140 in Schedule 1	67
105-145 in Schedule 1	69
110-50 in Schedule 1	62
111-50 in Schedule 1	62
111-60 in Schedule 1	62A
352-5 in Schedule 1	64
353-10 in Schedule 1	65
353-15 in Schedule 1	66
355-5 in Schedule 1	68
356-5 in Schedule 1	63
382-5 in Schedule 1	70
444-5 in Schedule 1	52
444-10 in Schedule 1	56
444-15 in Schedule 1	57

New law	***Old law***
444-30 in Schedule 1	50
444-70 in Schedule 1	54
444-85 in Schedule 1	52A
444-80 in Schedule 1	51
444-90 in Schedule 1	53
995-1(1) of the *Income Tax Assessment Act 1997*	20

Application and transitional provisions

Commencement

4.62 The amendments commence at the same time as the commencement of the Fuel Tax Bill 2006 (1 July 2006). ***[Clause 2, items 18 and 21]***

4.63 Some amendments are contingent upon the commencement of Schedule 4 to the *Tax Laws Amendment (2005 Measures No. 4) Act 2005* (about the scheme to extend the wine equalisation tax rebate to New Zealand wine producers). Once that scheme commences some additional minor amendments to the TAA 1953 will occur. ***[Schedule 5, Parts 2 and 3]***

Transitional rules

4.64 There are a number of transitional rules to ensure the smooth transition from Part VI of TAA 1953 (old law) to the rewritten version in Schedule 1 to the TAA 1953 (new law).

4.65 Despite the repeal of the old law imposing the general interest charge on amounts owed to the Commonwealth, the general interest charge will continue to accrue on any unpaid amounts. ***[Schedule 5, item 54]***

4.66 Records kept under obligations imposed by the old law will need to be kept in accordance with those obligations despite the repeal of the old law. ***[Schedule 5, item 56]***

4.67 The provisions in the new law providing taxpayers with a right of review apply to decisions made under the old law and the new law. ***[Schedule 5, items 55 and 57]***

4.68 Instruments (such as regulations, approved forms, determinations, authorisations and notices) made under the old law are taken to have been remade under the corresponding provisions of the new law. ***[Schedule 5, subitem 58(1)]***

4.69 Assessments made under the old law, and requests made under the old law for assessments to be made, are taken to been made under the new law. ***[Schedule 5, subitem 58(2)]***

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Fuel Tax Bill 2006

Chapter 2: Fuel tax credits for businesses and households

Bill reference	***Paragraph number***
Subsection 44-5(3)	2.93
Subsection 44-5(4)	2.93
Section 44-10	2.95
Subsection 45-5(1)	2.99
Subsection 45-5(2)	2.100
Subsection 46-5(1)	2.108
Subsection 46-5(2)	2.108
Subsection 46-5(3)	2.109
Subsection 46-5(4)	2.111
Subsection 46-5(5)	2.110
Subsection 60-5(1)	2.112
Subsection 61-5(2)	2.118
Section 61-10	2.121
Subsection 61-15(1)	2.123
Subsections 61-15(2) and 61-20(1)	2.124
Subsection 61-20(2)	2.125
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Schedule 2: Amendments relating to the repeal of the *States Grants (Petroleum Products) Act 1965*

Bill reference	*Paragraph number*
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