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Fuel Tax Bill 2006

No. , 2006

(Treasury)

**A Bill for an Act about fuel tax and fuel tax credits,
and for related purposes**

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1 **A Bill for an Act about fuel tax and fuel tax credits,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **Chapter 1—Introduction**

5 **Part 1-1—Preliminary**

6 **Division 1—Preliminary**

7 **Table of Subdivisions**

8 1-A Preliminary

*To find definitions of asterisked terms, see the Dictionary, starting at section 110-5.

1 **Subdivision 1-A—Preliminary**

2 **Table of Sections**

3	1-5	Short title
4	1-10	Commencement
5	1-15	States and Territories are bound by the fuel tax law

6 **1-5 Short title**

7 This Act may be cited as the *Fuel Tax Act 2006*.

8 **1-10 Commencement**

9 This Act commences on 1 July 2006.

10 **1-15 States and Territories are bound by the fuel tax law**

11 The *fuel tax law binds the Crown in right of each of the States, of
12 the Australian Capital Territory and of the Northern Territory.
13 However, it does not make the Crown liable to be prosecuted for
14 an offence.

15 Note: For the application of this Act to the Commonwealth, see
16 section 95-10.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1

2 **Part 1-2—Using this Act**

3 **Division 2—Overview and purpose of the fuel tax law**

4 **Table of Subdivisions**

5 2-A Overview and purpose of the fuel tax law

6 **Subdivision 2-A—Overview and purpose of the fuel tax law**

7 **Table of Sections**

8 2-1 Overview and purpose of the fuel tax law

9 **2-1 Overview and purpose of the fuel tax law**

10 This Act provides a single system of fuel tax credits. Fuel tax
11 credits are paid to reduce or remove the incidence of fuel tax levied
12 on taxable fuels, ensuring that, generally, fuel tax is effectively
13 only applied to:

- 14 (a) fuel used in private vehicles and for certain other private
15 purposes; and
16 (b) fuel used on-road in light vehicles for business purposes.

17 Liability for fuel tax currently arises under the *Excise Act 1901*, the
18 *Excise Tariff Act 1921*, the *Customs Act 1901* and the *Customs*
19 *Tariff Act 1995*.

20 It is intended that this Act be extended to apply to certain
21 compressed and liquefied gaseous fuels.

22 The administrative aspects of this Act (such as your rights,
23 obligations and payment arrangements) are aligned as closely as
24 possible to the administrative aspects of other indirect taxes
25 (primarily, the GST), and other taxes administered by the
26 Commissioner, to reduce your compliance costs.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1

2 **Division 3—Explanation of the use of defined terms**

3 **Table of Subdivisions**

4 3-A Explanation of the use of defined terms

5 **Subdivision 3-A—Explanation of the use of defined terms**

6 **Table of Sections**

7 3-1 When defined terms are identified

8 3-5 When terms are *not* identified

9 3-10 Identifying the defined term in a definition

10 **3-1 When defined terms are identified**

11 (1) Many of the terms used in the *fuel tax law are defined.

12 (2) Most defined terms in this Act are identified by an asterisk
13 appearing at the start of the term: as in “*enterprise”. The footnote
14 that goes with the asterisk contains a signpost to the Dictionary
15 definitions at section 110-5.

16 **3-5 When terms are *not* identified**

17 (1) Once a defined term has been identified by an asterisk, later
18 occurrences of the term in the same subsection are *not* usually
19 asterisked.

20 (2) Terms are *not* asterisked in the non-operative material contained in
21 this Act.

22 Note: The non-operative material is described in Division 4.

23 (3) The following basic terms used throughout the Act are *not*
24 identified with an asterisk.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1

Common definitions that are not asterisked	
Item	This term:
1	Australia
2	Commissioner
3	entity
4	fuel tax
5	fuel tax credit
6	taxable fuel
7	you

2 **3-10 Identifying the defined term in a definition**

3 Within a definition, the defined term is identified by *bold italics*.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1

2 **Division 4—Status of Guides and other non-operative**
3 **material**

4 **Table of Subdivisions**

5 4-A Status of Guides and other non-operative material

6 **Subdivision 4-A—Status of Guides and other non-operative**
7 **material**

8 **Table of Sections**

9 4-1 Non-operative material
10 4-5 Guides
11 4-10 Other material

12 **4-1 Non-operative material**

13 In addition to the operative provisions themselves, this Act
14 contains other material to help you identify accurately and quickly
15 the provisions that are relevant to you and to help you understand
16 them.

17 This other material falls into 2 main categories.

18 **4-5 Guides**

19 The first is the “Guides”. A *Guide consists of sections under a
20 heading indicating that what follows is a Guide to a particular
21 Subdivision, Division etc.

22 *Guides form part of this Act but are kept separate from the
23 operative provisions. In interpreting an operative provision, a
24 Guide may only be considered for limited purposes. These are set
25 out in section 105-10.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **4-10 Other material**

2 The other category consists of material such as notes and
3 examples. These also form part of the Act. Generally, they are
4 distinguished by type size from the operative provisions, but are
5 not kept separate from them.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1
2 **Chapter 3—Fuel tax credits**

3 **Part 3-1—Basic rules**

4 **Division 40—Object of this Chapter**

5 **Table of Subdivisions**

6 40-A Object of this Chapter

7 **Subdivision 40-A—Object of this Chapter**

8 **Table of Sections**

9 40-5 Object of this Chapter

10 **40-5 Object of this Chapter**

11 (1) The object of this Chapter is to provide a single system of fuel tax
12 credits to ensure that, generally, fuel tax is effectively only applied
13 to:

- 14 (a) fuel used in private vehicles and for certain other private
15 purposes; and
16 (b) fuel used on-road in light vehicles for business purposes.

17 (2) To do this, a fuel tax credit is provided to reduce or remove the
18 incidence of fuel tax applied to:

- 19 (a) fuel used in *carrying on your *enterprise (other than fuel
20 used on-road in light vehicles); and
21 (b) fuel used for domestic heating and domestic electricity
22 generation; and
23 (c) fuel packaged for use other than in an internal combustion
24 engine.

25 Note: However, other provisions of this Act might affect your entitlement to
26 a fuel tax credit.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1

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

4

Table of Subdivisions

5

Guide to Division 41

6

41-A Entitlement rules for fuel tax credits

7

41-B Disentitlement rules for fuel tax credits

8

Guide to Division 41

9

41-1 What this Division is about

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Fuel tax credits are provided under Subdivision 41-A to business taxpayers who are registered, or required to be registered, for GST (and to some non-profit bodies) in 2 situations.

11

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13

The first situation is where you acquire, manufacture or import fuel to use in carrying on your enterprise (whether the fuel is used as fuel or otherwise). The second situation is where you acquire, manufacture or import fuel to make a taxable supply to a private user for domestic heating or to package the fuel for the purpose of making a taxable supply of it for use other than in an internal combustion engine.

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However, fuel tax credits are denied under Subdivision 41-B if:

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(a) another person is already entitled to a fuel tax credit in respect of the fuel; or

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23

(b) the fuel is for use on-road in light vehicles; or

24

(c) the fuel is for use in vehicles that do not meet certain environmental criteria; or

25

26

(d) the fuel is for use in aircraft.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **Subdivision 41-A—Entitlement rules for fuel tax credits**

2 **Table of Sections**

3	41-5	Fuel tax credit for fuel to be used in carrying on your enterprise
4	41-10	Fuel tax credit for fuel to be sold or packaged

5 **41-5 Fuel tax credit for fuel to be used in carrying on your**
6 **enterprise**

- 7 (1) You are entitled to a fuel tax credit for taxable fuel that you acquire
8 or manufacture in, or import into, Australia to the extent that you
9 do so for use in *carrying on your *enterprise.

10 Note 1: Other provisions can affect your entitlement to the credit. (For
11 example, see Subdivisions 41-B and 45-A of this Act and Part 3 of
12 Schedule 3 to the *Fuel Tax (Consequential and Transitional*
13 *Provisions) Act 2006*.)

14 Note 2: Fuel is taken to have been used if it is blended as specified in a
15 determination made under section 95-5.

16 *Registration for GST*

- 17 (2) However, you are only entitled to the fuel tax credit if, at the time
18 you acquire, manufacture or import the fuel, you are *registered for
19 GST, or *required to be registered for GST.
- 20 (3) Subsection (2) does not apply if, at the time you acquire,
21 manufacture or import the fuel:
- 22 (a) you are a non-profit body; and
 - 23 (b) you acquire, manufacture or import the fuel for use in a
24 vehicle (or vessel) that:
 - 25 (i) provides emergency services; and
 - 26 (ii) is clearly identifiable as such.

27 **41-10 Fuel tax credit for fuel to be sold or packaged**

- 28 (1) You are entitled to a fuel tax credit for taxable fuel that you acquire
29 or manufacture in, or import into, Australia to the extent that:
30 (a) you do so to make a *taxable supply of the fuel to an entity;
31 and

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 41-15

- 1 (b) the fuel is kerosene, heating oil or any other fuel prescribed
2 by the regulations; and
3 (c) you have a reasonable belief that the entity:
4 (i) will not use the fuel in *carrying on an *enterprise; but
5 (ii) will use the fuel for domestic heating.
- 6 (2) You are entitled to a fuel tax credit for taxable fuel that you acquire
7 or manufacture in, or import into, Australia to the extent that:
8 (a) you do so to package the fuel, in accordance with the
9 regulations, for the purpose of making a *taxable supply of
10 the fuel for use other than in an internal combustion engine;
11 and
12 (b) the fuel is kerosene, mineral turpentine, white spirit or any
13 other fuel prescribed by the regulations.

14 **Subdivision 41-B—Disentitlement rules for fuel tax credits**

15 **Table of Sections**

16	41-15	No fuel tax credit if another entity was previously entitled to a credit
17	41-20	No fuel tax credit for fuel to be used in light vehicles on a public road
18	41-25	No fuel tax credit for fuel to be used in motor vehicles that do not meet
19		environmental criteria
20	41-30	No fuel tax credit for fuel to be used in aircraft

21 **41-15 No fuel tax credit if another entity was previously entitled to a**
22 **credit**

- 23 (1) You are not entitled to a fuel tax credit for taxable fuel if it is
24 reasonable to conclude that another entity has previously been
25 entitled to a fuel tax credit, or a *decreasing fuel tax adjustment, for
26 the fuel.
- 27 (2) However, subsection (1) does not apply if it is also reasonable to
28 conclude that another entity had, in respect of the credit, an
29 *increasing fuel tax adjustment of the *amount of the credit.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **41-20 No fuel tax credit for fuel to be used in light vehicles on a**
2 **public road**

3 You are not entitled to a fuel tax credit for taxable fuel to the extent
4 that you acquire, manufacture or import the fuel for use in a
5 vehicle with a gross vehicle mass of 4.5 tonnes or less travelling on
6 a public road.

7 Note: If you acquire a vehicle of 4.5 tonnes before 1 July 2006, you might
8 be entitled to the credit under Part 4 of Schedule 3 to the *Fuel Tax*
9 (*Consequential and Transitional Provisions*) Act 2006.

10 **41-25 No fuel tax credit for fuel to be used in motor vehicles that do**
11 **not meet environmental criteria**

12 (1) You are not entitled to a fuel tax credit for taxable fuel to the extent
13 that you acquire, manufacture or import the fuel for use in a *motor
14 vehicle, unless the vehicle meets one of the following criteria:

- 15 (a) it is manufactured on or after 1 January 1996;
16 (b) it is registered in an audited maintenance program that is
17 accredited by the *Transport Secretary;
18 (c) it meets Rule 147A of the Australian Vehicle Standards
19 Rules 1999;
20 (d) it complies with a maintenance schedule that is endorsed by
21 the Transport Secretary.

22 (2) Subsection (1) does not apply to a *motor vehicle:

- 23 (a) that is used:
24 (i) in carrying on a *primary production business; and
25 (ii) primarily on an agricultural property; or
26 (b) that is not powered by a diesel engine; or
27 (c) that is not used on a public road.

28 **41-30 No fuel tax credit for fuel to be used in aircraft**

29 You are not entitled to a fuel tax credit for taxable fuel that you
30 acquire, manufacture or import for use as fuel in aircraft if the fuel
31 was entered for home consumption for that use (within the

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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meaning of the *Excise Act 1901* or the *Customs Act 1901*, as the case requires).

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Division 42—Fuel tax credit for non-business taxpayers**

3 **Table of Subdivisions**

4

Guide to Division 42

5

42-A Fuel tax credit for non-business taxpayers

6 **Guide to Division 42**

7

42-1 What this Division is about

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Fuel tax credits are provided under this Division to non-business taxpayers. Currently, a credit is only provided for fuel to be used by you for generating electricity for domestic use.

11

Subdivision 42-A—Fuel tax credit for non-business taxpayers

12

Table of Sections

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42-5 Fuel tax credit for fuel to be used in generating electricity for domestic use

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42-5 Fuel tax credit for fuel to be used in generating electricity for domestic use

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You are entitled to a fuel tax credit for taxable fuel that you acquire or manufacture in, or import into, Australia to the extent that you do so for use by you in generating electricity for domestic use.

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Note: If you are carrying on an enterprise, you might be entitled to a credit under section 41-5.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Division 43—Working out your fuel tax credit**

3 **Table of Subdivisions**

4 Guide to Division 43
5 43-A Working out your fuel tax credit

6 **Guide to Division 43**

7 **43-1 What this Division is about**

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The amount of your credit for taxable fuel is the amount of fuel tax that was payable on the fuel, reduced to take account of certain grants and subsidies that were payable in respect of the fuel (as the grants or subsidies reduced the amount of fuel tax that effectively applied to the fuel).

13
14

In some cases, the credit is reduced so that some of the fuel tax can be retained to fund cleaner fuel grants and as a road user charge.

15 **Subdivision 43-A—Working out your fuel tax credit**

16 **Table of Sections**

17 43-5 Working out your fuel tax credit
18 43-10 Reducing the amount of your fuel tax credit

19 **43-5 Working out your fuel tax credit**

20 (1) The *amount of your fuel tax credit for taxable fuel is the amount
21 of *effective fuel tax that is payable on the fuel.

22 Note: The amount of the credit might be reduced under section 43-10.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 *Amount of effective fuel tax*

2 (2) The *amount of **effective fuel tax** that is payable on the fuel is the
3 amount (but not below nil) worked out using the following
4 formula:

5 Fuel tax amount – Grant or subsidy amount
6 where:

7 **fuel tax amount** means the *amount of fuel tax that was or would
8 be payable on the fuel:

- 9 (a) if you are *registered for GST, or *required to be registered
10 for GST—at the rate in force at the beginning of the *tax
11 period to which the credit is attributable; and
12 (b) if you are not registered for GST, nor required to be
13 registered for GST—at the rate in force on the day on which
14 the Commissioner receives your return relating to the fuel.

15 Note: Division 65 sets out which tax period a credit is attributable to.

16 **grant or subsidy amount** means the *amount of any grant or
17 subsidy that was or would be payable in respect of the fuel by the
18 Commonwealth:

- 19 (a) if you are *registered for GST, or *required to be registered
20 for GST—at the rate in force at the beginning of the *tax
21 period to which the credit is attributable; and
22 (b) if you are not registered for GST, nor required to be
23 registered for GST—at the rate in force on the day on which
24 the Commissioner receives your return relating to the fuel.

25 Note 1: Division 65 sets out which tax period a credit is attributable to.

26 Note 2: Subsection (4) affects how this formula applies to some blends of
27 petrol or diesel.

28 *Exclusions from grant or subsidy amount*

29 (3) In applying subsection (2), the following grants are disregarded:
30 (a) a grant under the Biofuels Capital Grants Program;
31 (b) a grant for on-road alternative fuel under the *Energy Grants*
32 (*Credits*) *Scheme Act 2003*;

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

- 1 (c) a grant for petrol or diesel under the *Energy Grants (Cleaner*
2 *Fuels) Scheme Act 2004*;
- 3 (d) a benefit under the *Product Stewardship (Oil) Act 2000*.
- 4 *Amount of effective fuel tax for blends of petrol and diesel*
- 5 (4) The **effective fuel tax** for taxable fuel that:
- 6 (a) is a blend of more than one kind of fuel; and
- 7 (b) meets a fuel standard, under the *Fuel Quality Standards Act*
8 *2000*, for petrol or diesel;
- 9 is worked out under subsection (2) as if the fuel were entirely that
10 kind of petrol or diesel (as the case requires).

11 **43-10 Reducing the amount of your fuel tax credit**

12 *Cleaner fuel grants*

- 13 (1) The *amount of your fuel tax credit for taxable fuel is reduced to
14 the extent, determined by the Minister, that fuel tax is imposed on
15 the fuel to fund a cleaner fuel grant.
- 16 (2) For the purposes of subsection (1), the Minister must determine, by
17 legislative instrument, the *amount of the fuel tax imposed that will
18 fund a cleaner fuel grant.

19 *Road user charge*

- 20 (3) To the extent that you acquire, manufacture or import taxable fuel
21 to use, in a vehicle, for travelling on a public road, the *amount of
22 your fuel tax credit for the fuel is reduced by the amount of the
23 road user charge, determined by the *Transport Minister.

24 Note: Only certain motor vehicles whose gross vehicle mass is more than
25 4.5 tonnes are entitled to any credit (see sections 41-20 and 41-25).

- 26 (4) However, the *amount is not reduced under subsection (3) if the
27 vehicle's travel on a public road is incidental to the vehicle's main
28 use.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 43-10

1 (5) For the purposes of subsection (3), the *Transport Minister must
2 determine, by legislative instrument, the *amount of the road user
3 charge.

4 *Working out the amount of the reduction*

5 (6) The *amount by which a fuel tax credit for taxable fuel is reduced
6 under subsection (1) or (3) is worked out by reference to the rate of
7 fuel tax or road user charge in force:

8 (a) if you are *registered for GST, or *required to be registered
9 for GST—at the beginning of the *tax period to which the
10 credit is attributable; and

11 (b) if you are not registered for GST, nor required to be
12 registered for GST—on the day on which the Commissioner
13 receives your return relating to the fuel.

14 Note: Division 65 sets out which tax period a credit is attributable to.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1

2 **Division 44—Increasing and decreasing fuel tax**
3 **adjustments**

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Table of Subdivisions

5

Guide to Division 44

6

44-A Increasing and decreasing fuel tax adjustments

7

Guide to Division 44

8

44-1 What this Division is about

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Your entitlement to a fuel tax credit for taxable fuel is worked out on the basis of what the fuel is intended for when you acquire, manufacture or import the fuel.

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If you use or supply the fuel differently, or you do not use or supply the fuel at all, you have an increasing or decreasing fuel tax adjustment.

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Fuel tax adjustments are included in working out your net fuel amount under Division 60. (Your net fuel amount determines how much you owe the Commissioner or the Commissioner owes you.)

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Note: There is also a decreasing fuel tax adjustment under Division 45 (Greenhouse Challenge Plus Programme).

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Subdivision 44-A—Increasing and decreasing fuel tax
21 **adjustments**

22

Table of Sections

23

44-5 Increasing and decreasing fuel tax adjustments for change of circumstances

24

44-10 Increasing fuel tax adjustment for failure to use or make a taxable supply of fuel

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*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **44-5 Increasing and decreasing fuel tax adjustments for change of**
2 **circumstances**

3 (1) You have a *fuel tax adjustment if you use fuel, or make a *taxable
4 supply of fuel, in circumstances where, if you had originally
5 acquired, manufactured or imported the fuel to use or make a
6 taxable supply in those circumstances, the *amount of the fuel tax
7 credit to which you would have been entitled would have been
8 different from the amount to which you are or were entitled.

9 (2) The *amount of the adjustment is the difference between the 2
10 amounts.

11 Note: Division 65 sets out which tax period or fuel tax return period the fuel
12 tax adjustment is attributable to.

13 *Decreasing fuel tax adjustments*

14 (3) The *fuel tax adjustment is a *decreasing fuel tax adjustment* if the
15 *amount to which you would have been entitled is greater than the
16 amount to which you are or were entitled.

17 *Increasing fuel tax adjustments*

18 (4) The *fuel tax adjustment is an *increasing fuel tax adjustment* if the
19 *amount to which you are or were entitled is greater than the
20 amount to which you would have been entitled.

21 Example: You acquire taxable fuel to use in a harvester in carrying on your
22 farming enterprise, so you are paid a fuel tax credit for the fuel. Later
23 on, you use the fuel to transport wheat in a vehicle of more than 4.5
24 tonnes travelling on a public road. As your fuel tax credit would have
25 been reduced by the amount of the road user charge, you have an
26 increasing fuel tax adjustment of the difference between the 2
27 amounts.

28 **44-10 Increasing fuel tax adjustment for failure to use or make a**
29 **taxable supply of fuel**

30 You have an *increasing fuel tax adjustment* if:

- 31 (a) you are or were entitled to a fuel tax credit for taxable fuel;
32 and

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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(b) you have no reasonable prospect of using, or making a
*taxable supply of, the fuel.
The *amount of the adjustment is the amount of the credit that you
are or were entitled to.
Example: You acquire taxable fuel to use in a harvester in carrying on your
farming enterprise, so you are paid a fuel tax credit for the fuel. Later
on, the fuel is stolen. You have an increasing fuel tax adjustment of
the amount of the credit.
Note: Division 65 sets out which tax period or fuel tax return period the fuel
tax adjustment is attributable to.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Part 3-3—Special rules**

3 **Division 45—Greenhouse Challenge Plus Programme**

4 **Table of Subdivisions**

5 Guide to Division 45

6 45-A Greenhouse Challenge Plus Programme

7 **Guide to Division 45**

8 **45-1 What this Division is about**

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Generally, you cannot include more than \$3 million in fuel tax credits in your net fuel amounts in a financial year unless you are a member of the Greenhouse Challenge Plus Programme.

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If you are denied a credit under this Division and you later become a member of the programme, you have a decreasing fuel tax adjustment of the amount of the credit that you were denied.

15 **Subdivision 45-A—Greenhouse Challenge Plus Programme**

16 **Table of Sections**

17 45-5 Certain entities to be members of Greenhouse Challenge Plus Programme

18 **45-5 Certain entities to be members of Greenhouse Challenge Plus**
19 **Programme**

- 20 (1) You must not take into account, in your *net fuel amounts for *tax
21 periods ending in a *financial year, a total of more than \$3 million
22 of fuel tax credits arising under section 41-5 unless the
23 *Environment Secretary has determined that you are a member of
24 one of the following programmes:
25 (a) the *Greenhouse Challenge Plus Programme;

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 45-5

1 (b) another programme determined, by legislative instrument, by
2 the *Environment Minister for the purposes of this section.

3 Note: If an entity has GST branches, all of the entity's and the entity's
4 branches' fuel tax credits are to be taken into account in applying the
5 \$3 million threshold.

6 (2) You have a *decreasing fuel tax adjustment* if:

7 (a) you were not entitled in a *financial year to take into account
8 the whole or a part of a fuel tax credit under subsection (1);
9 and

10 (b) you become a member of a programme mentioned in
11 subsection (1) within 4 years after the end of the financial
12 year.

13 The *amount of the adjustment is the amount of the credit that you
14 were not entitled to take into account.

15 Note: Division 65 sets out which tax period the fuel tax adjustment is
16 attributable to.

17 *Definition*

18 (3) The *Greenhouse Challenge Plus Programme* means the
19 Greenhouse Challenge Plus Programme as set out in the
20 Greenhouse Challenge Plus Programme Framework 2005, as
21 amended from time to time.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Division 46—Instalment taxpayers**

3 **Table of Subdivisions**

4 Guide to Division 46

5 46-A Instalment taxpayers

6 **Guide to Division 46**

7 **46-1 What this Division is about**

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If you are a GST instalment taxpayer, you work out and claim your fuel tax credits for GST instalment quarters, instead of the annual tax period you use for the GST. However, you can choose not to give a return for the first 3 GST instalment quarters in a financial year (but if you have an increasing fuel tax adjustment, you must give a return for the last quarter in the year).

14 **Subdivision 46-A—Instalment taxpayers**

15 **Table of Sections**

16 46-5 Instalment taxpayers

17 **46-5 Instalment taxpayers**

18 (1) If you are a *GST instalment payer, you must treat each *GST
19 instalment quarter as if it were a *tax period.

20 *GST instalment quarters to be treated as tax periods*

21 (2) For the purposes of working out under subsection 65-5(1) which
22 *GST instalment quarter a fuel tax credit is attributable to, you
23 must treat each GST instalment quarter as if, in the *GST Act, the
24 quarter were a *tax period.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 *Choice to give a return for first 3 quarters*

- 2 (3) You may choose whether to give the Commissioner a return for
3 any of the first 3 *GST instalment quarters in a *financial year. If
4 you do so, you must give the Commissioner your return on or
5 before the day on which you are, or would be, required to pay your
6 *GST instalment to the Commissioner for the quarter (disregarding
7 section 162-80 of the *GST Act).

8 Note: Section 162-80 of the GST Act allows certain entities to pay only 2
9 GST instalments for a financial year.

- 10 (4) If you choose not to give a return for any of those quarters, then
11 any fuel tax credit or *fuel tax adjustment that is attributable to that
12 quarter:

- 13 (a) ceases to be attributable to that quarter; and
14 (b) becomes attributable to the first quarter for which you give
15 the Commissioner a return.

16 Note: See subsection 65-5(4) if your return for a quarter does not include a
17 fuel tax credit that is attributable, under this subsection, to the quarter.

18 *Requirement to give a return for final quarter*

- 19 (5) If you have an *increasing fuel tax adjustment that is (or, under
20 subsection (4), would be) attributable to the last *GST instalment
21 quarter in the *financial year, you must give the Commissioner a
22 return for that quarter on or before the day on which you are, or
23 would be, required to pay your *GST instalment to the
24 Commissioner for the quarter (disregarding section 162-80 of the
25 *GST Act).

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Chapter 4—Common rules**

3 **Part 4-1—Net fuel amounts**

4 **Division 60—Net fuel amounts**

5 **Table of Subdivisions**

6 Guide to Division 60

7 60-A Net fuel amounts

8 **Guide to Division 60**

9 **60-1 What this Division is about**

10 Your net fuel amount reflects how much you or the Commissioner
11 must pay. A positive net fuel amount reflects how much you must
12 pay the Commissioner. A negative net fuel amount reflects how
13 much the Commissioner must pay you.

14 You work out your net fuel amount for each tax period (or fuel tax
15 return period if you are not registered, nor required to be
16 registered, for GST).

17 **Subdivision 60-A—Net fuel amounts**

18 **Table of Sections**

19 60-5 Working out your *net fuel amount*

20 **60-5 Working out your *net fuel amount***

21 (1) Your *net fuel amount* for a *tax period or a *fuel tax return period
22 is worked out using the following formula:

23
$$\text{Total fuel tax} - \text{Total fuel tax credits} + \text{Total increasing fuel tax adjustments} - \text{Total decreasing fuel tax adjustments}$$

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 60-5

1 where:

2 ***total decreasing fuel tax adjustments*** is the sum of all *decreasing
3 fuel tax adjustments that are attributable to the period.

4 Note: Division 65 sets out which tax periods or fuel tax return periods fuel
5 tax adjustments are attributable to.

6 ***total fuel tax*** is nil.

7 Note: Fuel tax is currently assessed under the *Excise Act 1901*, the *Excise*
8 *Tariff Act 1921*, the *Customs Act 1901* and the *Customs Tariff Act*
9 *1995*. It is intended that gaseous fuels will begin to be assessed under
10 this Act in 2011.

11 ***total fuel tax credits*** is the sum of all fuel tax credits to which you
12 are entitled that are attributable to the period.

13 Note 1: Division 45 (Greenhouse Challenge Plus Programme) might affect
14 your entitlement to a credit.

15 Note 2: Division 65 sets out which tax periods or fuel tax return periods fuel
16 tax credits are attributable to.

17 ***total increasing fuel tax adjustments*** is the sum of all *increasing
18 fuel tax adjustments that are attributable to the period.

19 Note: Division 65 sets out which tax periods or fuel tax return periods fuel
20 tax adjustments are attributable to.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Division 61—Returns, refunds and payments**

3 **Table of Subdivisions**

4 Guide to Division 61
5 61-A Returns, refunds and payments

6 **Guide to Division 61**

7 **61-1 What this Division is about**

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You must give the Commissioner a return for each tax period (or fuel tax return period if you are not registered, nor required to be registered, for GST) by a specified time.

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If your return includes a positive net fuel amount, you must pay the Commissioner that amount. If your return includes a negative net fuel amount, the Commissioner must pay you that amount.

14 **Subdivision 61-A—Returns, refunds and payments**

15 **Table of Sections**

16 61-5 Entitlement to a refund
17 61-10 Requirement to pay a net fuel amount
18 61-15 When you must give the Commissioner your return
19 61-20 Fuel tax return periods

20 **61-5 Entitlement to a refund**

21 (1) If your *net fuel amount for a *tax period or *fuel tax return period
22 is less than zero, the Commissioner must, on behalf of the
23 Commonwealth, pay that *amount (expressed as a positive amount)
24 to you.

25 Note 1: See Division 3A of Part IIB of the *Taxation Administration Act 1953*
26 for the rules about how the Commissioner must pay you. Division 3 of
27 Part IIB of that Act allows the Commissioner to apply the amount

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 61-10

1 owing as a credit against tax debts that you owe to the
2 Commonwealth.

3 Note 2: Interest is payable under the *Taxation (Interest on Overpayments and*
4 *Early Payments) Act 1983* if the Commissioner is late in paying the
5 amount.

6 (2) Your entitlement to be paid an *amount under subsection (1) arises
7 when you give the Commissioner a return.

8 **61-10 Requirement to pay a net fuel amount**

9 If your *net fuel amount for a *tax period or *fuel tax return period
10 is greater than zero, you must pay that *amount to the
11 Commissioner by the day on which you are required under
12 section 46-5 or 61-15 to give the Commissioner your return.

13 **61-15 When you must give the Commissioner your return**

14 (1) If you are *registered for GST, or *required to be registered for
15 GST, you must give the Commissioner your return for a *tax
16 period on or before the day on which you are required to give the
17 Commissioner your *GST return for the tax period.

18 Note 1: For the penalties for failing to comply with these obligations, see the
19 *Taxation Administration Act 1953*.

20 Note 2: If you lodge your GST return electronically, you must also
21 electronically notify the Commissioner of your net fuel amount (see
22 section 388-80 in Schedule 1 to the *Taxation Administration Act*
23 *1953*).

24 Note 3: Instalment taxpayers may give their returns on a different day (see
25 section 46-5).

26 (2) If you are neither *registered for GST, nor *required to be
27 registered for GST, you must give the Commissioner your return
28 for a *fuel tax return period by the 21st day after the end of the fuel
29 tax return period.

30 (3) You must give the Commissioner your return for a *tax period or a
31 *fuel tax return period in the *approved form.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **61-20 Fuel tax return periods**

2 (1) If you are neither *registered for GST, nor *required to be
3 registered for GST, your *fuel tax return period* is the period
4 specified in the return.

5 (2) However, you must end a *fuel tax return period within 90 days, or
6 any longer period allowed by the Commissioner, after you become
7 aware of an *increasing fuel tax adjustment under Division 44. If
8 you do not do so, your *fuel tax return period* ends at the end of the
9 90 days, or the longer period allowed by the Commissioner.

10 Note: You must give your return to the Commissioner by the 21st day after
11 the end of the fuel tax return period (see section 61-15).

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Part 4-2—Attribution rules**

3 **Division 65—Attribution rules**

4 **Table of Subdivisions**

5 Guide to Division 65

6 65-A Attribution rules

7 **Guide to Division 65**

8 **65-1 What this Division is about**

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Fuel tax credits and fuel tax adjustments are attributed to tax periods (or fuel tax return periods).

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Generally, if you are a business taxpayer, your fuel tax credit for taxable fuel is attributed to the same period as your input tax credit for the fuel (to reduce compliance costs). If you are a non-business taxpayer, your fuel tax credit for taxable fuel is attributed to the fuel tax return period in which you acquire, manufacture or import the fuel.

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Fuel tax adjustments are attributed to the tax period (or fuel tax return period) in which you become aware of the adjustment.

19 **Subdivision 65-A—Attribution rules**

20 **Table of Sections**

21 65-5 Attribution rules for fuel tax credits

22 65-10 Attribution rules for fuel tax adjustments

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **65-5 Attribution rules for fuel tax credits**

2 *Attribution rules for fuel you acquire or import*

- 3 (1) If you are *registered for GST, or *required to be registered for
4 GST, your fuel tax credit for taxable fuel that you acquire or
5 import is attributable to:
- 6 (a) the same *tax period that your *input tax credit for the fuel is
7 attributable to under the *GST Act; or
 - 8 (b) the same tax period that an input tax credit would have been
9 attributable to under that Act if the fuel had been a
10 *creditable acquisition or a *creditable importation.
- 11 (2) If you are neither *registered for GST, nor *required to be
12 registered for GST, your fuel tax credit for taxable fuel that you
13 acquire or import is attributable to the *fuel tax return period in
14 which you acquire or import the fuel.

15 *Attribution rule for fuel you manufacture*

- 16 (3) Your fuel tax credit for taxable fuel that you manufacture is
17 attributable to the *tax period or *fuel tax return period in which the
18 fuel was entered for home consumption (within the meaning of the
19 *Excise Act 1901*).

20 *Later attribution rule for fuel tax credits*

- 21 (4) If your return for a *tax period or *fuel tax return period states a
22 *net fuel amount that does not take into account a fuel tax credit
23 that is attributable to the period mentioned in subsection (1), (2) or
24 (3), then the credit:
- 25 (a) ceases to be attributable to that period; and
 - 26 (b) becomes attributable to the first period for which you give
27 the Commissioner a return that does take it into account.

28 Note: For another attribution rule for fuel tax credits, see subsection 46-5(4)
29 (GST instalment taxpayers).

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **65-10 Attribution rules for fuel tax adjustments**

- 2 (1) A *fuel tax adjustment under Division 44 is attributable to the *tax
3 period or *fuel tax return period in which you become aware of the
4 adjustment.

5 Note: For attribution rules for other fuel tax adjustments, see subsection
6 46-5(4) of this Act (GST instalment taxpayers) and item 9 of
7 Schedule 3 to the *Fuel Tax (Consequential and Transitional*
8 *Provisions) Act 2006*.

- 9 (2) A *fuel tax adjustment under Division 45 is attributable to the *tax
10 period in which you became a member of a programme mentioned
11 in subsection 45-5(1).

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Part 4-3—Special rules about entities**

3 **Division 70—Special rules about entities**

4 **Table of Subdivisions**

5 Guide to Division 70

6 70-A Special rules about entities and how they are organised

7 70-B Government entities

8 **Guide to Division 70**

9 **70-1 What this Division is about**

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This Act applies to GST groups, joint ventures, religious practitioners, incapacitated entities, branches, resident agents and non-profit sub-entities in a similar way to the way in which the GST Act applies to those entities.

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Government entities that are registered for GST are treated as if they are carrying on an enterprise.

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Subdivision 70-A—Special rules about entities and how they are organised

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Table of Sections

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70-5 Application of fuel tax law to GST groups and joint ventures

70-10 Entry and exit history rules

70-15 Consolidating joint venture returns

70-20 Application of fuel tax law to religious practitioners

70-25 Application of fuel tax law to incapacitated entities

70-30 Application of fuel tax law to GST branches, resident agents and non-profit sub-entities

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **70-5 Application of fuel tax law to GST groups and joint ventures**

- 2 (1) The entities in column 1 of the table are treated as a single entity
3 for the purposes of the *fuel tax law.
- 4 (2) The entity in column 2 of the table has all the rights, powers and
5 obligations of the single entity under the *fuel tax law (instead of
6 each entity in column 1 having those rights, powers and
7 obligations).

8

Application of fuel tax law to GST groups and joint ventures

Item	Column 1	Column 2
	These entities are treated as a single entity for the purposes of the fuel tax law	This entity has all the rights, powers and obligations of the single entity under the fuel tax law
1	The members of a *GST group	The representative member of the group
2	The *participants in a *GST joint venture (to the extent that any relevant fuel is acquired, manufactured or imported in the course of activities for which the joint venture was entered into)	The *joint venture operator of the joint venture

9 Note: Sections 444-80 and 444-90 in Schedule 1 to the *Taxation*
10 *Administration Act 1953* affect the operation of this section.

11 **70-10 Entry and exit history rules**

12 *Entry history rule*

- 13 (1) For the purposes of the *fuel tax law, from the time when a
14 particular entity starts to be treated as part of a single entity under
15 section 70-5, everything that happened (including because of any
16 previous application of this section) before that time, in relation to
17 any fuel in the hands of the particular entity at that time, is taken to
18 have happened as if the fuel had been in the hands of the single
19 entity.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 Example: The single entity is taken to have acquired the fuel for the purposes for
2 which the particular entity acquired the fuel.

3 *Exit history rule*

4 (2) For the purposes of the *fuel tax law, from the time when a
5 particular entity ceases to be treated as part of a single entity under
6 section 70-5, everything that happened (including because of any
7 previous application of this section) before that time, in relation to
8 any fuel in the hands of the particular entity immediately after that
9 time, is taken to have happened as if the fuel had been in the hands
10 of the particular entity.

11 Example: The particular entity is taken to have acquired the fuel for the purposes
12 for which the single entity acquired the fuel.

13 **70-15 Consolidating joint venture returns**

14 If, under section 51-52 of the *GST Act, an election is in force to
15 consolidate a *joint venture operator's *GST returns relating to its
16 *GST joint ventures, the operator must consolidate its returns under
17 this Act relating to the joint ventures.

18 **70-20 Application of fuel tax law to religious practitioners**

19 The *fuel tax law applies to *religious practitioners and religious
20 institutions in the same way as the *GST Act applies to them under
21 Division 50 of that Act.

22 **70-25 Application of fuel tax law to incapacitated entities**

23 The *fuel tax law applies to an *incapacitated entity and its
24 representative (within the meaning of the *GST Act) in the same
25 way as that Act applies to them under Division 147 of that Act.

26 **70-30 Application of fuel tax law to GST branches, resident agents
27 and non-profit sub-entities**

28 While an entity meets the condition in column 1 of the table, the
29 *fuel tax law applies to:
30 (a) the entity; and

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 70-35

- 1 (b) its fuel tax credits, *net fuel amount and *fuel tax
2 adjustments;
3 in a corresponding way to the way in which the *GST law applies,
4 because of the Division of the *GST Act mentioned in column 2,
5 to:
6 (c) the entity; and
7 (d) its *input tax credits, *net amount and *adjustments.
8

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

Item	Column 1 While this condition is met ...	Column 2 the fuel tax law applies in a corresponding way to the way in which the GST law applies to the entity because of this Division of the GST Act ...
1	The entity has a *GST branch	Division 54
2	The entity has a *resident agent	Division 57
3	The entity has a non-profit sub-entity	Division 63

9 **Subdivision 70-B—Government entities**

10 **Table of Sections**

11 70-35 Application of fuel tax law to government entities

12 **70-35 Application of fuel tax law to government entities**

13 A *government entity that is *registered for GST is treated, while
14 its registration has effect, as if it were an entity *carrying on an
15 *enterprise.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Part 4-4—Anti-avoidance**

3 **Division 75—Anti-avoidance**

4 **Table of Subdivisions**

5 Guide to Division 75

6 75-A Application of this Division

7 75-B Commissioner may negate effects of schemes for fuel tax
8 benefits

9 **Guide to Division 75**

10 **75-1 What this Division is about**

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The object of this Division is to deter schemes that give entities benefits by reducing fuel tax, increasing refunds or altering the timing of payment of net fuel amounts.

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If the dominant purpose or principal effect of a scheme is to give an entity such a benefit, the Commissioner may negate the benefit any entity gets from the scheme by making a declaration stating the entity's net fuel amount for a particular tax period, despite the scheme.

19 **Subdivision 75-A—Application of this Division**

20 **Table of Sections**

21 75-5 When does this Division operate?

22 75-10 When does an entity get a *fuel tax benefit* from a scheme?

23 75-15 Matters to be considered in determining purpose or effect

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **75-5 When does this Division operate?**

2 *General rule*

- 3 (1) This Division operates if:
- 4 (a) an entity (the *avoider*) gets a *fuel tax benefit from a
- 5 *scheme; and
- 6 (b) the fuel tax benefit is not attributable to the making, by any
- 7 entity, of a choice, election, application or agreement that is
- 8 expressly provided for by the *fuel tax law or the *GST law;
- 9 and
- 10 (c) taking account of the matters described in section 75-15, it is
- 11 reasonable to conclude that either:
- 12 (i) an entity that (whether alone or with others) entered into
- 13 or carried out the scheme, or part of the scheme, did so
- 14 with the sole or dominant purpose of that entity or
- 15 another entity getting a fuel tax benefit from the
- 16 scheme; or
- 17 (ii) the principal effect of the scheme, or of part of the
- 18 scheme, is that the avoider gets the fuel tax benefit from
- 19 the scheme directly or indirectly; and
- 20 (d) the avoider gets the fuel tax benefit from the scheme on or
- 21 after 1 July 2006.

22 *Territorial application*

- 23 (2) It does not matter whether the *scheme, or any part of the scheme,
- 24 was entered into or carried out inside or outside Australia.

25 **75-10 When does an entity get a fuel tax benefit from a scheme?**

- 26 (1) An entity gets a *fuel tax benefit* from a *scheme if:
- 27 (a) an *amount that is payable by the entity under this Act apart
- 28 from this Division is, or could reasonably be expected to be,
- 29 smaller than it would be apart from the scheme or a part of
- 30 the scheme; or
- 31 (b) an amount that is payable to the entity under this Act apart
- 32 from this Division is, or could reasonably be expected to be,

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 75-15

- 1 larger than it would be apart from the scheme or a part of the
2 scheme; or
3 (c) all or part of an amount that is payable by the entity under
4 this Act apart from this Division is, or could reasonably be
5 expected to be, payable later than it would have been apart
6 from the scheme or a part of the scheme; or
7 (d) all or part of an amount that is payable to the entity under this
8 Act apart from this Division is, or could reasonably be
9 expected to be, payable earlier than it would have been apart
10 from the scheme or a part of the scheme.

11 *Fuel tax benefit can arise even if no economic alternative*

- 12 (2) An entity can get a *fuel tax benefit from a *scheme even if the
13 entity or entities that entered into or carried out the scheme, or a
14 part of the scheme, could not have engaged economically in any
15 activities:
16 (a) of the kind to which this Act applies; and
17 (b) that would produce an effect equivalent (except in terms of
18 this Act) to the effect of the scheme or part of the scheme;
19 other than the activities involved in entering into or carrying out
20 the scheme or part of the scheme.

21 **75-15 Matters to be considered in determining purpose or effect**

- 22 (1) The following matters are to be taken into account under
23 section 75-5 in considering an entity's purpose in entering into or
24 carrying out the *scheme from which the avoider got a *fuel tax
25 benefit, and the effect of the scheme:
26 (a) the manner in which the scheme was entered into or carried
27 out;
28 (b) the form and substance of the scheme, including:
29 (i) the legal rights and obligations involved in the scheme;
30 and
31 (ii) the economic and commercial substance of the scheme;
32 (c) the purpose or object (whether or not expressly stated) of any
33 of the following Acts, and any relevant provision of those
34 Acts, so far as they are relevant to this Act:

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 75-15

- 1 (i) this Act;
2 (ii) the *Excise Act 1901* and the *Excise Tariff Act 1921*;
3 (iii) the *Customs Act 1901* and the *Customs Tariff Act 1995*;
4 (iv) the *Energy Grants (Credits) Scheme Act 2003*;
5 (v) the *GST Act;
6 (d) the timing of the scheme;
7 (e) the period over which the scheme was entered into and
8 carried out;
9 (f) the effect that this Act would have in relation to the scheme
10 apart from this Division;
11 (g) any change in the avoider's financial position that has
12 resulted, or may reasonably be expected to result, from the
13 scheme;
14 (h) any change that has resulted, or may reasonably be expected
15 to result, from the scheme in the financial position of an
16 entity (a **connected entity**) that has or had a connection or
17 dealing with the avoider, whether the connection or dealing is
18 or was of a family, business or other nature;
19 (i) any other consequence for the avoider or a connected entity
20 of the scheme having been entered into or carried out;
21 (j) the nature of the connection between the avoider and a
22 connected entity;
23 (k) the circumstances surrounding the scheme;
24 (l) any other relevant circumstances.
- 25 (2) Subsection (1) applies in relation to consideration of an entity's
26 purpose in entering into or carrying out a part of a *scheme from
27 which the avoider gets a *fuel tax benefit, and the effect of part of
28 the scheme, as if the part were itself the scheme from which the
29 avoider gets the fuel tax benefit.

30 **Subdivision 75-B—Commissioner may negate effects of**
31 **schemes for fuel tax benefits**

32 **Table of Sections**

33 75-40 Commissioner may negate avoider's fuel tax benefits

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 75-40

- 1 75-45 Commissioner may reduce an entity's net fuel amount to compensate
2 75-50 Refund payable in accordance with declaration
3 75-55 Commissioner may disregard scheme in making declarations
4 75-60 One declaration may cover several tax periods or fuel tax return periods
5 75-65 Commissioner must give copy of declaration to entity affected

6 **75-40 Commissioner may negate avoider's fuel tax benefits**

- 7 (1) For the purpose of negating a *fuel tax benefit the avoider gets
8 from the *scheme, the Commissioner may make a declaration
9 stating the *amount that is (and has been at all times) the avoider's
10 *net fuel amount for a specified *tax period or *fuel tax return
11 period that has ended.

12 Note: A declaration of the Commissioner under this section is a reviewable
13 fuel tax decision (see Subdivision 112-E in Schedule 1 to the *Taxation*
14 *Administration Act 1953*).

- 15 (2) A declaration under this section is not a legislative instrument.

16 **75-45 Commissioner may reduce an entity's net fuel amount to**
17 **compensate**

- 18 (1) This section operates if:
19 (a) the Commissioner has made a declaration under
20 section 75-40 to negate the *fuel tax benefit an entity gets
21 from a *scheme; and
22 (b) the Commissioner considers that another entity (the *loser*)
23 gets a *fuel tax disadvantage from the scheme; and
24 (c) the Commissioner considers that it is fair and reasonable that
25 the loser's fuel tax disadvantage be negated or reduced.
- 26 (2) An entity gets a *fuel tax disadvantage* from a *scheme if:
27 (a) an *amount that is payable by the entity under this Act apart
28 from this Division is, or could reasonably be expected to be,
29 larger than it would have been apart from the scheme or a
30 part of the scheme; or
31 (b) an amount that is payable to the entity under this Act apart
32 from this Division is, or could reasonably be expected to be,

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 75-50

- 1 smaller than it would have been apart from the scheme or a
2 part of the scheme; or
- 3 (c) all or part of an amount that is payable by the entity under
4 this Act apart from this Division is, or could reasonably be
5 expected to be, payable earlier than it would have been apart
6 from the scheme or a part of the scheme; or
- 7 (d) all or part of an amount that is payable to the entity under this
8 Act apart from this Division is, or could reasonably be
9 expected to be, payable later than it would have been apart
10 from the scheme or a part of the scheme.
- 11 (3) For the purposes of negating or reducing the loser's *fuel tax
12 disadvantage from the *scheme, the Commissioner may make a
13 declaration (under this section) stating the *amount that is (and has
14 been at all times) the loser's *net fuel amount for a specified *tax
15 period or *fuel tax return period that has ended.
- 16 Note: A declaration of the Commissioner under this section is a reviewable
17 fuel tax decision (see Subdivision 112-E in Schedule 1 to the *Taxation*
18 *Administration Act 1953*).
- 19 (4) An *amount stated in a declaration as the loser's *net fuel amount
20 must not be less than the net fuel amount would have been apart
21 from the *scheme, or part of the scheme, and the declaration.
- 22 (5) An entity may give the Commissioner a written request to make a
23 declaration under this section relating to the entity. The
24 Commissioner must decide whether or not to grant the request, and
25 give the entity notice of the Commissioner's decision.
- 26 Note: A decision of the Commissioner under subsection (5) is a reviewable
27 fuel tax decision (see Subdivision 112-E in Schedule 1 to the *Taxation*
28 *Administration Act 1953*).
- 29 (6) A declaration under this section is not a legislative instrument.

30 **75-50 Refund payable in accordance with declaration**

31 A statement in a declaration under this Subdivision has effect
32 according to its terms, for the purposes of Division 61 (about
33 refunds and payments), despite the provisions of this Act outside
34 that Division and this Division.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **75-55 Commissioner may disregard scheme in making declarations**

2 For the purposes of making a declaration under this Subdivision,
3 the Commissioner may:

- 4 (a) treat a particular event that actually happened as not having
5 happened; and
6 (b) treat a particular event that did not actually happen as having
7 happened and, if appropriate, treat the event as:
8 (i) having happened at a particular time; and
9 (ii) having involved particular action by a particular entity;
10 and
11 (c) treat a particular event that actually happened as:
12 (i) having happened at a time different from the time it
13 actually happened; or
14 (ii) having involved particular action by a particular entity
15 (whether or not the event actually involved any action
16 by that entity).

17 **75-60 One declaration may cover several tax periods or fuel tax**
18 **return periods**

19 Statements relating to different *tax periods or *fuel tax return
20 periods may be included in a single declaration under this
21 Subdivision.

22 **75-65 Commissioner must give copy of declaration to entity affected**

- 23 (1) The Commissioner must give a copy of a declaration under this
24 Subdivision to the entity whose *net fuel amount is stated in the
25 declaration.
26 (2) A failure to comply with subsection (1) does not affect the validity
27 of the declaration.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Part 4-5—Miscellaneous**

3 **Division 95—Miscellaneous**

4 **Table of Subdivisions**

5 Guide to Division 95

6 95-A Miscellaneous

7 **Guide to Division 95**

8 **95-1 What this Division is about**

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This Division provides for determinations and regulations to be made for the purposes of the fuel tax law.

11 **Subdivision 95-A—Miscellaneous**

12 **Table of Sections**

13 95-5 Determination of blends that no longer constitute fuels

14 95-10 Application of this law to the Commonwealth

15 95-100 Regulations

16 **95-5 Determination of blends that no longer constitute fuels**

17 (1) For the purposes of the *fuel tax law, the Commissioner may, by
18 legislative instrument, determine that a blend of a fuel and another
19 product does not constitute a fuel.

20 (2) An entity that blends that fuel and that other product to produce
21 that blend is taken to have used that fuel.

22 (3) In making a determination under subsection (1), the Commissioner
23 must consider the following matters:

24 (a) the physical and chemical properties of the blend;

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

- 1 (b) whether the blend can be used in an internal combustion
2 engine;
3 (c) whether the blend is marketed and distributed as fuel;
4 (d) whether there is a risk that the blend might be used as fuel,
5 and the financial impact on the Commonwealth if the blend
6 were used as fuel;
7 (e) any other relevant matter.
8 The Commissioner must give the greatest weight to the matter
9 mentioned in paragraph (d).

10 **95-10 Application of this law to the Commonwealth**

- 11 (1) It is the Parliament's intention that the Commonwealth and
12 *untaxable Commonwealth entities should:
13 (a) be notionally entitled to fuel tax credits; and
14 (b) have notional *fuel tax adjustments.

15 Note: The fuel tax law binds the Crown in right of the States, the Australian
16 Capital Territory and the Northern Territory (see section 1-15).

- 17 (2) The *Finance Minister may give such written directions as are
18 necessary or convenient for carrying out or giving effect to
19 subsection (1) and, in particular, may give directions in relation to
20 the transfer of money within an account, or between accounts,
21 operated by the Commonwealth or an *untaxable Commonwealth
22 entity.
- 23 (3) The directions given under subsection (2) may also take account of
24 the provisions of the *Fuel Tax (Consequential and Transitional*
25 *Provisions) Act 2006*.
- 26 (4) Directions under subsection (2) have effect, and must be complied
27 with, despite any other Commonwealth law.
- 28 (5) A direction given under subsection (2) is not a legislative
29 instrument.

30 **95-100 Regulations**

31 The Governor-General may make regulations prescribing matters:

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 95-100

- 1 (a) required or permitted by this Act to be prescribed; or
2 (b) necessary or convenient to be prescribed for carrying out or
3 giving effect to this Act.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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Chapter 5—Interpretation

Part 5-1—Rules for interpreting this Act

Division 105—Rules for interpreting this Act

Table of Subdivisions

105-A Rules for interpreting this Act

Subdivision 105-A—Rules for interpreting this Act

Table of Sections

105-1 What forms part of this Act
105-5 What does not form part of this Act
105-10 Guides, and their role in interpreting this Act

105-1 What forms part of this Act

- (1) These all form part of this Act:
 - (a) the headings to the Chapters, Parts, Divisions and Subdivisions of this Act;
 - (b) *Guides;
 - (c) the headings to the sections and subsections of this Act;
 - (d) the headings for groups of sections of this Act (group headings);
 - (e) the notes and examples (however described) that follow provisions of this Act.
- (2) The asterisks used to identify defined terms form part of this Act. However, if a term is not identified by an asterisk, disregard that fact in deciding whether or not to apply to that term a definition or other interpretation provision.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

1 **105-5 What does not form part of this Act**

2 These do not form part of this Act:

- 3 (a) footnotes and endnotes;
4 (b) Tables of Subdivisions;
5 (c) Tables of sections.

6 **105-10 Guides, and their role in interpreting this Act**

7 (1) A *Guide* consists of:

- 8 (a) sections under a heading indicating that what follows is a
9 Guide to a particular Subdivision, Division etc.; or
10 (b) a Subdivision, Division or Part that is identified as a Guide
11 by a provision in the Subdivision, Division or Part.

12 (2) *Guides form part of this Act, but they are kept separate from the
13 operative provisions. In interpreting an operative provision, a
14 Guide may only be considered:

- 15 (a) in determining the purpose or object underlying the
16 provision; or
17 (b) to confirm that the provision's meaning is the ordinary
18 meaning conveyed by its text, taking into account its context
19 in the Act and the purpose or object underlying the provision;
20 or
21 (c) in determining the provision's meaning if the provision is
22 ambiguous or obscure; or
23 (d) in determining the provision's meaning if the ordinary
24 meaning conveyed by its text, taking into account its context
25 in the Act and the purpose or object underlying the provision,
26 leads to a result that is manifestly absurd or is unreasonable.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

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2 **Part 5-3—Dictionary**

3 **Division 110—Dictionary**

4 **Table of Subdivisions**

5 110-A Dictionary

6 **Subdivision 110-A—Dictionary**

7 **Table of Sections**

8 110-5 Dictionary

9 **110-5 Dictionary**

10 In this Act:

11 *adjustment* has the meaning given by section 195-1 of the *GST
12 Act.

13 *amount* includes a nil amount.

14 *approved form* has the meaning given by section 388-50 in
15 Schedule 1 to the *Taxation Administration Act 1953*.

16 *Australia* has the meaning given by section 195-1 of the *GST Act.

17 *carrying on* an *enterprise has the meaning given by section 195-1
18 of the *GST Act.

19 *Commissioner* means the Commissioner of Taxation.

20 Note: The office of Commissioner of Taxation is created by section 4 of the
21 *Taxation Administration Act 1953*.

22 *creditable acquisition* has the meaning given by section 195-1 of
23 the *GST Act.

24 *creditable importation* has the meaning given by section 195-1 of
25 the *GST Act.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

- 1 **decreasing adjustment** has the meaning given by section 195-1 of
2 the *GST Act.
- 3 **decreasing fuel tax adjustment** has the meaning given by:
4 (a) section 44-5 and subsection 45-5(2) of this Act; and
5 (b) item 9 of Schedule 3 to the *Fuel Tax (Consequential and*
6 *Transitional Provisions) Act 2006*.
- 7 **effective fuel tax** has the meaning given by section 43-5.
- 8 **enterprise** has the meaning given by section 9-20 of the *GST Act.
- 9 **entity** has the meaning given by section 184-1 of the *GST Act.
- 10 **Environment Minister** means the Minister who administers the
11 *Environment Protection and Biodiversity Conservation Act 1999*.
- 12 **Environment Secretary** has the meaning given by section 995-1 of
13 the *Income Tax Assessment Act 1997*.
- 14 **Finance Minister** has the meaning given by section 195-1 of the
15 *GST Act.
- 16 **financial year** has the meaning given by section 195-1 of the *GST
17 Act.
- 18 **fuel tax** means duty that is payable on fuel under:
19 (a) the *Excise Act 1901* and the *Excise Tariff Act 1921*; or
20 (b) the *Customs Act 1901* and the *Customs Tariff Act 1995*;
21 other than any duty that is expressed as a percentage of the value of
22 fuel for the purposes of section 9 of the *Customs Tariff Act 1995*.
- 23 **fuel tax adjustment** means an *increasing fuel tax adjustment or a
24 *decreasing fuel tax adjustment.
- 25 **fuel tax benefit** has the meaning given by section 75-10.
- 26 **fuel tax credit** means an entitlement arising under section 41-5,
27 41-10 or 42-5.
- 28 **fuel tax disadvantage** has the meaning given by section 75-45.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

- 1 ***fuel tax law*** means:
2 (a) this Act; and
3 (b) the *Fuel Tax (Consequential and Transitional Provisions)*
4 *Act 2006*; and
5 (c) the *Taxation Administration Act 1953*, so far as it relates to
6 any Act covered by paragraphs (a) and (b); and
7 (d) any other Act, so far as it relates to any Act covered by
8 paragraphs (a) to (c) (or to so much of that Act as is covered);
9 and
10 (e) regulations under any Act, so far as they relate to any Act
11 covered by paragraphs (a) to (d) (or to so much of that Act as
12 is covered).
- 13 ***fuel tax return period*** has the meaning given by section 61-20.
- 14 ***government entity*** has the meaning given by section 41 of the *A*
15 *New Tax System (Australian Business Number) Act 1999*.
- 16 ***Greenhouse Challenge Plus Programme*** has the meaning given
17 by section 45-5.
- 18 ***GST Act*** means the *A New Tax System (Goods and Services Tax)*
19 *Act 1999*.
- 20 ***GST branch*** has the meaning given by section 54-5 of the *GST
21 Act.
- 22 ***GST group*** has the meaning given by section 48-5 of the *GST
23 Act.
- 24 ***GST instalment*** has the meaning given by subsection 162-70(1) of
25 the *GST Act.
- 26 ***GST instalment payer*** has the meaning given by section 162-50 of
27 the *GST Act.
- 28 ***GST instalment quarter*** has the meaning given by subsections
29 162-70(2) and (3) of the *GST Act.
- 30 ***GST joint venture*** has the meaning given by section 51-5 of the
31 *GST Act.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 110-5

- 1 ***GST law*** has the meaning given by section 195-1 of the *GST Act.
- 2 ***GST return*** has the meaning given by section 195-1 of the *GST
3 Act.
- 4 ***Guide*** has the meaning given by section 105-10.
- 5 ***incapacitated entity*** has the meaning given by section 195-1 of the
6 *GST Act.
- 7 ***increasing adjustment*** has the meaning given by section 195-1 of
8 the *GST Act.
- 9 ***increasing fuel tax adjustment*** has the meaning given by
10 sections 44-5 and 44-10.
- 11 ***input tax credit*** has the meaning given by section 195-1 of the
12 *GST Act.
- 13 ***input taxed*** has the meaning given by section 195-1 of the *GST
14 Act.
- 15 ***joint venture operator*** has the meaning given by section 195-1 of
16 the *GST Act.
- 17 ***motor vehicle*** has the meaning given by section 995-1 of the
18 *Income Tax Assessment Act 1997*.
- 19 ***net amount*** has the meaning given by section 195-1 of the *GST
20 Act.
- 21 ***net fuel amount*** has the meaning given by section 60-5.
- 22 ***participant*** has the meaning given by section 195-1 of the *GST
23 Act.
- 24 ***primary production business*** has the meaning given by subsection
25 995-1(1) of the *Income Tax Assessment Act 1997*.
- 26 ***registered for GST*** has the meaning given to ***registered*** by
27 section 195-1 of the *GST Act.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 110-5

- 1 **religious practitioner** has the meaning given by section 195-1 of
2 the *GST Act.
- 3 **required to be registered for GST** has the meaning given to
4 **required to be registered** by section 195-1 of the *GST Act.
- 5 **resident agent** has the meaning given by section 195-1 of the *GST
6 Act.
- 7 **scheme** has the meaning given by subsection 165-10(2) of the
8 *GST Act.
- 9 **taxable fuel** means fuel in respect of which duty is payable under:
10 (a) the *Excise Act 1901* and the *Excise Tariff Act 1921*; or
11 (b) the *Customs Act 1901* and the *Customs Tariff Act 1995*;
12 but does not include fuel covered by:
13 (c) item 15 or 17 of the Schedule to the *Excise Tariff Act 1921*;
14 or
15 (d) any imported goods that would be classified to item 15 of the
16 Schedule to the *Excise Tariff Act 1921*, if the goods had been
17 manufactured in Australia.
- 18 Note: Item 15 of the Schedule to the *Excise Tariff Act 1921* deals with
19 certain petroleum based oils and greases. Item 17 of that Schedule
20 deals with certain stabilised crude petroleum oils.
- 21 **taxable supply** has the meaning given by section 195-1 of the
22 *GST Act.
- 23 **tax period** has the meaning given by section 195-1 of the *GST
24 Act.
- 25 **Transport Department** means the Department administered by the
26 *Transport Minister.
- 27 **Transport Minister** means the Minister who administers the *Motor*
28 *Vehicle Standards Act 1989*.
- 29 **Transport Secretary** means the Secretary of the *Transport
30 Department.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.

Section 110-5

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untaxable Commonwealth entity has the meaning given to
Commonwealth entity by section 177-1 of the *GST Act.

you: if a provision of this Act uses the expression ***you***, it applies to
entities generally, unless its application is expressly limited.

Note: The expression ***you*** is not used in provisions that apply only to entities
that are not individuals.

*To find definitions of asterisked terms, see the Dictionary at section 110-5.
