ShineWing AUSTRALIA
Advisors & Accountants

Take the lead

Fuel Tax Credits and Indirect Tax Claims

Toll Road Full Federal Court decision handed down

The decision of the Full Federal Court in Linfox Australia Pty Ltd v Commissioner of Taxation (2019) FCAFC 131 (the Toll Road case) has now been handed down.

The case is important for business fuel users in Australia as it deals directly with the meaning of "public road" in the context of the Fuel Tax Act. It also deals with the so called 4 year rule within which claims are to be made.

Issue 1 - Public Roads

So what is a public road and why is it important?

Under the Fuel Tax Act, a business is generally entitled to a Fuel Tax Credit for the Fuel Tax (i.e. excise) embedded in the price of the fuel. There are, however, disentitlement provisions that apply to fuel used travelling on a "public road".

The Toll Roads case concerned whether a toll road operated by a private operator is a "public road" within the meaning of the Fuel Tax Act.

The Court concluded that the toll roads are public roads.

So what does this mean?

The most determinative factor in whether or not a road is a public road is the entitlement of the public as a right to use the road. While this case has been a win for the Commissioner, it will be interesting to see how wide the ATO considers this decision extends when a Decision Impact Statement is released, and whether it specifically refers to other 'roads' and activities thereon. It also highlights the need for a robust approach to Fuel Tax Credits, in particular when dealing with issues of apportionment.

Issue 2 – 4 year rule

An important secondary issue in the context of the Toll Roads case is whether the so-called 4 year cap on retrospective claims would have applied. This has broader indirect tax implications.

In particular whether an amount had been "taken into account", in a potential claim during the 4 years after the day on which a return on which the credit would be attributable.

The ATO argued that the taxpayer had not "taken into account" the additional credits because they had not been claimed in its BAS within 4 years. The Court rejected this view in deciding the amount in question had been "taken into account" "by reason of it having formed part of a calculation (the process) which produced the net amount recorded in a taxpayer's BAS".

In practical terms, this appears to suggest that if an amount was included in the FTC/BAS workpapers, then it will be regarded as having been taken into account even if it is not included on the BAS. Conversely, an amount that did not form part of the calculation process and was not included on the BAS would not be regarded as having been taken into account.

This is at odds with the current ATO view so the ATO response will be interesting to observe. Given the often very significant amounts of indirect tax (FTC or GST) at stake when dealing retrospectively, this issue is one that requires particular care.

Get in touch

Our experts can assist with further information.

Andrew Nutman
Associate Director, Tax
T +61 3 8635 1981
E anutman@shinewing.com.au

David Wilson
Associate Director, Tax
T +61 7 3085 0809
E dwilson@shinewing.com.au