

Fuel Tax Credits

Toll Road Full Federal Court Decision Impact Statement

The Australian Taxation Office (ATO) has published the Decision Impact Statement (DIS) on Linfox Australia Pty Ltd v Commissioner of Taxation (2019) FCAFC 131 (the Toll Road case).

On the primary issue decided, the DIS states “The Full Court decision confirms the ATO view that a ‘public road’ is a road that is available for use, or generally accessible as of right, by members of the public”.

The other key issue addressed by the Court concerned the time limit for refunds. The Commissioner has accepted the Court’s conclusions in relation to ‘the 4 year rule’, however has noted that the Court’s decision was based on the particular facts of the case and does not extend to situations where no credit has been claimed in respect of a particular fuel acquisition.

There is other current litigation underway that should address broader factual situations, the outcome of which will be viewed with interest.

In respect of passenger air-conditioning, the DIS states that “The Full Federal Court was not asked to consider the Tribunal’s conclusion in respect of cabin air-conditioning, and accordingly the Tribunal’s decision was not challenged and now stands”.

As a consequence, in addition to maintaining its view that fuel used in passenger air-conditioning units is ineligible for a full Fuel Tax Credit, the

Commissioner is now reconsidering if Fuel Tax Credits for fuel used to power other passenger air-conditioning units (for example in commercial buses) should also be restricted.

Importantly, the Commissioner is also reconsidering if Fuel Tax Credits for fuel used to power other forms of auxiliary equipment should be reduced.

This has the potential to impact many businesses who are currently claiming full Fuel Tax Credits for fuel used to power auxiliary equipment such as cement mixers, elevated work platforms, waste removal, cranes, drilling, pumping, lifting etc.

Although the final position to be adopted by the ATO will not be made clear until after consultation, what is clear is that it is likely to be less favourable for businesses than the current position.

As any change in ATO view should take effect prospectively from the date FTR2008/1 and PCG2016/11 are amended, it would be prudent for businesses to ensure any additional or retrospective claims are made sooner rather than later.



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