Submission to:	Australian Taxation Office
Title:	Draft addendum to FTR 2008/1 and related issues
Date:	22 February 2013

AUSTRALIAN TRUCKING ASSOCIATION

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About the Australian Trucking Association

The Australian Trucking Association is the peak body representing trucking operators. The ATA's direct members include state and sector trucking associations, some of Australia's major logistics companies and businesses with leading expertise in truck technology.

In total, the ATA represents many thousands of trucking businesses, both large and small.

Summary

In *Linfox Australia Pty Ltd v Commissioner of Taxation*, the Administrative Appeals Tribunal ruled that the fuel used in the refrigeration units of refrigerated trailers is not subject to the 25.5 cents per litre road user charge.

The ATO has responded to the decision by drafting amendments to its key fuel tax credits ruling (FTR 2008/1) for industry comment.

This submission draws on a survey of 34 affected businesses to recommend changes to the draft amendments, as well as changes to the guidance on record keeping and substantiation in the ATO's fuel tax credits guide and internal administrative documents.

The most important ambiguity in FTR2008/1 is the application of the carbon charge to the fuel used in a truck or its auxiliary equipment when it is not on a public road.

In the ATA's view, none of the fuel used by the heavy on-road transport industry, including fuel used off-road for incidental purposes, should be subject to the carbon charge under the existing legislation.

The ATA's view is based on commercial practice in the trucking industry, and also on the Government's policy intent when it introduced its Clean Energy Legislative Package. The submission demonstrates that Government's intent was to exempt the trucking industry as a whole from the carbon charge until mid-2014, not just the fuel it uses on public roads.

Many long distance trucks with sleeper cabs are fitted with sleeper cab air conditioners: small units that operate while a truck is stationary, the truck engine is off and the driver is resting. Some models run off an auxiliary diesel engine.

The submission argues that the fuel used to operate sleeper cab air conditioners is not 'for travelling' and should not be subject to the road user charge. This would enable trucking operators to claim up to $300 in additional fuel tax credits per truck per year.

To claim fuel tax credits, businesses need to substantiate their fuel use. *Linfox* raises substantiation issues for businesses that need to show the amount of fuel used in their auxiliary equipment, and particularly for businesses with equipment that takes power from the main engines of their trucks, such as many cement mixers and waste industry vehicles.

The submission argues that the ATO guidance material should make it clear that businesses can calculate the average hourly fuel consumption of power take off equipment by using tests or estimates based on established engineering procedures.

In addition, it argues that the ATO should work with the trucking industry and industry associations to develop a schedule of standard percentages that businesses could use as a safe harbour to calculate the fuel used in their power take off equipment. This approach is used in a number of states in the USA and Canada; it would be straightforward for both trucking businesses and the tax office.

The submission argues that the ATO should update its guidance material to reflect the current approaches used by trucking businesses to measure the hours of operation of their equipment, including the use of hour meters, PTO meters, engine monitoring systems, GPS based vehicle tracking systems and business records such as job sheets, cargo manifests and driver work diaries. These approaches can be used now under the 'fair and reasonable' principle, but the guidance material should include them as up to date examples of how businesses can comply.

Recommendations

Recommendation 1

The ATO should amend FTR 2008/1DA4 or issue a separate ruling to cover the application of the carbon charge to the fuel used off-road in auxiliary equipment. In its ruling, the ATO should find that none of the fuel used by the heavy on-road transport industry, including fuel used off-road for incidental purposes, is subject to the carbon charge under the existing legislation.

Recommendation 2

The ATO should amend FTR 2008/1DA4 so proposed section 23B of FTR2008/1 makes it clear that the fuel used to power a separate sleeper cab air conditioner is not subject to the road user charge.

Recommendation 3

The ATO should amend FTR2008/1DA4 to add an additional example to FTR2008/1 as follows:

> **Example 9B: fuel that is not 'for travel' on a public road**
>
> 43B. A long distance truck is fitted with a sleeper cab where the driver can take rest breaks as required by law. The sleeper cab is cooled by an air conditioner powered by an auxiliary diesel engine that draws fuel from the tank that supplies the truck's main engine. The fuel that powers the sleeper cab air conditioner is not 'for travelling.' The fuel is used for the purpose of cooling the sleeper cab while the truck is stationary with its main engine off. The design of the sleeper cab air conditioner is not determinative.

Recommendation 4

The ATO should amend the fuel tax credits guide and PS LA 2010/3 to make it clear that businesses can calculate the average hourly fuel consumption of their PTO equipment by using tests or estimates based on established engineering procedures.

Recommendation 5

The ATO should work with the trucking industry and industry associations to develop a schedule of standard percentages that businesses could use as a safe harbour to apportion the fuel used in their PTO equipment.

Recommendation 6

The ATO should update the fuel tax credits guide and PS LA 2010/3 to include the following ways of measuring the hours of operation of equipment: hour meters, PTO meters, engine monitoring systems, GPS based vehicle tracking systems and business records such as job sheets, cargo manifests and driver work diaries. The guide and PS LA 2010/3 should continue to stress that the list is not exhaustive and that other appropriate ways of measuring operating hours may be used.

1. Introduction

In *Linfox Australia Pty Ltd v Commissioner of Taxation*[1], the Administrative Appeals Tribunal ruled that the fuel used in the refrigeration units of refrigerated trailers is not subject to the road user charge.

The ATO has responded to the decision by drafting amendments (designated as FTR 2008/1DA4) to its fuel tax credits ruling (FTR2008/1) for industry comment.

Under the ATO's planned approach, the road user charge would apply to the fuel used in heavy vehicles for propulsion and aspects of the vehicle's function and operation that are for the purposes of travelling on a public road. This would include fuel used for stopping and idling while stationary in the course of a journey as well as the use of lights, brakes, power-steering, windscreen wipers and aiding passenger comfort through heating and air-conditioning systems.[2]

It follows that the fuel used in auxiliary equipment would not be subject to the charge. According to the draft addendum, the location of the relevant machinery, source of the fuel, or design of the engine would not be determinative when considering whether the fuel used in auxiliary equipment was subject to the charge.[3]

As a result, the fuel used in the auxiliary equipment could come from a separate tank (as in *Linfox*) or the same tank as the main engine. The auxiliary equipment could be powered by a separate diesel engine or a direct power take off from the truck's main engine.

This approach would have significant implications for businesses that use truck mounted auxiliary equipment, as table 1 shows.

Table 1: fuel tax credit rates as at February 2013

	Fuel tax credit rate (cents per litre)
Fuel used for travelling on a public road	12.643
Fuel used in auxiliary equipment	38.143

The ATA generally supports the ATO's response to *Linfox* and FTR 2008/1DA4. This submission recommends amendments to the draft addendum, as well as amendments to the record keeping and apportionment guidance in *Fuel tax credits – keeping records and claiming eligible quantities*[4] and PS LA 2010/3.

In doing this, the submission answers four questions:

- what is the scope of the equipment covered by *Linfox*, and what journeys do trucks fitted with this equipment typically undertake (section 2)?
- do those journeys raise issues for either FTR 2008/1DA4 or the application of the carbon charge (section 3)?
- are there any types of equipment that are not adequately covered by FTR 2008/1DA4 (section 4)?
- how can businesses fairly and reasonably substantiate their use of fuel in auxiliary equipment (section 5)?

[1] *Linfox Australia Pty Ltd v Commissioner of Taxation* [2012] AATA 517.
[2] FTR 2008/1DA4, cl 5, proposed para 23B.
[3] ibid, cl 5, proposed para 23D.
[4] Australian Taxation Office, *Fuel tax credits – keeping records and claiming eligible quantities*, NAT 15230-08.2012.

2. Evidence from trucking businesses

To support the development of this submission, the ATA circulated a questionnaire to trucking businesses through its member associations. The questionnaire (attachment A) asked the businesses to provide detailed responses to 12 technical and financial questions. Because of the sensitivity of the questions, the ATA assured businesses their responses would be treated in confidence and would be rounded and de-identified before use.

The ATA received completed questionnaires from 34 businesses, including firms operating refrigerated vehicles, cement agitators, container side lifters and waste vehicles. Table 2 summarises the responding businesses by their industry sector.

Table 2: responding businesses by industry sector

	Number	Per cent*
Refrigerated transport	15	44
Construction	4	12
Bulk tanker	4	12
Waste/environmental services	4	12
Container	3	9
General freight	4	12
Total	34	100

*Percentages may not sum to 100 per cent due to rounding.

The table in attachment B sets out the details of the vehicles with auxiliary equipment operated by the responding businesses. The table categorises the equipment according to its power source and fuel supply:

- Power take off (PTO) from main engine
- Separate diesel engine connected to the main fuel tanks of the truck
- Separate diesel engine connected to a separate fuel tank
- The 12/24VAC power supply of the truck.

It should be noted that some vehicle types appear in more than one category. For example, the mixer bowls of some cement agitator trucks are powered through a PTO. Others run off a separate diesel engine.

The table also draws on the survey results to show how businesses use the vehicles and the typical journeys they undertake.

3. Application of the carbon charge

FTR2008/1DA4 does not address the most important ambiguity in FTR2008/1: the application of the carbon charge to fuel used in a truck or its auxiliary equipment when it is not on a public road.

The Australian Parliament enacted the carbon charge on transport fuel as part of the Government's Clean Energy Legislative Package. The carbon charge is imposed as a reduction in the fuel tax credits that businesses can claim. The reduction amount is determined by the energy content of the fuel and the carbon price.[5]

[5] Clean Energy (Fuel Tax Legislation Amendment) Bill 2011, explanatory memorandum, [1.16]-[1.25].

As a result of the amendments in the package, s43-8(4) of the *Fuel Tax Act 2006* provides that:

> The *amount of carbon reduction that applies to the fuel is nil to the extent that:
> (a) the fuel is *covered by the Opt-in Scheme; or
> (b) you acquire, manufacture or import the fuel for use in:
> (i) *agriculture; or
> (ii) *fishing operations; or
> (iii) *forestry; or
> (c) you acquire, manufacture or import the fuel for use in a vehicle with a gross vehicle mass of more than 4.5 tonnes travelling on a public road; or
> (d) you acquire, manufacture or import the fuel for use otherwise than by combustion of the fuel.

There are two possible ways of interpreting s43-8(4)(c). Either:

(a) the nil carbon reduction only applies to the fuel used while a heavy vehicle is travelling on a public road; or
(b) the nil carbon reduction applies to all the fuel used in a heavy vehicle used for road transport, including the fuel used off road as an ordinary part of its on-road travelling, such as fuel used while loading, unloading or waiting.

If interpretation (a) is correct, the fuel used in auxiliary equipment while a vehicle is not 'travelling on a public road' would be subject to the carbon charge.

The ATO has not yet ruled on how to interpret s43-8(4)(c). In the ATA's view, however, the only sensible way to interpret it is (b).

3.1 Interpreting 'travelling on a public road'

FTR 2008/1DA4 proposes to define 'travelling on a public road' as follows:

> 16. Travel or travelling on a public road includes all the ordinary incidents of a journey undertaken by a vehicle, including stopping and idling while stationary in the course of a journey.[6]

As *Linfox* and attachment B show, the ordinary incidents of a journey undertaken by the trucking industry can include:

- operating auxiliary equipment to 'pull down' the temperature of a refrigerated trailer[7]
- loading and unloading, both on public roads and off road
- waiting (sometimes for an extended period) for a loading or unloading slot. During this time, the vehicle's auxiliary equipment may need to operate
- in the case of a powered trailer, waiting for a prime mover as part of a shuttle operation or while a vehicle with multiple trailers is broken apart and the trailers towed to different destinations or
- stopping for rest and meal breaks.

These activities are ordinary, incidental and essential parts of undertaking a trucking journey.

It would be consistent with this commercial reality for the ATO to interpret 'travelling on a public road' in s43-8(4)(c) to include these incidental activities. It would also be consistent with Parliament's approach to incidental use in the former *Energy Grants (Credits) Scheme Act*.[8]

The ATA's interpretation is supported by the Government's policy intent when it developed the Clean Energy Legislative Package.

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[6] FTR 2008/1DA4, cl 3.
[7] *Linfox*, [19]
[8] *Energy Grants (Credits) Scheme Act 2003*, s 8.

3.2 The Government's policy intent

In the Explanatory Memorandum on the Clean Energy (Fuel Tax Legislation Amendment) Bill 2011, the Government stated that:

> No FTC [fuel tax credit] reductions will be made to heavy on-road transport industries during 2012-13 or 2013-14. It is the Government's intention that separate arrangements will be made so that heavy on-road transport will become liable for a carbon charge after 30 June 2014.[9]

Similarly, the Minister for Climate Change and Energy Efficiency, Greg Combet, said in his second reading speech on the Bill that:

> The heavy on-road, agricultural, forestry and fishing industries will be exempted from the carbon reduction to their fuel tax credit entitlements.[10]

Clearly, the Government's policy intent was to exempt the heavy on-road transport *industry* from the carbon charge, not just the fuel it uses for its activities on public roads.

Recommendation 1

The ATO should amend FTR 2008/1DA4 or issue a separate ruling to cover the application of the carbon charge to the fuel used off-road in auxiliary equipment. In its ruling, the ATO should find that none of the fuel used by the heavy on-road transport industry, including fuel used off-road for incidental purposes, is subject to the carbon charge under the existing legislation.

4. Sleeper cab air conditioners

FTR 2008/1DA4 proposes that the definition of fuel used for travelling (and therefore subject to the road user charge) should include fuel used for 'aiding passenger comfort through heating and air-conditioning systems.'[11]

The ATA agrees that the fuel used to operate the main heating/air conditioning system of a vehicle while it is moving or idling is fuel used for travelling. It is therefore appropriately subject to the road user charge.

There is a strong argument, though, that the fuel used to operate sleeper cab air conditioners is not 'for travelling' and should not be subject to the charge.

A sleeper cab air conditioner is a small air conditioning unit fitted to a truck's sleeper cab. The unit operates while the truck is stationary, the truck engine is off and the driver is resting. The drivers of heavy vehicles weighing more than 12 tonnes are required to take rest breaks on a set schedule. For a driver on standard hours, this includes a rest break of at least seven continuous hours every 24 hours, which can be taken in a sleeper cab.[12]

As attachment B shows, some sleeper cab air conditioners use a small diesel engine that draws fuel from a truck's main fuel tanks. These units burn about 0.7 litres of fuel per hour. With an inverter fitted, they can also supply 240V AC power to the sleeper cab for amenities such as a microwave oven, an LCD TV or a sleep apnoea machine.

Other models of sleeper cab air conditioner run off a truck's 12/24V DC power supply

In the ATA's view, the fuel used to operate a sleeper cab air-conditioner is not acquired for the object or purpose of travelling on a public road. It is acquired to regulate the temperature of the sleeper cab while a vehicle is stationary with its main engine off.

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[9] Clean Energy (Fuel Tax Legislation Amendment) Bill 2011, explanatory memorandum, para 1.7.
[10] House of Representatives, *Debates,* 13 September 2011, p9862.
[11] FTR 2008/1DA4, cl 5, proposed section 23B.
[12] For more information about the driver work and rest hour requirements, visit www.nhvr.gov.au.

In any case, at least some of the fuel used to operate a diesel-powered sleeper cab air conditioner is actually used for electricity generation. In these units, the diesel engine is coupled mechanically to the compressor, but also generates electricity through an alternator to power the fans. A business is entitled to a full fuel tax credit for electricity generation under s41-5 of the *Fuel Tax Act 2006*.

The fuel used to operate a sleeper cab air-conditioner should not be subject to the carbon charge. Because truck rest areas are part of the road system, the fuel use would occur 'while travelling on a public road' within the meaning of s43-8(4)(c).

Exempting the fuel used in sleeper cab air-conditioners from the road user charge would enable trucking operators to claim up to $300 in additional fuel tax credits per truck per year.

Recommendation 2

The ATO should amend FTR 2008/1DA4 so proposed section 23B of FTR2008/1 makes it clear that the fuel used to power a separate sleeper cab air conditioner is not subject to the road user charge.

Recommendation 3

The ATO should amend FTR2008/1DA4 to add an additional example to FTR2008/1 as follows:

> **Example 9B: fuel that is not 'for travel' on a public road**
>
> 43B. A long distance truck is fitted with a sleeper cab where the driver can take rest breaks as required by law. The sleeper cab is cooled by an air conditioner powered by an auxiliary diesel engine that draws fuel from the tank that supplies the truck's main engine. The fuel that powers the sleeper cab air conditioner is not 'for travelling.' The fuel is used for the purpose of cooling the sleeper cab while the truck is stationary with the engine off. The design of the sleeper cab air conditioner is not determinative.

5. Apportionment

For the purposes of claiming fuel tax credits, including at multiple rates, the ATO allows businesses to use any apportionment method that is considered fair and reasonable in their circumstances.[13]

The ATO recognises four commonly used methods for apportionment:

- **constructive method** (adding up the eligible quantities of fuel at the same rate)
- **deductive method** (subtracting ineligible fuel from total fuel purchases)
- **percentage use method** (determining a reliable percentage of eligible fuel use over a sample period and applying it to a number of tax periods)
- **estimated use method** (making a fair and reasonable estimate of the quantity of fuel acquired).[14]

Businesses can use any appropriate, reliable measure as the basis for working out their eligible quantities of fuel, including:

- odometer readings of kilometres actually travelled
- route distances if a vehicle travels on fixed routes
- hours of operation for vehicles or equipment
- average hourly fuel consumption for vehicles or equipment.[15]

Businesses with many vehicles or pieces of equipment can use statistically valid sampling techniques as part of any method they use.[16]

[13] Australian Taxation Office, FTD 2010/1, [7].
[14] Australian Taxation Office, *Fuel tax credits*, p4.
[15] ibid, p4.
[16] ibid, p9

Questions 7-12 of the ATA survey asked businesses to explain how they planned to work out the fuel used by their auxiliary equipment. Table 3 summarises the results:

Table 3: working out the fuel used in auxiliary equipment

	Number	Per cent*
Detailed record of all fuel used	11	32
Deductive method: subtracting fuel used for travel from total fuel purchases	3	9
Hourly fuel consumption	13	38
Percentage use	1	3
Not sure or under investigation	6	18
Total	34	100

*Percentages may not sum to 100 per cent due to rounding.

5.1 Keeping a detailed record of all fuel used

32 per cent of the operators surveyed said their business systems would enable them to keep an exact record of the fuel used in their auxiliary equipment. All their auxiliary equipment was powered by separate diesel engines with separate fuel tanks:

> *We would obtain separate fuel cards for all on road auxiliary equipment. There would be a small cost of $2.20 per card per month; we would then separate the data on a spreadsheet to claim the fuel tax rebate.*
>
> [Container sideloader operator, Victoria]

> *We have a fuel system attached to our bulk diesel tank on site at three of our depots. A tag and PIN number is required to unlock the pumps and each transaction is recorded against the unit number with reference to the driver.*
>
> [Refrigerated transport operator, Queensland]

In the ATA's view, the fuel tax credits guide and PS LA 2010/3 already provide adequate guidance to businesses that choose to use this method.

Some businesses that use auxiliary equipment with separate tanks felt that attempting to record the fuel purchased for use in those tanks would understate their auxiliary fuel use.

Their point of view was summed up by one refrigerated transport business:

> *We have assigned different fuel account numbers to each of our trucks and trailers and encourage our drivers to use them, so we can track the exact amount of fuel used in each of our vehicles. The problem is that it is not realistic to expect drivers to do this 100 per cent of the time, particularly at busy service stations. For example, the driver of a refrigerated B-double would need to:*
>
> - *fill the prime mover tanks*
> - *pay at the console with one account number*
> - *move the combination forward*
> - *fill the A-trailer tank*
> - *pay at the console with a second account number*
> - *move the combination forward*
> - *fill the B-trailer tank and then finally*
> - *pay at the console with a third account number.*
>
> *This is the reason we decided to calculate the fuel we used for refrigeration by obtaining the average fuel consumption figures for our units from our equipment supplier and multiplying it by the daily usage of our units.*
>
> [Refrigerated transport operator, NSW]

5.2 Using average hourly fuel consumption

The fuel tax credits guide and PS LA 2010/3 envisage that businesses would establish the average hourly fuel consumption of their equipment by either:

- keeping records of their fuel use and their equipment operating times during an appropriate sample period;[17] or
- using manufacturer's specifications if they are suitable for the business's circumstances.[18]

Questions 9 and 10 of the ATA survey asked businesses to specify how they would determine the fuel consumption of their equipment.

Table 4: measuring average fuel consumption

	Number	Per cent*
Fuel consumption records for own equipment	1	8
Manufacturer's specifications	9	69
No specifications available	3	23
Total	13	100

*Percentages may not sum to 100 per cent due to rounding.

It is clear from the table that the two specific approaches set out in the guidance material are not relevant for some trucking businesses.

It is a problem that particularly affects businesses with PTO equipment. These operators may not be able to keep records of the fuel used in their PTO equipment over a sample period, because it is powered from the truck's main engine. They may not be able to turn to the manufacturer's specifications, because in some cases they do not exist.

[17] ibid, p8. Example 6 in the guide suggests the use of a typical 12 week sample period.
[18] ibid, p8.

As one waste industry operator told the ATA:

> *There are no manufacturer's specifications about the fuel consumption of our equipment available because all our equipment is custom made and is different from the truck manufacturers.*
>
> [Waste industry operator, Victoria]

In these circumstances, operators with modern truck engines may be able to extract the fuel consumption information they need from their computerised engine management systems, but it needs to be remembered that the average age of a heavy rigid truck in Australia is 15.6 years. Almost 45 per cent of the heavy rigid truck fleet was manufactured before 1996.[19] The operators of these vehicles need other, clearly defined, options.

Testing fuel consumption using established engineering procedures

There are established engineering procedures for calculating the fuel consumption of PTO equipment. The ATO has previously issued private rulings to businesses confirming that they can use these procedures as the basis for calculating their use of eligible fuel.

To ensure that businesses are aware of all their options for calculating the hourly fuel consumption of their PTO equipment, the guidance material should be amended to make it clear that they can also base their calculations on tests or estimates carried out using established engineering procedures.

Recommendation 4

The ATO should amend the fuel tax credits guide and PS LA 2010/3 to make it clear that businesses can calculate the average hourly fuel consumption of their PTO equipment by using tests or estimates based on established engineering procedures.

Providing standard percentages for PTO fuel consumption

A number of US and Canadian states provide businesses with a tax refund for the fuel used in their PTO equipment. One of the options for claiming the refund is typically to base it on a government determined percentage of the total amount of fuel used in the PTO equipped vehicle. The percentages vary according to the equipment involved and are different from state to state.

This fixed percentage approach was supported by the PTO operators who participated in the ATA survey:

> *A fixed percentage rebate would simplify the claims process and give transport companies certainty regarding record keeping and accepted methodologies ensuring consistency across industry groups.*
>
> [Waste industry operator, Victoria]

If adopted, this approach should be available to operators as a safe harbour alternative to working out the fuel used in their PTO equipment. The schedule of percentages would need to be determined in consultation with Australian operators and industry associations. The American percentages are not directly applicable to Australia because Australian trucking businesses travel different distances and have different operating practices.[20]

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[19] Australian Bureau of Statistics, *Motor Vehicle Census, Australia*, (ABS cat 9309.0) 31 Jan 2012, tables 3 and 9.

[20] For example, the cement industry in the United States typically uses the wet batch process. The cement, aggregate and water for a load of concrete is mixed at the plant and then loaded into a mixer truck for delivery. Australian firms tend to dry batch. The cement, aggregate and water for a load of concrete is mixed in the truck before it leaves the cement plant. As a result, Australian mixer trucks tend to use a greater percentage of fuel to operate their PTO equipment than American ones.

Recommendation 5

The ATO should work with the trucking industry and industry associations to develop a schedule of standard percentages that businesses could use as a safe harbour to apportion the fuel used in their PTO equipment.

5.3 Estimating hours of operation

To use the average hourly fuel consumption measure, businesses need to calculate the hours of operation of their equipment.

PS LA 2010/3 cites job sheet records as the sole example of how businesses can do this,[21] but notes that other measures may be appropriate in an entity's circumstances.[22]

Table 5 sets out the measures that the trucking businesses in the survey propose to use.

Table 5: measuring hours of operation

	Number	Per cent
Hour meter, PTO meter, engine monitoring system or GPS	11	85
Business records, including driver work diaries	2	15
Total	13	100

As an can be seen, they overwhelmingly propose to record the hours of operation of their auxiliary equipment through hour meters, power take off meters or engine monitoring systems.

One business intends to use its GPS vehicle tracking and fleet management system. The systems use satellite technology to track the exact distances travelled by a vehicle, its running hours and its position down to a few metres.

Two of the businesses in the survey plan to work off their business records; specifically, their cargo manifests and driver work diaries. The drivers of heavy vehicles weighing more than 12 tonnes that travel more than 100 kilometres from their base are generally required to keep official work diaries, showing their work hours and when they complied with the statutory rest break requirements. Drivers are required to lodge a copy of each page with their employer. It is an offence to falsify a work diary entry.[23]

All these measures are reliable and would be allowed under the ATO's 'fair and reasonable' principle. Because drivers are required to record their rest breaks, the diaries would in the ATA's view be a fair and reasonable way of substantiating the hours of use of sleeper cab air conditioners (recommendation 2).

To bring the fuel tax credits guide and PS LA 2010/3 into line with current industry practice; however, the ATO should update its guidance material.

Recommendation 6

The ATO should update the fuel tax credits guide and PS LA 2010/3 to include the following ways of measuring the hours of operation of equipment: hour meters, PTO meters, engine monitoring systems, GPS based vehicle tracking systems and business records such as job sheets, cargo manifests and driver work diaries. The guide and PS LA 2010/3 should continue to stress that the list is not exhaustive and that other appropriate ways of measuring operating hours may be used.

[21] PS LA 2010/3, note 33.
[22] PS LA 2010/3, [82].
[23] More information about the driver work diary requirements is available at www.nhvr.gov.au.

Attachment A: fuel tax credits on auxiliary equipment questionnaire

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FUEL TAX CREDITS FOR AUXILIARY EQUIPMENT

Last year, the Administrative Appeals Tribunal ruled that the fuel used to power the refrigeration units in refrigerated trailers is not subject to the road user charge.

The ATO is redrafting its public ruling on fuel tax credits (FTR2008/1) to take the AAT decision into account. The ATO's planned approach is that:

- the road user charge would apply to the fuel used in heavy vehicles for on-road propulsion and travelling generally, including fuel used for stopping and idling while stationary in the course of a journey as well as the use of lights, brakes, power-steering, windscreen wipers and aiding passenger comfort through heating and air-conditioning systems.

- fuel used in auxiliary equipment would not be subject to the charge. The location of the relevant machinery, source of the fuel, or design of the engine would not be relevant when considering whether the fuel used in auxiliary equipment was subject to the charge. For example, the fuel used in the auxiliary equipment could come from a separate tank or the same tank as the main engine. The auxiliary equipment could be powered by a separate diesel engine or a direct power takeoff from the truck's main engine.

The decision has significant implications for businesses that use truck mounted auxiliary equipment. The table below compares the current fuel tax credit rates that would apply:

	Fuel tax credit rate (cents per litre)
Fuel used for travelling on a public road	12.643
Fuel used to power auxiliary equipment **while travelling on a public road** (eg: fuel used to run trailer refrigeration equipment or operate the bin lift and compactor in a rubbish truck)	38.143
Diesel used to power auxiliary equipment when the vehicle is **not travelling on a public road** (eg: fuel used to operate a mobile crane on a worksite)*	31.933

*reduced by the 6.21 cpl carbon tax. The comparable fuel tax credit for petrol would be 32.623 cpl. It is subject to the carbon tax at a lower rate due to its lower energy content.

We would like to get your input to help develop the industry's submission on the ATO's new approach.

This would involve answering some questions about your equipment and asking your chief financial officer, finance manager or accountant to prepare responses to some accounting questions. We would also seek your comments on the draft submission.

If you would like to participate, would you please provide responses to the following questions and send them to Sarah Harber (sarah.harber@truck.net.au) by **Friday 8 February?**

All responses will be treated in confidence and de-identified before they are used. Please contact Bill McKinley or Sarah Harber on (02) 6253 6900 if you have any questions.

Truck/trailer mounted auxiliary equipment used in your business

1. What heavy vehicles or trailers do you operate that are fitted with auxiliary equipment?

   Examples:

   - truck/trailer refrigeration unit
   - rubbish truck with bin lift and compactor
   - truck mounted mixer (eg: concrete, animal feed, pavement materials) .

Response:

2. How is each type of auxiliary equipment powered?

   Examples:

   - direct power takeoff from the main engine (eg: mechanical, hydraulic)
   - separate diesel engine
   - truck electricity supply (eg: 12/24 volt truck system, 240 volt inverter/generator for ancillary power).

Response:

3. Do the main engines of your vehicles need to be running for your auxiliary equipment to operate?

   Please answer for each type of auxiliary equipment you operate.

Response:

4. Does your auxiliary equipment draw fuel from the same tanks as your main vehicle engines, or does it draw fuel from separate tanks?

   Please answer for each type of auxiliary equipment you operate.

Response:

Typical journeys

5. When and where do you use your trucks/trailers fitted with auxiliary equipment?

   Please answer for each type of auxiliary equipment you operate.

   Examples:

   - at all times during the trailer's journey to keep contents cold (a refrigerated trailer)
   - when the truck is travelling on public roads and collecting and compacting household rubbish (a rubbish truck)
   - only when the truck is stationary on a worksite with stabilisers deployed (a mobile crane).

Response:

6. What does a typical journey involve? In the course of a typical journey, do your vehicles spend a material amount of time stationary with auxiliary equipment operating?

   Please answer for each type of auxiliary equipment you operate.

   Examples:

   - travel on public roads from cold stores to supermarkets with stops for statutory rest breaks only (a refrigerated trailer)
   - travel from cement plant to worksite on public roads, then long periods waiting on or off road waiting for cement to be poured (a mixer truck)
   - travel from depot to worksite on public roads. The vehicle is then parked and the drilling rig deployed (a mobile drilling rig).

Response:

Record keeping

7. For the purposes of claiming fuel tax credits, what method do you currently use to record your fuel use?

   Examples:

   - constructive method
   - deductive method
   - percentage use (please outline how you calculate the percentages)
   - estimated use (please outline how you develop your estimates).

Response:

8. Do you currently record or estimate your use of fuel to power truck mounted auxiliary equipment? How do you do this?

   Please answer for each type of auxiliary equipment you operate.

Response:

9. Are reasonably accurate estimates of the fuel consumption of your auxiliary equipment available from their manufacturers?

   Please answer for each type of auxiliary equipment you operate.

Response:

10. Are there affordable ways you could test the fuel consumption of your auxiliary equipment?

Response:

11. Do you record, or could you conveniently record, the number of hours your auxiliary equipment operates?

Response:

12. What method do you consider you should be able to use to substantiate your use of fuel to power your auxiliary equipment? What evidence do you think it would be fair and reasonable for you to keep?

Response:

Attachment B: types of auxiliary equipment and typical journeys

Auxiliary equipment power source and fuel supply	Vehicle	Typical journey/operation
Power takeoff from main engine	Sideloader waste collection vehicle with compactor	Vehicle travels on public roads, collects household rubbish at the kerbside and compacts it while moving. Load is ejected off road at a landfill/recycling depot. Main engine must be running for waste equipment to operate.
	Frontlift waste collection vehicle with compactor	Vehicle travels on public roads to worksites to collect waste. Stationary for 1-2 minutes per collection. Compaction takes place while vehicle is travelling on public roads. Load is ejected off road at a landfill/recycling depot. Main engine must be running for waste equipment to operate.
	Hooklift waste transport vehicle	Vehicle travels on public roads, but spends long periods of time off road loading/unloading and tipping.
	Rear load waste collection vehicle	Vehicle travels on public roads to collection sites (which could be on road or off road). Rear loader only operates at those sites. A hydraulic ram then ejects the load at landfill/recycling depot. Main engine must be running for equipment to operate.
	On site shredding vehicle with shredder and bin lifter	Vehicle travels on public roads to clients' premises, shreds waste onsite and later ejects load at waste facility.
	Waste jetter and vacuum system	Waste jetters and vacuum systems are used to clean sewers and stormwater drains. Vehicle travels on public roads to worksite. Auxiliary equipment only operates when vehicle is stationary with main engine operating. Note that some waste jetter and vacuum system vehicles (for example, the Isuzu 450 and 900) use an auxiliary engine instead. This equipment is typically customised for each customer.
	Tipper	Vehicle travels on public roads to worksite, then hydraulic PTO operates tipper. Main engine must be running for tipper to operate.
	Street/footpath sweeper	Vehicle travels on public roads to worksite (which may also be a public road). Sweeper brushes operate from main engine. The operation of this equipment is already covered by paragraph 23 and example 6 in FTR 2008/1.
	Trailer/rigid gas tanker with gas pump	Vehicle travels from depot to customer site on public roads. Gas pump is operated when vehicle is stationary on site to deliver gas to customer. Main engine of vehicle must be running for pump to operate.

	Prime mover/rigid truck fitted with mobile crane	Vehicle travels from depot to worksite on public roads. Vehicle is then parked and stabilisers deployed to load goods onto the truck or unload goods.
	Concrete agitator truck	Vehicle is loaded at concrete plant and travels on public roads to worksite. Unloading could take up to one hour on site on average. Mixer bowl turns at all times when the vehicle is loaded to prevent concrete from hydrating.
Separate diesel engine fuelled from main tanks of truck	Refrigerated rigid truck	Vehicle is loaded at cold store and travels on public roads to customers' premises.
	Waste jetter and vacuum system	Waste jetters and vacuum systems are used to clean sewers and stormwater drains. Vehicle travels on public roads to worksite. Auxiliary equipment only operates when vehicle is stationary with main engine operating. Note that some waste jetter and vacuum system vehicles (for example, Mercedes equipment) operate off a PTO from the main engine instead. This equipment is typically customised for each customer.
	Sleeper cab air conditioner	Operated during driver rest breaks while main engine is off. Air conditioner draws fuel from the truck's main fuel tanks. It should be noted that other models are powered from the truck's electrical system.
Separate diesel engine fuelled from separate tank	Refrigerated trailer	Trailer is loaded at cold store and travels on public roads to customers' premises. Trailer refrigeration units can operate off road for extended periods; for example, if the vehicle arrives at its destination in the evening and does not have an unloading spot until morning. The units may also need to operate while stationary if they are decoupled as part of a shuttle operation or as a result of breaking apart a combination with multiple trailers.
	Bulk powdered cement tanker	Vehicle travels on public roads to concrete plants. Auxiliary equipment (a compressor) operates only when vehicle is stationary to unload powdered cement.
	Concrete agitator truck	Vehicle is loaded at concrete plant and travels on public roads to worksite. Unloading could take up to one hour on site on average. Mixer bowl turns at all times when the vehicle is loaded to prevent concrete from hydrating.
	Water cart	Vehicle travels on public roads to construction site. Auxiliary equipment (a pump motor) only operates when vehicle is stationary at worksite.
	Liquid waste vacuum tanker collection vehicle	Vehicle travels on public roads to collection and disposal sites. Auxiliary equipment only operates while vehicle is stationary with main engine off.

	Container sideloader	Vehicle travels on public roads to container yard, depot or clients' premises. Sideloading equipment is only operated when vehicle is stationary.
	Tipping skel	Vehicle travels on public roads to container yard, depot or clients' premises.
Truck 12/24V DC electrical supply	Sleeper cab air conditioner	Operated during driver rest breaks while main engine is off. This model draws power from the truck's electrical system. Other models use a small diesel engine/generator that draws fuel from the truck's main tanks.