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Dear Ms August

### **ATA response to draft PS LA 3648 (GA)**

Thank you for the opportunity to comment on draft PS LA 3648 (GA). The ATA has the following comments on the draft:

#### **Recast the draft PS LA as a public ruling**

Law administration practice statements only provide a limited level of protection to taxpayers and do not legally bind the ATO.

As a result, a business that relied on the PS LA, once made, to make a fuel tax credit claim could have to repay those fuel tax credits if the PS LA was later decided to be incorrect. The business would not be liable to pay penalties or interest provided its reliance on the PS LA was reasonable and in good faith.

The ATA considers that businesses should be able to rely on the safe harbour percentages in the draft. Accordingly, the ATA recommends that the tax office should recast it as a public ruling or as an amendment to an existing ruling.

Recasting the draft PS LA would also help ensure that a business could safely rely on the percentages even if there was evidence suggesting it had a lower non-propulsion percentage than the applicable figure in the apportionment table.

#### **Increase the apportionment figure for concrete transit vehicles to 35 per cent**

Item 1 of the auxiliary equipment apportionment table sets the percentage apportionment rate for concrete transit vehicles at 30 per cent.

The figure is in line with the percentage apportionment rate used by a number of North American jurisdictions, including Minnesota (US), Indiana (US) and Ontario (Canada).

As the ATA noted in its February 2013 submission, the Australian cement industry uses different operational practices to the industry in North America.

The cement industry in North America typically uses the wet batch process. The cement, aggregate and water for a load of concrete are 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.

As a result, Australian mixer trucks use a higher percentage of fuel to operate their PTO equipment than American ones. The ATA's consultations suggest the figure is more likely to be in the 36-40 per cent range than 30 per cent.

It would therefore be appropriate to increase the safe harbour apportionment percentage for concrete transit vehicles to 35 per cent.

### **Establish an extra category for high density urban waste management**

Item 4 of the auxiliary equipment apportionment table sets two apportionment rates for the waste industry: 25 per cent for waste collection in urban areas and 10 per cent for non-urban areas.

In urban areas, the key factor that determines a waste collection vehicle's auxiliary fuel consumption is the number of bins it empties. A vehicle that empties many bins per day will use a higher percentage of fuel to power its bin lifters than a vehicle that empties a smaller number of bins.

The ATA's consultations suggest that waste trucks collecting a high density of bins in urban areas could be expected to use more than 35 per cent of their fuel to operate their auxiliary equipment.

Accordingly, the ATA recommends that item 4 be amended as follows:

Item	Vehicle	%	Comment
4	Waste management collection – urban high density (>800 bin lifts per truck per day)	35	Equipment of a vehicle used to lift the garbage bin to deposit contents into the waste collection tray of the vehicle and to compact the contents of the tray. Includes front, rear and side loading and liquid waste vehicles.
	Waste management collection – urban low density (<=800 bin lifts per truck per day)	25	
	Waste management collection – non-urban	10	



## Street sweepers and truck mounted drilling equipment

Paragraph 11 lists the brushing mechanism of a street sweeper as an example of the auxiliary equipment captured by the PS LA.

The tax office has previously ruled (in example 5 in FTR 2008/1 and ATO ID 2009/114) that street sweepers are not travelling on a road for the purposes of the road user charge when their brushes are down. They are engaged in a completely different activity – road maintenance – and claim fuel tax credits at the relevant off-road rate. This means that:

- street sweeper operators can only claim 19.0715 cents per litre in fuel tax credits for fuel used in road maintenance prior to 1 July 2012; and
- they can currently claim only 31.622 cents per litre due to the application of the carbon reduction amount.

The reference to street sweepers in paragraph 11 suggests that a street sweeper operator could apply the *Linfox* apportionment rules and possibly claim some fuel tax credits at 38.143 cents per litre. This interpretation would in the ATA's view be entirely incorrect.

The ATA has similar concerns about the reference in paragraph 11 to truck mounted drilling equipment.

As a result, the ATA recommends that the tax office should clarify paragraph 11 to eliminate the uncertainty, in these instances, about whether to apply the *Linfox* ruling or the off-road fuel tax credit rate.

## ATA contact

The ATA contact for this letter is Bill McKinley, National Manager, Government Relations and Communications, on 02 6253 6900 or [bill.mckinley@truck.net.au](mailto:bill.mckinley@truck.net.au). For more information about the ATA and its members, visit [www.truck.net.au](http://www.truck.net.au).

Yours sincerely



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Chief Executive

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