

To: Australian Taxation Office

**Re: Fuel Tax Credits - Practical Compliance Guidance
PCG2020/Dx and Taxpayer Alert TA 2020/X**

12 October 2020

Introduction

AMEC appreciates the opportunity to comment on the ATO's proposed fuel tax credit practical compliance guidance and taxpayer alert draft documents. The mineral exploration and mining industry and heavily reliant on road transportation and will be impacted by any changes to the current fuel tax credit calculation methods. We welcome opportunities to engage with the ATO to develop practical guidance documents to be utilised by Industry into the future.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 325 member companies across Australia.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people. In 2018/19, these companies collectively paid over \$39 billion in royalties and taxation, invested \$36.1 billion in new capital and generated more than \$283 billion in mineral exports. In 2019/20, \$2.8 billion was spent on minerals exploration, representing an 18% increase from the previous year.

Fuel tax credit documents

General Feedback

AMEC appreciates the ATO's consultation of the draft guideline document and taxpayer alert, intended to reduce incorrect apportionments of fuel tax credits which could result in inadvertent overclaims, and substantial adjustments upon review. Industry welcomes technological advancements such as the use of GPS and telematics technology to more efficiently support their fuel tax credit calculations and claims. The incidence of possibly incorrect claims arising from the use of such technologies creates administrative burden for industry and the Government alike, and AMEC is broadly supportive of measures to mitigate this occurrence.

A competitive tax system is critical to attracting investment to the mining and mineral exploration industry. Recent reporting indicates the diesel excise rebate is worth in excess of \$2 billion per annum to the sector¹. Changes to the calculation and reporting requirements of fuel tax credits are of particular interest to our industry, where it is common for multiple parties to cover transport costs for the same job; the calculations and apportionments are complex often requiring specialist knowledge

¹ <https://www.afr.com/politics/federal/miners-seek-assurances-on-fuel-excise-rebate-20200420-p54lae>

or the assistance of technologies to simplify and support calculations. The Department of Treasury and the Henry Review have previously found the fuel tax credit system to constitute good economic policy, ensuring taxes are not embedded into business inputs.

AMEC understands the need for more clarity and consistency into fuel tax credit claims, but asserts the importance of ensuring any current or near-term reforms of this system are used for their intended purpose, rather than as a potential rebate to pay for the COVID-19 induced budget deficit.

Draft Practical Compliance Guideline

Recommendation: ATO continues to consult with AMEC and industry in the preparation of more Practical Compliance Guidance materials, providing clarity and consistency for industry and Government alike.

The mineral exploration and mining industry present a unique situation where the calculation and application of fuel tax credit rulings can be complex, dependent on up-to-date technological advancements where the simplified method is not suitable.

This is of relevance to the different calculation methodologies for 'on public road' and 'off public road'. Especially in the remote regional areas where mineral activity is generally located, it can be difficult to distinguish between on-or-off public road. Technological advancements, predominantly the use of GPS and telematic technology applications, may not always be updated as quickly as anticipated, which could result in industry inadvertently presenting marginally skewed calculations. In such instances, the intent of these claims is based upon evidence believed to be an accurate record at the time of submitting. Industry recognises this may not always be the case, but as they are acting in good faith when submitting their claims, reliant on technology available at the time, suggests it would be equitable for consistency in the reasonable allowance of discretion and flexibility from the ATO in the review of such claims. An agreed upon buffer zone to accommodate for common reasonable discrepancies would be a practical and welcome inclusion to the guidance materials.

The acknowledgement in point 7 of the draft PCG that there may be situations where the \$10,000 entitlement is exceeded and require an element of discretion and flexibility is welcomed. Industry considers this a common occurrence and is concerned the ATO may not share the same view. To avoid excessive review requirements, it is suggested more clarity is provided as to the "reasonable expectations" of the ATO, and any relevant parameters to these expectations. Industry is reliant on good quality guidance from the Government, and the provision of such will result in higher quality assessments being submitted.

Draft Taxpayer alert

Recommendation: ATO to consult with industry to develop a fuel tax safeharbour to provide industry with understanding of the ATO's decision making process.

Industry welcomes well-consulted safeharbours from the ATO, reflective of current industry calculation methods, to provide them with more certainty of the ATO's expectations and reduce the incidence of subsequent reviews. AMEC understands the ATO will be publishing further guidance materials relating to fuel tax credits, and would like to be involved in future discussions to ensure industry's views are adequately represented.

The advice provided in the draft alert that the ATO scrutinises fuel tax credit claims on 'normal industry benchmarks' raises industry concerns. Primarily, when were these benchmarks last calculated, and when will they be reviewed? We want to ensure the benchmarks are accurate and reflect the current actual conditions users are subject to.

Secondly, as the concern highlighted in this document seems to arise from technology providers not updating their technology to account for different calculation methods, leading to industry possibly submitting incorrect fuel tax credit claims, AMEC suggests the ATO directly engages with technology providers to communicate current requirements. While it is anticipated that industry will conduct appropriate due diligence before adopting new technologies into their business practices, it is not unreasonable to expect that they will outsource the majority of the calculation responsibilities to vendors of such technologies once purchased, in line with the expectation that the adoption of new technologies will streamline their calculation requirements. To promote good governance in this area, where use of the simplified method is not the preferred option, a reminder to crosscheck total fuel acquired against total consumed would not be unreasonable.

AMEC represents a large proportion of the mineral exploration and mining industry across Australia. Our members likely to be impacted by these new documents range from small junior exploration companies to large mining companies. The potential requirement for companies to have to undertake duplicative assessments or reassessments to verify the data provided by their technology purchased for this specific purpose if requested by the ATO, counteracts the intent of the technology. This would create administrative burden and likely increase red tape and costs for industry. Fuel tax credit claims are made by industry in good faith. This intent should not be overlooked in considerations to reform fuel tax credit requirements.

Simplified method for GPS technologies

Recommendation: ATO to consult with industry to develop a simplified method for calculations involving the use of GPS technologies, allowing for reasonable industry consumption rates.

The Class Rulings on GPS technology recognise that reports generated from the products are a record (but not the only record) that can be used to calculate fuel tax credits.

AMEC broadly supports the ATO's move towards simplified methods to reduce administrative burden and complex processes which add further costs and restrictions in an already heavily regulated jurisdiction. We recommend undertaking reforms to reduce red tape without disadvantaging smaller or junior companies who are not experienced in this area, nor have the internal resourcing to submit then later re-review these complex calculations.

The reports that are currently provided for fuel tax credit calculated using GPS technologies that do not fit within the simplified framework are potentially subject to subsequent review should declarations exceed the ATO's industry benchmarks. If this occurs there will likely be additional costs for industry, and the ATO should ensure industry benchmarking is accurate and current.

The opportunity to apply for a Private Ruling on GPS technology, in addition to the Class Rulings that already exist, while likely to be appreciated by larger companies, could create administrative burden and delays that will disadvantage smaller companies.

Final comments

AMEC appreciates the opportunity to engage with the ATO and welcomes further consultation on reforms which will have significant, ongoing impacts on the mining and mineral exploration industry. We are supportive of reforms that reduce red tape and streamline processes, to reduce the cost of minerals projects operating in Australia, whilst complying with legislative requirements. The provision of clear, well-consulted practical guidance documents will provide much needed certainty to industry and the Government alike and should reduce the instance of subsequent reassessment requirements.

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