

Air Conditioning Fuel Tax Refund

Information Update by the Bus Industry Confederation



25 June 2013

Introduction

This communication follows on from the BIC's previous information update on 20 June (attached) regarding fuel tax credits refunds for operators arising from a recent ruling by the Australian Taxation Office.

Safe Harbour

As you would be aware the BIC is participating in the process being undertaken by the Australian Taxation Office to determine a "Safe Harbour" figure for bus operators wishing to make a claim for refunds of the Road User Charge paid on fuel use attributable to air conditioning.

The Safe Harbour figure will be a set percentage determined by the ATO to allow operators to make a claim for a refund of the Road User Charge paid on fuel use attributable to air conditioning for a period of up to 4 years from the date that the refund notification letter (STOP THE CLOCK – see attached template) is lodged with the ATO.

This Safe Harbour will mean that an operator will be able to make a claim without undertaking direct testing.

The ATO has set a timeline for the determination of the Safe Harbour figure at the end of July.

BIC Data Collection

As part of our work with the ATO the BIC would like to work with operators to collect data from testing undertaken by operators to determine the fuel use attributable to air conditioning on buses.

In the interim the BIC is interested in collecting any data bus operators may have from testing and collating it to get an idea of the range of results being produced by the industry using different testing methodologies.

Attached is a spreadsheet which operators can fill out, which tracks the testing method used, the vehicle type, the air conditioning model on the vehicle, the season and location of testing, the number of vehicles tested and the results produced.

This can be filled out by operators who have previously conducted testing, operators who are undertaking testing to make their claim and operators who plan to use manufacturer specifications to make claims.

The BIC would like to collect this data on an ongoing basis as the Safe Harbour figure will be reviewed in two years time after the initial issue of the figure at the end of July 2013.

This data will allow us to challenge the Safe Harbour in future if the need arises. We would, however, encourage any operators wishing to participate in the data collection to respond to the BIC by 10 July so we can communicate testing results to the ATO as they move towards the initial Safe Harbour figure.

If you are willing to participate in this process please contact the BIC via email isuru@bic.asn.au or by calling (02) 6247 5990.

Testing Methodologies

The ATO has issued a DRAFT Practice Statement to assist tax payers in making claims. This Practice Statement identifies methods operators may use in testing the fuel use attributable to auxiliary equipment, in this case, air conditioning on their buses.

It is important to stress that this Practice Statement is still at a DRAFT stage, with a final statement to be issued in early July.

Based on discussions with the ATO the BIC has been given leeway to communicate the methodologies identified in the DRAFT Practice Statement. Methodologies based on the ATO's Practice Statement and BIC's last communication are as outlined in the following table.

If you base your claim on testing results, the methodology you use will be assessed by the ATO on the basis of it being "fair and reasonable".

| TESTING METHODOLOGY | DETAILS | COMMENTS/INFORMATION |
|--------------------------|---|--|
| Records Method | Actual records of fuel supplied to auxiliary equipment based on the amount of fuel acquired. | This method is suitable where the equipment is fuelled from a separate tank to the vehicle's main tank. This would not apply to buses and coaches. |
| Manufacturers Method | Manufacturer specification of fuel consumption of the auxiliary equipment. | Based on advice provided by the air conditioning suppliers and/or chassis suppliers. This will be based on the air conditioning manufacturers' range of additional fuel usage figures from the low to the high performance of the air con unit. The ATO will more likely average these figures. This may be irrelevant depending on the final Safe Harbour percentage identified by the ATO. |
| Idle Method | Comparing the vehicle's fuel consumption when the vehicle is idling with, and without the auxiliary equipment engaged. | The idle test may be irrelevant in the context of the figure at which the Safe Harbour is set. |
| On Road Method | Trials to compare the fuel consumption of the vehicle with and without the auxiliary equipment operating. | Test results from may be very specific to the actual types of service, number of stops, summer/winter running. |
| Engine Diagnostic Method | Engine diagnostic download. A vehicle that is equipped with an electronic control module has the capacity to report a detailed history of the actual fuel consumption of the vehicle. | If the auxiliary equipment is connected to the module, the running time and fuel consumption of the auxiliary equipment may be reported. Generally, the diagnostics will indicate the idle time of vehicle with and without the auxiliary equipment engaged. |

JUNE 20 ADVICE

Information Update: Fuel Tax Credits Refund for the Use of Fuel in Operating Air Conditioning on Buses

Dear Reader,

The following is an update on the matter of bus operators making claims for refunds of fuel excise paid on the fuel used in air conditioning on their buses. This update provides some steps to follow in pursuing a refund with the Australian Taxation Office.

1. **STOP THE CLOCK:** You need to protect your refund entitlement by lodging a refund notification letter with the Australian Taxation Office.

This will lock in the earliest possible period in respect of which you can claim a refund. The sooner a notification letter is lodged with the ATO, the greater your available refund entitlement.

The most important step at this stage is to lodge your refund notification letter (STOP THE CLOCK) with the ATO.

Attached is a template "stop the clock" letter. You can modify this letter to suit your needs.

2. **TESTING OR SAFE HARBOUR:** It is a matter for the individual operator to determine whether you want to test for identifying an apportionment of fuel use for air conditioning on your vehicles or whether you will use the safe harbor figure provided by the ATO.

If you wish to test see step 3, if you wish to use the Safe Harbour see step 4, which also explains what the "Safe Harbour" is.

3. **TESTING:** There are a range of testing options and measures for the apportionment of fuel use available to you.

The BIC is looking at a range of options in relation to testing and will inform you further as we know more.

The most important step at this stage is to lodge your refund notification letter (STOP THE CLOCK) with the ATO.

Please be patient as the BIC works through this matter with the ATO and other involved parties towards determining an outcome.

4. **SAFE HARBOUR:** Safe Harbour is a figure for the apportionment of fuel use to air conditioning that the ATO will provide for operators to use when making a claim that won't be dependent on primary testing.

Safe Harbour will be an agreed percentage of total fuel use attributable to air conditioning. The BIC is currently working with the ATO through the Fuel Schemes Forum in determining this figure.

THE TIMELINE FOR THE PROVISION OF THIS SAFE HARBOUR FIGURE IS ESTIMATED BY THE ATO TO BE THE END OF JULY 2013.

Once the Safe Harbour is issued operators will be able to make a claim using fuel records or equivalent record keeping measures.

The Safe Harbour figure may be conservative relative to the fuel apportionment results produced by the primary testing.

5. MANUFACTURER SPECIFICATIONS

Your air conditioner supplier might be able to assist you in identifying an apportionment based on manufacturer specifications, but this may be at the low end of the spectrum fuel use attributable to air conditioning.

The Manufacturers Specifications are based on maximum fuel efficiency of the unit, when in fact the fuel use of air conditioning units can vary based on a range of real world operational factors. These are issues BIC is working through with the ATO.

6. HOW YOU CAN HELP

The BIC is interested in establishing a private and confidential database of operators making refund claims following on from the Linfox case.

We would seek that the BIC Urban Bus Group and members of State Associations provide us with information to assist us in our dealings with the ATO and allow us to keep you informed.

This is an ongoing matter and there may be additional cases or interpretations of the law that impact on your Fuel Tax Credits claims as the system evolves.

If you are interested in contributing to this resource please contact isuru@bic.asn.au and we will send through a spreadsheet outlining the required information so we can collate it.

Regards,



Michael Apps

Bus Industry Confederation

<DATE >

Mr James O'Halloran
The Deputy Commissioner of Taxation
Australian Taxation Office
GPO Box 900
CIVIC SQUARE CANBERRA ACT 2600

Dear Deputy Commissioner

NOTIFICATION OF ENTITLEMENT TO FUEL TAX CREDITS REFUND

Name: <INSERT NAME> ("Taxpayer")

ABN: <INSERT ABN>

On behalf of the above named Taxpayer, we hereby notify the Commissioner that the Taxpayer is entitled to a refund in respect of each of the tax periods specified below.

The refund in each tax period relates to the Taxpayer not claiming its full entitlement to fuel tax credits in respect of fuel used to power air conditioning units fitted to buses. This has resulted in the net amount for each tax period being overpaid or, understated in any tax period where the net amount in the lodged BAS was a negative amount.

This notification is made in accordance with the requirements of Section 105-55(1)(a) in Schedule 1 to the *Tax Administration Act 1953* ("**TAA**").

Tax Periods covered by refund claim

This refund claim relates to each of the tax periods commencing from <INSERT DATE> through to <INSERT DATE> ("**the relevant tax periods**").

Circumstances of the refund claim

Fuel has been used in buses operated by the Taxpayer while traveling on public roads. Fuel tax credits have been claimed in the relevant tax periods based on the published rate applicable to fuel used in heavy vehicles for travelling on a public road. This rate reflects the deduction from the fuel tax credit of the Road User Charge.

As a consequence of the *Linfox Pty Ltd v Commissioner of Taxation [2012] AATA 517*, the Taxpayer has determined that a portion of the fuel acquired and used during the relevant tax periods was not subject to the Road User Charge as it was used to power air conditioning units fitted to the buses.

The amount of the refund entitlement for each tax period has not yet been quantified.

We note that the Commissioner is currently working with industry to determine appropriate apportionment methodologies for fuel used in these circumstances.

The Taxpayer is currently in the process of reviewing and quantifying its fuel usage and refund entitlement.

We will advise the amount of the refund for each tax period once the review and quantification process have been completed and subject to the Commissioner's approved methodologies being finalised.

We submit that the contents of this letter satisfy the requirements set out by the Commissioner in his ruling MT 2009/1 to be a valid Notification of entitlement to a refund.

To this end, we request written confirmation that:

- a) This notification letter has been received by your office; and
- b) This notification meets the requirements of section 105-55 in Schedule 1 to the TAA and the Commissioner's requirements.

Yours faithfully