Land Transport Management (Regional Fuel Tax) Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Land Transport Management (Regional Fuel Tax) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Land Transport Management (Regional Fuel Tax) Amendment Bill proposes to introduce a mechanism for funding transport infrastructure programmes that would otherwise be delayed or not funded, by introducing regional fuel taxes (RFTs) of up to 10 cents (plus GST) per litre. The revenue from a regional fuel tax would go to the council responsible for the areas where the taxed fuel is delivered for sale or consumption.

Initially, the ability to implement a regional fuel tax would be available only to the Auckland region; it would be available to other regions from 1 January 2021.

Under the bill, establishing a new regional fuel tax would require a council to make a proposal to the Minister of Finance and the Minister of Transport for establishing the tax, including a plan for the transport programmes and projects that would be funded by the revenue. The council would be required to consult the affected community before finalising the proposal and submitting it to the joint Ministers for approval. Approved regional fuel taxes would have a maximum initial duration of 10 years, but a council could extend the tax before it expired, following a review.

All approved regional fuel taxes would be administered, monitored, and enforced by the New Zealand Transport Agency.

Structure of bill and recommended changes

The bill is in two parts. Part 1 amends the Land Transport Management Act 2003. Part 2 amends the Goods and Services Tax Act 1985, the Land Transport Act 1998, the Legislation Act 2012, the Local Government Act 2002, and the Search and Surveillance Act 2012.

The substance of the bill is in clause 5, which would insert new subpart 3 into the Land Transport Management Act. Subpart 3 contains new sections 65A to 65ZF.

This commentary covers the main amendments we recommend to the bill as introduced, all of which relate to clause 5. We do not discuss minor or technical amendments.

Providing the ability to exclude parts of a region

The bill as introduced would provide that a regional fuel tax implemented in a region must apply to fuel that is sold in the whole of its region. We recommend amending new section 65D to provide that councils can request that part of a region be exempt from the RFT in their proposals. This could be necessary, for example, in large regions where members of the public in parts of the region are unlikely to see any benefits from an RFT.

Recommended changes to regulation-making powers

Requiring the Minister's reasons for changing the maximum RFT rate

The Regulations Review Committee expressed concern about the powers contained in new section 65ZD for the responsible Minister to recommend that the maximum rate of the RFT be changed by Order in Council. We recommend amending new section 65ZD(4) to provide that the responsible Minister must provide reasons for recommending the change to the maximum rate.

The bill as introduced provides that the regulation would be a confirmable instrument under section 47B of the Legislation Act 2012.

Regulations prescribing uses of fuel

New section 65ZE would outline the regulations that could be changed by Order in Council. The most substantial regulations would involve the ability to change the information required in a proposal to establish, replace, or change an RFT scheme; the uses of fuel that are exempt from RFT; and circumstances in which people are entitled to RFT rebates.

We recommend adding new section 65ZE(2) to provide that the Minister must consider whether to make regulations to exempt fuel from RFT and, when doing so, must reflect the principle that RFT is intended to be borne only by those who use fuel on public roads. New section 65ZE(3) would provide that the Minister must provide reasons in the explanatory note of the regulations for recommending the regulations be changed.

Items to include in proposals

We recommend a number of additions to the list of requirements for RFT proposals in new section 65E. The new items we recommend would require:

- a statement of the amount of interest expenditure expected to be required to deliver the transport programme
- the forecast expenses of administering the RFT scheme, including the costs of processing rebates
- a clear description of any parts of the region to be exempted from the RFT, as well as any reasons for the exemption
- a statement of the council's expectations as to whether the RFT will change fuel-buying behaviour by the public, any likely consequences from such changes, and how anticipated changes have been considered in the council's revenue forecast
- an explanation of why the council believes it is practicable for regional fuel taxpayers and the New Zealand Transport Agency to implement the scheme.

Performance monitoring by the New Zealand Transport Agency

One possible undesirable effect of the bill as introduced could be "price spreading". Fuel companies could price spread by slightly raising the price of petrol nationwide to avoid passing the full cost of the tax on to customers in regions with a fuel tax. This is not the intent of the bill.

We recommend inserting new section 65N(da) to add a performance monitoring system to the New Zealand Transport Agency's functions under the bill. This would require the Agency to monitor the revenues, costs, and fuel market impacts of each regional fuel tax scheme it administers.

Liability for payment of regional fuel tax

New section 65O of the bill as introduced outlines the situations in which a taxpayer would be liable to pay RFT. We recommend adding new section 65NA to be explicit about the intended liability.

Regional fuel tax would be required to be paid where fuel is either delivered to a fuel outlet in an RFT region, or supplied directly to an end user in an RFT region (if RFT has not already been paid).

If a regional fuel taxpayer transfers fuel into their own vehicle's fuel tank within an RFT region, and the RFT has not already been paid, the taxpayer would be liable for the RFT (for example, a fuel distributor filling its own road tankers within the RFT region).

We also recommend inserting new section 65NA(b), to clarify that RFT is payable only once on any particular fuel.

Registration as a regional fuel taxpayer

We recommend inserting new section 65OA, to allow a person who is liable for payment of RFT to register with the New Zealand Transport Agency as a regional fuel taxpayer. A registry of regional fuel taxpayers would help taxpayers to avoid double liability for RFT, while ensuring that the tax was paid.

New Zealand Transport Agency to report on each RFT scheme

Under the bill as introduced, new section 65T(2) would require the New Zealand Transport Agency to include information in its annual reports for each RFT scheme about revenue collected, RFT rebates, funds held for future rebates, and administration and enforcement costs. We recommend amending new section 65T(2) to also require in the Agency's annual report:

- a comparison of actual revenues with forecast revenues
- a comparison of actual administration costs with forecast administration costs.

We also recommend adding new section 65T(3), to require the Agency to report to the responsible Minister quarterly with information on:

- changes in the volume of fuel supplied inside and outside the RFT region
- fuel prices inside and outside the RFT region
- non-compliance with the RFT scheme
- avoidance of regional fuel tax.

We consider that this would improve the quality of the Agency's monitoring and reporting. We also recommend adding new section 65T(4) to require the Agency to publish this information on its website.

Appeals

New section 65Y of the bill as introduced provides for a regional fuel taxpayer to appeal to the District Court with respect to an assessment of regional fuel tax. We recommend amending proposed section 65Y(1) to provide that taxpayers may also appeal a liability for a filing penalty, a late payment penalty, or an under-reporting penalty. They would need to do so within 30 days of being notified of the liability.

Requests for review of New Zealand Transport Agency decisions

In response to a submission by the Office of the Clerk, we recommend adding new section 65XA, which would provide that anyone who is affected by any of the decisions of the New Zealand Transport Agency specified by new section 65XA(1) may request an internal review of the decision within 40 working days. New section 65XA(2) to (5) would outline the review process. New section 65XA(4) would require that the person who conducted the review process must not have participated in the making of the decision being reviewed.

New Zealand National Party and ACT New Zealand minority view

The National Party and ACT Party members of the committee oppose this bill. The bill imposes steep costs on New Zealanders, especially in Auckland. This cost is an unnecessary burden on the motorists and taxpayers who will pay it as there are better alternatives to find the necessary funding.

The primary cost of the fuel tax is the 11.5 cents a litre that the tax will impose (inclusive of GST). The impact of that should not be understated. It will cost households hundreds of dollars a year in order to raise the projected $150 million. Importantly, businesses affected by the tax through increased costs of shipping will simply pass that cost on to consumers through higher prices. This poses an additional increase in prices for people in regional fuel tax regions.

Regional fuel taxes must be viewed in the wider context of national fuel tax increases. The Government has proposed increases of fuel taxes of up to 12 cents a litre (exclusive of GST). What this means is that over the next few years, regions that impose a regional fuel tax could be facing a 25.3 cents per litre tax increase for motorists and businesses. This will drive up the living costs of many of those in the RFT affected region, making it harder to live in the region and requiring some families to make difficult financial trade-offs because of this legislation.

Equity concerns

As was noted by many of the submitters, the tax in the proposed legislation will have a regressive effect and the burden of the new tax proposed in this legislation will disproportionately fall upon low-income New Zealanders. Lower-income families are the stakeholders most likely to own older and less fuel efficient vehicles and they are more likely to live further away from the CBD of a region, meaning that they need to travel more and have less access to major transportation projects.

We note that the Ministry of Transport acknowledged that regional fuel taxes posed a risk of operating in a regressive way. It is therefore disappointing that the committee did not receive advice on the impacts that would be had on the low-income New Zealanders that they believed could be affected. However, in the submission of Sam Warburton, the committee was provided with modelling that shows that the fuel tax would disproportionately affect families on low or fixed incomes, Māori families, and sole parents. In contrast, people who can afford newer and more fuel efficient cars can limit the impact that the fuel tax has on their consumption. If a person can afford to purchase an electric vehicle then they could shield themselves entirely from the burden of this tax.

Costs to businesses

There is a lack of guidance in the legislation as to rebate schemes for fuel used off-road. Industries such as agriculture and horticulture use petrol and diesel as a crucial commodity in their day-to-day business in ways that do not affect the roading of their region, but remain subject to the proposed tax unless the Minister decides to utilise regulation-making powers for rebates. We have similar concerns with regard to small aircraft uses and recreational boating. The purpose of this tax is to require road users to pay for road improvements. When activities exist that use petrol or diesel for non-road uses they should be exempted from the costs of the tax. These off-road uses should be added as exempt uses in the definition of the bill.

Price spreading

We are concerned that there is a likelihood that price spreading will occur, meaning that a regional fuel tax will spread outside of the region it is implemented in. According to the ministry, price spreading occurred when regional fuel taxes were previously introduced in the 1990s, and it was one of the reasons put forward in 2009 when the Parliament repealed previous regional fuel tax legislation. The ability for fuel companies to spread the price of the regional fuel tax means that taxpayers from around the country will be paying the price of a regional tax designed to require Aucklanders to pay for Auckland’s transport. If this were to occur, consumers in other parts of New Zealand affected by the price spreading and eligible for rebate will not be able to claim it back.

Alternatives

We are concerned that there has been limited appreciation of alternatives that could be put in place instead of the fuel tax. We believe that the regional fuel tax will be used in lieu of regional councils looking for savings. Using Auckland as an example, evidence was provided which calculated that the Auckland Council would need to find savings of approximately 4 percent across its budget to fund comparable revenue to the fuel tax indefinitely. This is not a difficult task. We questioned the Auckland Mayor, when Auckland Council submitted, on his previous comments about finding between 3 and 6 percent of savings within the Council organisation, and his instructions to his officials to that effect. The Auckland Council has also been making use of a targeted rate labelled as an “Interim Transport Levy” to raise funds for Auckland’s transport. This shows that there is an alternative that can be used to cover the revenue a fuel tax would raise through a less regressive mechanism.

Recommendations

The economic impacts of the bill mean that it is especially important to maintain a high threshold on where, when, and for how long regional fuel taxes can be used. The National Party and ACT Party members remain opposed to the use of regional fuel taxes in any instance, however we will be proposing several amendments to limit the harm they can cause.

There should be a higher bar in place for councils to justify the imposition of new taxes on ratepayers. Councils should be required to demonstrate clearly that they have exhausted all reasonable avenues for funding, provide clear benefit-cost ratios and business cases for the projects they are proposing, and demonstrate exactly how much of the revenue will be going to each project before they are authorised to impose and collect any new regional fuel tax revenue.

Further, legislating for a maximum period of 10 years is excessive. The time period for regional fuel taxes should align with the review period for regional land transport plans which is three years. This would allow the tax to match up with key projects in regional land transport plans and would build more accountability in the use of this tax.

Finally, we are not content with the bill being returned to Parliament without legislative guarantees that off-road users of fuel will be exempted from the tax, and we will be proposing amendments to include these activities as an exempt use.

Transparency and accountability

The National Party and ACT Party members are extremely concerned at the level of power this bill provides to the Executive. Examples such as the ability to raise the maximum rate of a regional fuel tax by Order in Council in section 65ZD and the wide ranging powers to regulate in section 64ZE demonstrate a propensity to provide significant powers to the Executive to impose taxes on New Zealand with little restriction or parliamentary oversight.

Similarly, we are concerned that the consultation procedures in the bill are inadequate given the impacts that a regional fuel tax can have. We recommend the consultation procedures be made more robust by including a requirement for benefit-cost ratios to be included for each project and an overall benefit–cost ratio be included for the programme a regional fuel tax is intended to fund. We will also be proposing that the consultation provisions be required to mirror the special consultative procedures contained in local government legislation.

We also oppose provisions in Schedule 1AA which allows regional fuel taxes to be imposed in regions outside of Auckland from 1 January 2021. The context of the regional fuel tax was a policy proposal by the current parties in Government targeted specifically at Auckland. Allowing these taxes to be imposed in other regions by an Order in Council simply allows new taxes to be imposed without proper parliamentary accountability of the Government.

Conclusion

Regional fuel taxes will impose a large economic cost on the regions in which they are imposed. Taxpayers will be hit with the direct cost of the tax and increased prices on goods and services. This burden is a change from current forms of funding and possible alternatives which will disproportionately place the burden of funding this tax on those with low or fixed incomes.

Moreover, the legislation as proposed provides significant powers for Ministers to regulate and impose taxes through proposals that do not require satisfactory consultation or justification for the onerous taxes to be imposed.

Appendix

Committee process

The Land Transport Management (Regional Fuel Tax) Amendment Bill was referred to the committee on 28 March 2018. The closing date for submissions was 20 April 2018. We received and considered 520 submissions from interested groups and individuals. We heard oral evidence from 25 submitters at hearings in Auckland and Wellington.

We received advice from the Ministry of Transport and the New Zealand Transport Agency. The Regulations Review Committee reported to the committee on the powers contained in new sections 65ZD, 65ZE(b), and 65ZE(c).

Committee membership

Michael Wood (Chairperson)

Hon Amy Adams

Kiritapu Allan

Andrew Bayly

Rt Hon David Carter

Tamati Coffey

Ian McKelvie

Willow-Jean Prime

Dr Deborah Russell

David Seymour

Fletcher Tabuteau

Dr Duncan Webb

Lawrence Yule

Jami-Lee Ross was on the committee for our consideration of this bill.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Phil Twyford

Land Transport Management (Regional Fuel Tax) Amendment Bill ~~Act~~

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Land Transport Management (Regional Fuel Tax) Amendment Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Amendments to Land Transport Management Act 2003

3 Principal Act

This Act amends the Land Transport Management Act 2003 (the **principal Act**).

4 New section 6A inserted (Transitional, savings, and related provisions)

After section 6, insert:

6A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

5 New subpart 3 of Part 2 inserted

After section 65, insert:

Subpart 3—Regional fuel tax

Preliminary provisions

65A Definitions

In this subpart, unless the context otherwise requires,—

exempt use, in connection with the use of fuel, is—

(a) use in the generation of electricity, or the manufacture of gas, for public use at any electric-power station or gas works; or

(b) use in the manufacture at a refinery of refined petroleum products; or

(c) use in any commercial ship within the meaning of section 2(1) of the Maritime Transport Act 1994; or

(d) use in any vehicle that is designed to operate exclusively on rails; or

(e) any use that is prescribed by the regulations to be a use exempt from regional fuel tax

fuel means specified engine fuel as defined in section 181(1) of the Local Government Act 1974, but without regard to paragraph (b) of that definition

fuel distribution operation means a business operation in the fuel distribution system (other than a fuel outlet) that involves the supply of fuel—

(a) to 1 or more fuel outlets; or

(b) to 1 or more end users (typically in bulk) without it ever having been supplied to a fuel outlet

fuel distributor means a person carrying on a fuel distribution operation

fuel outlet means an establishment commonly called a fuel stop or service station or any similar establishment from which a business of supplying fuel to end users is carried out

region means a region as defined in section 5(1) of the Local Government Act 2002

regional council means a regional council as defined in section 5(1) of the Local Government Act 2002, and includes a unitary authority as defined in that section

regional fuel tax means a regional fuel tax that is payable under an RFT scheme

RF taxpayer means a person liable to pay regional fuel tax under **section 65O**

RFT rebate means a rebate under **section 65W**

RFT region means a region, or part of a region, for which an RFT scheme has been established

RFT scheme means a regional fuel tax scheme established, replaced, or varied under **section 65K**.

65B Overview of subpart

This subpart provides for—

(a) the establishment, replacement, variation, and termination of RFT schemes; and

(b) the review of RFT schemes; and

(c) the collection of regional fuel tax in respect of RFT ~~regions~~ schemes; and

(d) the application for, and payment of, RFT rebates; and

(e) the administration and enforcement of RFT schemes.

Requirements: RFT schemes

65C Requirements relating to RFT scheme

(1) No more than 1 RFT scheme may be in force at any time in ~~an RFT region~~ any area.

(2) The maximum duration of an RFT scheme is 10 years unless extended under **section 65K(2)**.

(3) The maximum rate of regional fuel tax under an RFT scheme is $0.10 per litre.

(4) The amount of any regional fuel tax payable under this subpart must be stated exclusive of any goods and services tax payable under the Goods and Services Tax Act 1985.

Proposals to establish or replace RFT scheme

65D Preparation of proposal to establish or replace RFT scheme

A regional council may prepare a proposal to establish or replace an RFT scheme for the region, or a part of the region, if the council, having regard to the views of the regional ~~land~~ transport committee, considers that there are 1 or more capital projects that—

(a) would benefit the region or the part of it to which the proposal relates; ~~but~~ and

(aa) are included in the relevant regional land transport plan (including a draft plan); and

(b) cannot reasonably be fully funded from sources other than a regional fuel tax within the time frame desired by the council.

65E Proposal for RFT scheme: content requirements

A proposal to establish or replace an RFT scheme must—

(a) describe the programme of capital projects that the RFT scheme is intended to support; and

(b) with regard to the programme,—

(i) state its objectives; and

(ii) describe its expected effects (positive and negative); and

(iii) explain how it is expected to contribute to achieving the objectives of any relevant regional land transport plan (including a draft plan), ~~the~~ any relevant GPS on land transport (including a draft GPS), and any other document that sets out transport priorities for the region and that the Minister of Finance and the responsible Minister specify; and

(iiia) state the amount of interest expenditure expected to be required for delivery of the programme; and

(iv) explain why it is desirable that a regional fuel tax be among the funding sources for the programme; and

(c) for each project in the programme,—

(i) describe the project; and

(ii) describe its expected costs and benefits; and

(iii) explain why the regional council believes the project provides value for money; and

(iv) set out its proposed completion date; and

(v) state the amount of capital expenditure expected to be required from regional fuel tax; and

(vi) state the amount of operating expenditure (other than interest) expected to be required from regional fuel tax for the delivery of the project; and

(vii) state the amount of debt repayment expected to be required from regional fuel tax for the project; and

(viii) specify the project's proposed duration; and

(d) specify the scheme's proposed duration; and

(e) set out the rate or rates of regional fuel tax and the period during which each rate is to apply; and

(f) set out the forecast revenue from the regional fuel tax and the assumptions or data on which the forecast is based; and

(fa) set out the forecast expenses of administering the scheme, including RFT rebate processing; and

(fb) clearly describe, if it is proposed that the RFT scheme apply to only part of a region,—

(i) the part of the region that is not to be subject to the RFT scheme; and

(ii) the reasons for proposing that the RFT scheme not apply to that part; and

(fc) state to what extent the regional council expects the RFT scheme to change fuel-buying behaviour by the public, any likely consequences from such changes, and how such anticipated changes have been taken into account in the revenue forecast; and

(fd) explain why the regional council believes it will be practicable for RF taxpayers and the Agency to implement the RFT scheme; and

(g) include any other information or other matter that may be prescribed by regulations made under this subpart.

65F Consultation on proposal

(1) When preparing a proposal to establish or replace an RFT scheme, a regional council—

(a) must carry out consultation in accordance with the principles set out in section 82 of the Local Government Act 2002; and

(b) may use the special consultative procedure specified in section 83 of the Local Government Act 2002.

(2) A regional council must also carry out consultation in accordance with **subsection (1)** on any material change in a proposal that results from a reconsideration after a proposal is referred back to the council under **section 65J(b)**.

(3) A regional council may carry out the consultation required under **subsection (1)** in conjunction with—

(a) the council's consultation on its long-term plan or its annual plan under the Local Government Act 2002; or

(b) any other consultation under this Act.

Proposals to vary RFT scheme

65G Proposal to vary RFT scheme

~~() A regional council may prepare a proposal to vary an RFT scheme if it considers it desirable that any of the following aspects of the RFT scheme for its region be changed:~~

~~(a) the programme of capital projects supported by the RFT scheme:~~

~~(b) the rate or rates of regional fuel tax under the RFT scheme:~~

~~(c) the period during which any rate of regional fuel tax applies under the RFT scheme:~~

~~(d) the end date of the RFT scheme (but *see* **section 65M**).~~

(1) A regional council—

(a) must prepare a proposal to vary an RFT scheme in its region if it intends to change a material aspect of the programme of capital projects supported by the RFT scheme; and

(b) may prepare a proposal to vary an RFT scheme in its region if it considers it desirable that any of the following aspects of the RFT scheme be changed:

(i) the rate or rates of regional fuel tax under the RFT scheme:

(ii) the period during which any rate of regional fuel tax applies under the RFT scheme:

(iii) the area that is subject to the RFT scheme:

(iv) the end date of the RFT scheme (but *see* **section 65M**).

(2) **Section 65D** applies to a proposal to vary an RFT scheme referred to in **subsection (1)(a)** as if the proposal were a proposal to establish or replace an RFT scheme.

65H Rules applicable to proposals to vary RFT scheme

A regional council, in a proposal to vary an RFT scheme,—

(a) must set out as much of the information that is required under **section 65E** as is necessary or useful to understand the changes proposed to the RFT scheme; and

(b) must not propose an amended end date for the RFT scheme that extends it by more than 10 years; and

(c) must carry out consultation on the proposal in accordance with **section 65F** as if it were a proposal to establish or replace an RFT scheme.

Submission of proposals to Minister of Finance and responsible Minister

65I Submission of proposal and accompanying report

(1) After a proposal to establish, replace, or vary an RFT scheme has been consulted on, the regional council may submit it (with any changes made as a result of the consultation) to the Minister of Finance and the responsible Minister.

(2) A proposal submitted to the Minister of Finance and the responsible Minister must be accompanied by—

(a) a report of the consultation carried out in accordance with **section 65F**, including a summary of the submissions made during the consultation and a description of any changes made as a result of the consultation; and

(b) any other information that the Minister of Finance and the responsible Minister reasonably require.

Decisions of Ministers regarding proposals

65J Decisions of Minister of Finance and responsible Minister concerning proposed RFT scheme

The Minister of Finance and the responsible Minister may, in their complete discretion, after considering a proposal to establish, replace, or vary an RFT scheme,—

(a) recommend to the Governor-General that the RFT scheme be established, replaced, or varied in the manner set out in the proposal; or

(b) refer the proposal back to the regional council, requesting it to reconsider 1 or more of the aspects of the proposal; or

(c) decline to recommend the establishment, replacement, or variation of the RFT scheme in the manner set out in the proposal.

Orders in Council regarding RFT schemes

65K Orders in Council establishing, replacing, or varying RFT scheme

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Finance and the responsible Minister,—

(a) establish or replace a regional fuel tax scheme, specifying the area that is subject to the scheme; and

(b) prescribe the start date and end date of the scheme, the rate or rates of regional fuel tax applicable under it, and the period during which each rate applies.

(2) The Governor-General may, by Order in Council made on the recommendation of the Minister of Finance and the responsible Minister,—

(a) vary a regional fuel tax scheme; and

(b) accordingly amend any provisions relating to the end date of the scheme, the rate or rates of regional fuel tax applicable under the scheme, ~~and~~ the period during which each rate applies, and the area that is subject to the scheme.

(3) An order made under **subsection (1)** must—

(a) identify, but need not contain, the proposal; and

(b) include, in a schedule of the order, a list of the capital projects in the programme supported by the RFT scheme and their proposed completion dates.

(4) An order made under **subsection (2)**—

(a) must identify, but need not contain, the proposal; and

(b) must, if the proposal includes any change to a material aspect of the programme of capital projects supported by the RFT scheme, amend the schedule of the relevant order to reflect the change; and

(c) must not amend the end date of the RFT scheme to any date that is later than the day that is 10 years after the date on which the order comes into force.

(5) A regional council must make a proposal identified in an order made under this section accessible in accordance with section 108.

(6) An order made under **subsection (1) or (2)** is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

65L Early termination of RFT schemes

(1) An order made under **section 65K** may advance the end date of an RFT scheme or terminate an RFT scheme only—

(a) in accordance with—

(i) a proposal prepared by the regional council under **section 65G** and submitted to the Minister of Finance and the responsible Minister under **section 65I**; and

(ii) the Ministers' recommendation under **section 65J(a)**; or

(b) if the Minister of Finance and the responsible Minister on their own initiative recommend such an order because they are satisfied, on reasonable grounds, that the actions that the regional council has taken or intends to take in respect of concerns notified to the council under **subsection (2)** are not an adequate response to those concerns.

(2) The Minister of Finance and the responsible Minister may, if they have reasonable concerns that a regional council is not duly carrying out, in a material way, the proposal on which the RFT scheme for their region is based, notify the council of those concerns and advise the council that it must, within 3 months, respond to each of the concerns, stating what action the council has taken, or intends to take, in respect of those concerns.

Review of RFT schemes

65M Regional council must review RFT scheme before proposing to extend or replace scheme

(1) A regional council must review ~~the~~ an RFT scheme ~~for~~ that is in effect in its region before preparing a proposal—

(a) to replace the scheme under **section 65D**; or

(b) to vary the scheme under **section 65G** to change its end date to a date later than 10 years after its original start date.

(2) The review must be completed no later than 1 year before the end date of the RFT scheme.

Functions of Agency under this subpart

65N Functions of Agency under this subpart

The Agency's functions under this subpart include—

(a) providing the Minister of Finance and the responsible Minister with any advice, as requested by the Ministers, relating to this subpart or to a proposed or existing RFT scheme; and

(b) collecting regional fuel tax and any related penalties and, in connection with the collection of regional fuel tax, maintaining—

(i) a registry of RF taxpayers; and

(ii) a registry of users of fuel for an exempt use and the locations where any fuel supplied to them will be used exclusively for an exempt use; and

(c) administering the provision of RFT rebates; and

(d) transferring the net revenue from an RFT scheme to the appropriate regional council; and

(da) monitoring the revenues and costs of RFT schemes, and fuel prices and volumes related to the schemes; and

(e) prosecuting offences under **section 65ZC**.

Liability to tax

65NA Intended liability

The provisions imposing liability to pay regional fuel tax are intended to ensure, and must be interpreted and applied so as to ensure,—

(a) that, subject to **section 65O(2)(b)**, regional fuel tax is payable with respect to all fuel—

(i) that is supplied to a fuel outlet located in an RFT region; or

(ii) that is supplied in an RFT region to an end-user, if regional fuel tax has not already been paid with respect to that fuel under **subparagraph (i)**; or

(iii) that an RF taxpayer transfers within an RFT region into the RF taxpayer's own vehicle fuel tanks, if regional fuel tax has not already been paid with respect to that fuel under **subparagraph (i) or (ii)**; and

(b) that regional fuel tax is payable only once in respect of any particular fuel.

65O Liability to pay regional fuel tax

(1) A person (the **RF taxpayer**) is liable to pay regional fuel tax at the rate prescribed for an RFT region on any fuel that the RF taxpayer,—

(a) in the course of carrying on a fuel distribution operation,—

(i) supplies to any person at a location in the RFT region; or

Examples

A Ltd distributes petroleum products throughout New Zealand. It supplies fuel to an independent service station operator, J Ltd, in an RFT region. A Ltd is liable to pay regional fuel tax on the fuel supplied to J Ltd.

A Ltd distributes petroleum products throughout New Zealand. It supplies fuel directly to K Ltd, which operates a farm at a location in an RFT region. A Ltd is liable to pay regional fuel tax on the fuel supplied to K Ltd.

(ii) supplies, outside the RFT region,—

(A) to an operator of a fuel outlet that is located in the RFT region, if the RF taxpayer knows that the fuel will be transported to that fuel outlet for use in supplying end users; or

(B) to an operator of a business enterprise conducted at a location in the RFT region, if the RF taxpayer knows that the fuel will be used in that enterprise; or

Examples

A Ltd is a fuel distributor at a location outside the RFT region. L Ltd operates service stations in the RFT region. A Ltd supplies fuel to L Ltd at its location outside the RFT region. A Ltd knows that L Ltd intends to transport that fuel to its service stations in the RFT region. A Ltd is liable to pay regional fuel tax on the fuel supplied to L Ltd.

A Ltd is a fuel distributor at a location outside the RFT region. M Ltd operates a farm in the RFT region. A Ltd supplies fuel to M Ltd at its location outside the RFT region. A Ltd knows that M Ltd intends to transport that fuel to its farm in the RFT region for use in its farm trucks and equipment. A Ltd is liable to pay regional fuel tax on the fuel supplied to M Ltd.

(b) being the operator of a fuel outlet located outside the RFT region, supplies to any person at a location in the RFT region; or

Example

B Ltd operates a service station outside the RFT region. It delivers fuel to N Forestry Ltd at a location inside the RFT region. B Ltd is liable to pay regional fuel tax on the fuel delivered.

(c) in the course of carrying on a fuel distribution operation~~, or operating a fuel outlet,~~ in the RFT region, transfers into a fuel tank of the RF taxpayer's own vehicles or equipment ~~, or vessels~~.

Example

A Ltd is a fuel distributor operating in the RFT region. It fuels its own road tankers at its location in the RFT region. A Ltd is liable to pay regional fuel tax on that fuel.

(2) However, a person is not liable to pay regional fuel tax on fuel that the person—

(a) supplies to a person who is a registered ~~with the Agency as an~~ RF taxpayer (subject to any qualifications in that registration); or

Example

A Ltd supplies fuel outside the RFT region to B Ltd, who, in turn, supplies fuel to various service stations, including some inside the RFT region. B Ltd is registered as an RF taxpayer. A Ltd is not required to pay regional fuel tax on the fuel supplied to B Ltd. B Ltd, however, is required to pay regional fuel tax on any fuel it supplies to a service station inside the RFT region.

(b) supplies to a person who is registered with the Agency as a user of fuel for an exempt use at a location registered as one where any fuel supplied will be used exclusively for an exempt use; or

Example

A Ltd supplies fuel to O Ltd, which operates a fishing fleet. O Ltd has registered with NZTA as a user of exempt fuel and its location at Fisherman's Wharf is a location registered as one where any fuel supplied to O Ltd will be used only for an exempt use. A Ltd is not required to pay regional fuel tax on the fuel it supplies to O Ltd at the Fisherman's Wharf location.

(c) uses for an exempt use.

Example

A Ltd, a fuel distributor located in an RFT region, operates both a recreational boat and a commercial ship and fuels them from its tanks in the RFT region. A Ltd is not required to pay regional fuel tax on the fuel for its commercial ship.

(3) **Subsection (4)** applies if a person—

(a) operates a fuel outlet outside an RFT region or carries on a fuel distribution operation in or outside the RFT region; and

(b) in the course of any such operation, provides fuel to a fuel outlet operated by that person at a location in the RFT region, or to any other business operation of the person carried on at a location in the RFT region.

(4) If this subsection applies,—

(a) the providing operation and the fuel outlet or other business operation to which fuel is provided must be treated as if they were separate persons; and

(b) the providing operation is to be treated as having made a supply of fuel to which **subsection (1)** applies; and

(c) **subsection (2)(a)** does not apply to exempt such a supply from regional fuel tax.

Examples

A Ltd distributes petroleum products throughout New Zealand and also owns its own service stations inside the RFT region. A Ltd is liable for regional fuel tax on the fuel it provides to its service stations in the RFT region.

A Ltd distributes petroleum products throughout New Zealand and also operates a timber-harvesting business inside the RFT region. A Ltd is liable for regional fuel tax on the fuel it provides to its timber-harvesting business.

65OA Registration as RF taxpayer

(1) A person who is liable to pay regional fuel tax under **section 65O** may apply to the Agency to become a registered RF taxpayer.

(2) An application must

(a) show that the person is likely to be liable to pay regional fuel tax on a regular basis; and

(b) describe the person's business operations relating to supplies of fuel that are relevant to an RFT scheme; and

(c) provide any other information that the Agency reasonably requires.

(3) The Agency may accept an application for a person to become a registered RF taxpayer if it is satisfied that to do so will promote the registry's purpose of avoiding double liability for regional fuel tax without resulting in the avoidance of regional fuel tax.

(4) The Agency may qualify the registration of a registered RF taxpayer by restricting the registration to particular business operations or locations or in any other way that will promote the registry's purpose of avoiding double liability for regional fuel tax without resulting in the avoidance of regional fuel tax.

Record keeping and returns

65P Record keeping

The following persons must keep records related to the acquisition or supply of fuel in accordance with the requirements of the Agency:

(a) RF taxpayers:

(b) operators of fuel outlets in an RFT region:

(c) fuel distributors who supply fuel in an RFT region exclusively for exempt uses:

(d) persons who are registered as users of fuel for an exempt use.

65Q Returns

An RF taxpayer by whom a regional fuel tax is payable under an RFT scheme in respect of any supplies or transfers of fuel in a month must file with the Agency a return for that month. The return must—

(a) be filed within the first 20 days of the next month; and

(b) be filed in the form and manner reasonably required by the Agency; and

(c) contain any information and be accompanied by any other document reasonably required by the Agency.

Assessments

65R Assessment of tax

(1) The Agency must assess the regional fuel tax payable by an RF taxpayer under an RFT scheme for any month. In doing so, the Agency may rely on the infor-

mation set out in the RF taxpayer's monthly return or may make its own determination of the correct amount payable.

(2) If an RF taxpayer has failed to file a return in accordance with **section 65Q** for any month in respect of which regional fuel tax is payable,—

(a) a filing penalty of up to 10%, as determined by the Agency, of the regional fuel tax for that month is payable by the RF taxpayer and must be paid together with the regional fuel tax for that month; and

(b) the Agency must determine what the amount, if any, of the filing penalty will be, taking into account the following principles:

(i) a higher amount of penalty is more likely to be appropriate in any case of a repeated failure to file a return:

(ii) a lesser amount of penalty is more likely to be appropriate in any case where the RF taxpayer neither knew nor ought to have known that they had an obligation to file a return:

(iii) a lesser amount of penalty is more likely to be appropriate in any case where the failure to file a return is promptly remedied.

(3) The Agency may reassess the regional fuel tax payable by an RF taxpayer under an RFT scheme for any month but may not amend the assessment so as to increase the amount of tax payable after the expiration of 4 years from the end of the month in which the original assessment was made.

(4) Despite **subsection (3)**, in any case where, in the opinion of the Agency, a return for any month was fraudulent or wilfully misleading, the Agency may amend the assessment for that month at any time so as to increase the amount of tax payable.

(5) The Agency must comply with any requirement by the Auditor-General to make an assessment or a reassessment for the purpose of this subpart.

Payment of tax

65S Payment of regional fuel tax

(1) An RF taxpayer must pay to the Agency—

(a) any amount of regional fuel tax that is shown as payable in the RF taxpayer's return for a month not later than the end of the month in which the return was required to be sent to the Agency; and

(b) any amount of regional fuel tax that is shown as payable by the RF taxpayer in an assessment by the Agency relating to a month within 20 days after the date of the assessment, taking into account any amount already paid by the RF taxpayer for that month.

(2) If an amount required to be paid under **subsection (1)(a)** is not paid on or before the date by which it is required to be paid, a late-payment penalty of 5%

of the unpaid amount is payable by the RF taxpayer and must be paid together with the regional fuel tax.

(3) If the amount of regional fuel tax that is assessed as payable by the Agency for a month exceeds the amount shown as payable on the RF taxpayer's return for that month, an under-reporting penalty of the total of the following amounts is payable by the RF taxpayer and must be paid together with the regional fuel tax:

(a) 5% of the amount by which assessment exceeds the amount shown as payable on the return; and

(b) 2% of that excess for each month after the month in which the return was due, up to and including the month in which the assessment was made.

(4) If an amount of regional fuel tax that is required to be paid under **subsection (1)(a) or (b)** remains unpaid on the day that is 1 month after the date by which it is required to be paid, a late-payment penalty of 2% of the unpaid amount is payable by the RF taxpayer and must be paid together with the regional fuel tax, and the same applies for each following month until the regional fuel tax is fully paid.

(5) Despite **section 65R(2) and subsections (2), (3), and (4)**, the Agency may, at any time, reduce or waive any filing penalty, late-payment penalty, or under-reporting penalty referred to in those provisions if it considers that it is just to do so, but may not reduce or waive them so as to result in total penalties of less than 1% per month on any unpaid amount of regional fuel tax.

(6) The Agency must repay or credit to an RF taxpayer any overpayment by the taxpayer of regional fuel tax.

(7) The amount of any unpaid regional fuel tax, filing penalty, late-payment penalty, or under-reporting penalty and any associated enforcement costs are recoverable in any court of competent jurisdiction as a debt due to the Agency.

Dealing with proceeds of regional fuel tax

65T Accounting for regional fuel tax

(1) In respect of ~~a regional fuel tax~~ each RFT scheme that the Agency administers, the Agency must account for—

(a) revenue collected, including from regional fuel tax, penalties, and interest; and

(b) RFT rebates; and

(c) funds held for future RFT rebates; and

(d) administration and enforcement costs.

(2) The annual report of the Agency must report on each RFT scheme ~~it~~ that the Agency administers ~~, including information on each of the items referred to in **subsection (1)** for that year.~~ and include—

(a) information on each of the items referred to in **subsection (1)** for that year:

(b) a comparison of actual revenues with forecast revenues:

(c) a comparison of actual administration costs with forecast administration costs.

(3) The Agency must report to the responsible Minister, no less frequently than quarterly, information on—

(a) changes in the volume of fuel supplied inside and outside the RFT region:

(b) fuel prices inside and outside the RFT region:

(c) non-compliance with the RFT scheme:

(d) avoidance of regional fuel tax.

(4) The Agency must make its reports under **subsection (3)** available on its Internet site.

65U Disbursement of proceeds

Monthly payments

(1) Within 10 days after the end of each month during which an RFT scheme is in force, the Agency must pay to the appropriate regional council the greater of $0.00 and an amount calculated in accordance with the following formula:

$$\text{NegResultCF} + \text{Revenue} - \text{Rebates} - \text{Costs}$$

where—

NegResultCF is any negative result from a calculation under this formula for the previous month (carried forward)

Revenue is the revenue received in the month from regional fuel tax, penalties, and interest in relation to that scheme

Rebates is the amount paid in RFT rebates in the month in relation to that scheme

Costs is the amount of the Agency's actual net costs and expenses in the month, up to any limit set by the Minister of Finance and the responsible Minister after having consulted the Agency and the appropriate regional council, arising out of the performance of the Agency's functions and duties and the exercise of its powers under this subpart in relation to that scheme

Rebate reserve

(2) In any 1 month, the Agency may deduct from the payment amount under **subsection (1)** a rebate reserve, up to any limit set by the Minister of Finance and the responsible Minister, for the purpose of funding the payment of rebates in the course of the RFT scheme.

(3) The amount of the rebate reserve taken under **subsection (2)** may be increased or decreased in any later month, up to any limit set by the Minister of Finance and the responsible Minister, as may be required to provide sufficient funds for the payment of the rebates reasonably expected to be required to be paid out of the rebate reserve. The amount payable under **subsection (1)** for a month must be adjusted appropriately to reflect any increase or decrease in that month in the rebate reserve.

Final accounting and payment

(4) As soon as practicable after 2 years have elapsed after the end date of an RFT scheme, the Agency must account to the regional council for the rebate reserve and any rebates paid in relation to the scheme after its end date and pay any remaining balance of the rebate reserve to the council. If more has been paid in rebates than the amount of the rebate reserve, the regional council must pay the excess to the Agency.

65V Regional fuel tax ~~account~~ reserve fund

(1) A regional council of an RFT region must, for each RFT scheme in its region,—

(a) operate a regional fuel tax ~~account~~ reserve fund; and

(b) deposit into or credit to that ~~account~~ reserve fund all funds received by the council under **section 65U**; and

(c) ensure that all payments from that ~~account~~ reserve fund are—

(i) made in support of the programme of capital projects of the RFT scheme in force for the region; and

(ii) accounted for in any manner required by the Agency.

(2) A regional council may—

(a) carry forward to any later financial year any amount of the credit balance in its regional fuel tax ~~account~~ reserve fund at the close of any financial year; and

(b) use that money at any time for payments in accordance with this section.

Rebates

65W Rebate related to regional fuel tax

(1) This section applies with respect to a person—

(a) who has paid regional fuel tax on fuel under an RFT scheme; or

(b) to whom fuel has been supplied that was subject to regional fuel tax under an RFT scheme.

(2) A person to whom this section applies is entitled to a rebate related to any fuel if—

(a) the person makes an application in accordance with **section 65X**; and

(b) either—

(i) the fuel has been used or will be used for an exempt use and no exemption in relation to that fuel has been, or will be, claimed under **section 65O(2)(b)**; or

(ii) the person otherwise qualifies for a rebate in relation to that fuel under regulations made under **section 65ZE**.

(3) An RFT rebate,—

(a) for a person described in **subsection (1)(a)**, must be calculated in accordance with the rate of regional fuel tax paid by the person; and

(b) for a person described in **subsection (1)(b)**, must be calculated in accordance with the rate of regional fuel tax in effect in the relevant RFT region on the date the fuel was supplied to the person.

65X Process relating to RFT rebates

(1) An application for an RFT rebate must—

(a) be made in the form and manner required by the Agency; and

(b) be made in respect of a single RFT scheme; and

(c) be made in accordance with any rebate application requirements of the Agency; and

(d) be supported by any documentary evidence and any other information—

(i) that is prescribed in regulations made under this Act; or

(ii) that the Agency reasonably requires; and

(e) claim a rebate at least equal to the minimum rebate.

(2) In this section,—

minimum rebate means the greater of—

(a) $20 or any lesser amount established by the Agency; and

(b) an amount prescribed by regulations

rebate application requirements means requirements, which may vary by class (for example, according to amount of rebate claimed or by industry), established by the Agency for the purpose of administrative efficiency in the processing of rebate applications, including any related to—

(a) minimum or maximum periods for which applications for rebates may be made; or

(b) the end dates of periods for which applications for rebates may be made.

(3) The Agency must—

(a) reduce the amount of an RFT rebate by 10% of the amount otherwise payable if the application for it is made more than 3 months after the last day of the period in respect of which the rebate is sought; or

(b) refuse an application for an RFT rebate if—

(i) the application for it is made more than 2 years after the last day of the period in respect of which the rebate is sought; or

(ii) the amount of the rebate to which the applicant would be entitled is less than the minimum rebate.

(4) Despite **subsection (3)**, the Agency may, at any time, if it considers that it is just to do so,—

(a) in the circumstances described in **subsection (3)(a)**, reduce the amount of an RFT rebate by a lesser amount or waive a reduction altogether; or

(b) in the circumstances described in **subsection (3)(b)**, approve an application for an RFT rebate.

(5) If a person's application for an RFT rebate is approved by the Agency, it must pay or credit to the person the amount of the approved RFT rebate.

Internal review

65XA Internal review

(1) A person who is affected by any of the following decisions by the Agency may apply to the Agency for an internal review of the decision:

(a) an assessment of regional fuel tax:

(b) any decision that leaves the person liable to a filing penalty, a late payment penalty, or an under-reporting penalty:

(c) a refusal, or approval for a lesser amount than was applied for, of an application for an RFT rebate:

(d) a decision on a request to become a registered RF taxpayer:

(e) a decision on a request to be registered as an exempt user of fuel:

(f) a decision on a request to register a location as one where any fuel supplied will be used exclusively for an exempt use:

(g) a decision of a type that is prescribed by regulations to be a reviewable decision.

(2) The application for internal review must be made within 40 working days after the date on which notice of the reviewable decision was given.

(3) An internal review of the reviewable decision must be conducted in accordance with a process established from time to time by the Agency for that purpose, and must—

(a) confirm or vary the reviewable decision; or

(b) set aside the reviewable decision and substitute any other decision that the reviewer considers appropriate.

(4) The internal review process of the Agency must require—

(a) that the internal review of a reviewable decision be conducted by a person who did not participate in the making of that decision; and

(b) that the internal review be conducted within a reasonable time; and

(c) that the applicant be notified of the decision on the internal review within 5 working days of it being made; and

(d) that reasons for the decision be provided to the applicant, together with notice of the decision.

(5) If an internal review is conducted, the decision made on the internal review is to be treated as the Agency's decision for the purposes of any appeal.

Appeals

65Y Appeals

~~(1) Within 30 days after the date on which an RF taxpayer is notified of an assessment by the Agency of regional fuel tax payable, the RF taxpayer may appeal against the assessment to the District Court.~~

~~(2) Within 30 days after the date on which a person is notified of the decision by the Agency on an application for an RFT rebate, the person may appeal against the decision to the District Court.~~

(1) A person who is affected by a decision of the Agency that is reviewable under **section 65XA(1)** may appeal against that decision to the District Court within 30 days after the date on which notice of the decision was given.

(~~3~~2) On the hearing of the appeal, the District Court may confirm~~ or amend~~, vary, or set aside~~the assessment or~~ the decision or substitute for it any other decision that the Court considers appropriate.

Administration and enforcement

65Z Agency and Auditor-General may require information

(1) The Agency may require any person or regional council to provide to it information that it reasonably believes is relevant to the administration or enforcement of an RFT scheme.

(2) For the purposes of this subpart, the Auditor-General has the same powers in respect of the records relevant to the administration of an RFT scheme, includ-

ing the determination of regional fuel tax payable under the scheme, as the Auditor-General has under Part 4 of the Public Audit Act 2001.

65ZA Inspection of records or other information

(1) For the purpose of issuing an assessment under **section 65R**, or otherwise ascertaining whether the provisions of this Act have been, or are being, complied with by any person to whom this Act applies, the Agency may require that person to produce for inspection any records or other information in that person's possession or control that are relevant to the regional fuel tax payable by the RF taxpayer.

(2) The Agency may, in relation to any records or other information produced under **subsection (1)**,—

(a) take extracts from the records or other information:

(b) make copies of the records or other information at the place of inspection:

(c) remove the records or other information if the Agency is satisfied that it is impracticable to copy the records or other information at the place of inspection.

(3) If the Agency removes any records or other information under **subsection (2)(c)**, the Agency must—

(a) issue a receipt for the records or other information to the person from whom the records or other information was taken; and

(b) return the records or other information as soon as practicable; and

(c) for as long as the records or other information is held by the Agency, allow the person from whom the records or other information was taken, at any reasonable time, to inspect, and obtain copies of, the records or other information at the premises where the records or other information is held.

65ZB Power to issue search warrant in respect of alleged offence

(1) An issuing officer (within the meaning of section 3(1) of the Search and Surveillance Act 2012) may issue a search warrant in relation to a place, vehicle, or other thing if, on application made by an enforcement officer in the manner provided in subpart 3 of Part 4 of that Act, he or she is satisfied that there are reasonable grounds—

(a) to suspect that an offence under **section 65ZC** has been, is being, or will be committed; and

(b) to believe that the search will find evidential material in respect of the offence in the place, vehicle, or other thing.

(2) The provisions of Part 4 of the Search and Surveillance Act 2012 apply.

Offences

65ZC Offences and penalties

(1) A person commits an offence if the person knowingly or recklessly—

(a) refuses or fails to file a monthly return in accordance with **section 65Q**; or

(b) refuses or fails to provide information relevant to the administration or enforcement of regional fuel tax that has been reasonably requested by the Agency; or

(c) in relation to the administration or enforcement of an RFT scheme, provides to the Agency any information that is false or misleading; or

(d) produces false records or information under **section 65ZA**; or

(e) refuses or fails to pay any regional fuel tax in accordance with **section 65S**; or

(f) evades the payment of any regional fuel tax payable by the person under this subpart; or

(g) refuses or fails to keep accounts or records required to be kept by any person for any purpose under this subpart; or

(h) makes a false or misleading statement in an application under **section 65X** for an RFT rebate.

(2) A person who commits an offence against **subsection (1)** is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $15,000:

(b) in the case of a person or an organisation other than an individual, to a fine not exceeding $75,000.

(3) Despite section 25 of the Criminal Procedure Act 2011, a charging document in respect of an offence against **subsection (1)** may be filed at any time within 3 years after the date on which the offence was committed.

Change to maximum rate of regional fuel tax

65ZD Change to maximum rate of regional fuel tax

(1) The Governor-General may from time to time, by Order in Council, amend **section 65C(3)** to change the maximum rate of regional fuel tax under an RFT scheme.

(2) An order made under **subsection (1)** that reduces the maximum rate of regional fuel tax does not have the effect of reducing any rate of regional fuel tax that has already been provided for in an order made under **section 65K** before the amendment comes into force.

(3) An order made under **subsection (1)** is a legislative instrument and a confirmable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

~~(4) The explanatory note of an order made under **subsection (1)** must indicate that—~~

~~(a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and~~

~~(b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and~~

~~(c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.~~

(4) The explanatory note of an order made under **subsection (1)** must—

(a) indicate that—

(i) it is a confirmable instrument under section 47B of the Legislation Act 2012; and

(ii) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and

(iii) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act; and

(b) set out the responsible Minister's reasons for recommending the making of the order.

Regulations

65ZE Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for 1 or more of the following purposes:

(a) prescribing information or any other thing that must be included in a proposal to establish, replace, or vary an RFT scheme:

(b) prescribing uses of fuel (other than use in a vehicle on a public road) that are exempt from regional fuel tax:

(c) prescribing circumstances in which persons are entitled to an RFT rebate~~:~~, including—

(i) when an RF taxpayer has paid regional fuel tax in relation to a supply of fuel but has not been paid for that fuel:

(ii) when the regional fuel tax paid by an RF taxpayer in relation to a supply of fuel resulted in a double payment of regional fuel tax with respect to that fuel:

(iii) any other circumstance where it would be unjust or contrary to the policy of this subpart for regional fuel tax to be collected or kept:

(d) prescribing any information or other matter that must be provided to the Agency in support of an application for an RFT rebate:

(e) prescribing accounts or records to be kept by any person for any purpose under this subpart:

(f) prescribing an amount for the purposes of **section 65X(2)(b)**:

(fa) prescribing types of decisions as reviewable decisions for the purposes of **section 65XA(1)(g)**:

(g) providing for any other matter contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

(2) The responsible Minister must consider whether to recommend the making of regulations under **subsection (1)(b)** and, when doing so, must have regard to the principle that regional fuel tax is intended to be borne only by those who use fuel on public roads.

(3) If the responsible Minister recommends the making of regulations under **subsection (1)(b)**, the Minister's reasons for making the recommendation (including why the regulations are appropriate) must be set out in the explanatory note of the regulations.

No limitation

65ZF No limitation on claims by Agency to recover regional fuel tax

A claim by the Agency to recover regional fuel tax, any penalty related to regional fuel tax, or any interest on any regional fuel tax or penalty, or in respect of any forfeiture proceedings, is not barred or otherwise affected by—

(a) the Limitation Act 2010:

(b) any other enactment that prescribes a limitation period or other limitation defence.

Transitional, savings, and related provisions

6 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2
Amendments to other Acts

Amendments to Goods and Services Tax Act 1985

7 Amendments to Goods and Services Tax Act 1985

(1) This section amends the Goods and Services Tax Act 1985.

(2) In section 2(1), insert in its appropriate alphabetical order:

regional fuel tax has the same meaning as in **section 65A** of the Land Transport Management Act 2003

(3) After section 5(6B), insert:

(6BB) For the purposes of this Act,—

(a) any amount of regional fuel tax (**RFT**) that is paid is treated as being consideration for a supply of services in the course or furtherance of a taxable activity carried on by the New Zealand Transport Agency, as agent for and on behalf of the local authority responsible for the RFT scheme under which the RFT is paid:

(b) any amount of RFT rebate paid under **section 65X** of the Land Transport Management Act 2003 to a registered person is treated as being consideration for a supply of services in the course or furtherance of the registered person's taxable activity to the extent to which the RFT rebate relates to fuel used by the person for, or available for use by the person in, making taxable supplies.

Amendment to Land Transport Act 1998

8 Amendment to Land Transport Act 1998

(1) This section amends the Land Transport Act 1998.

(2) After section 208(3)(a)(i), insert:

(ia) **subpart 3 of Part 2** of the Land Transport Management Act 2003:

Amendment to Legislation Act 2012

9 Amendment to Legislation Act 2012

(1) This section amends the Legislation Act 2012.

(2) In Schedule 2, insert in its appropriate alphabetical order:

Land Transport Management Act 2003	**65ZD(1)**

Amendments to Local Government Act 2002

10 Amendments to Local Government Act 2002

(1) This section amends the Local Government Act 2002.

(2) After section 103(2)(i), insert:

(ia) regional fuel taxes under the Land Transport Management Act 2003:

(3) In section 200(3)(a)(v), delete "; or".

(4) After section 200(3)(a)(v), insert:

(vi) regional fuel tax; or

(5) In Schedule 10, after clause 34A, insert:

34B Additional information: RFT schemes

(1) The regional council of an RFT region, in its annual report, must report on—

(a) the revenue from an RFT scheme paid to the council by the Agency; and

(b) how that revenue was applied by the council, including to which projects and for what purposes (for example, capital expenditures, debt repayment, operational expenditures); and

(c) progress with respect to the programme of capital projects supported by the RFT scheme.

(2) In this clause,—

(a) **regional council**, **RFT region**, and **RFT scheme** have the same meanings as in **section 65A** of the Land Transport Management Act 2003; and

(b) **Agency** has the same meaning as in section 5(1) of that Act.

Amendment to Search and Surveillance Act 2012

11 Amendment to Search and Surveillance Act 2012

(1) This section amends the Search and Surveillance Act 2012.

(2) In the Schedule, insert in its appropriate alphabetical order:

Land Transport Management Act 2003	**65ZB**	Enforcement officer may obtain and execute warrant to search for evidence of offences against **section 65ZC** of Land Transport Management Act 2003	All

Schedule
New Schedule 1AA inserted

s 6

Schedule 1AA
Transitional, savings, and related provisions

s 6A

Part 1
Provisions relating to Land Transport Management (Regional Fuel Tax) Amendment Act **2018**

1 Definition

In this Part,—

amending Act means the Land Transport Management (Regional Fuel Tax) Amendment Act **2018**~~.~~

Bill means the Land Transport Management (Regional Fuel Tax) Amendment Bill that became the amending Act when enacted.

2 Certain provisions apply only in relation to Auckland until 1 January 2021

Until 1 January 2021, **section 65K** of this Act as enacted by the amending Act applies only in respect of proposals to establish, replace, or vary an RFT scheme for the region of Auckland.

3 Validation of certain pre-commencement actions

If any of the following actions are taken in relation to a proposal to establish an RFT scheme for Auckland before the amending Act comes into force, and those actions would have substantially complied with the requirements of **subpart 3 of Part 2**, as it read in the Bill at the latest stage of its consideration that had been completed before the actions were taken, ~~if they had been taken after the coming into force of the amending Act,~~ those actions are deemed to have been taken in compliance with that subpart as enacted:

(a) preparation of an RFT proposal; or

(b) consultation on an RFT proposal; or

(c) submission of an RFT proposal to the Minister of Finance and the responsible Minister; or

(d) consideration of an RFT proposal by the Minister of Finance and the responsible Minister; or

(e) any recommendation or referral back by the Minister of Finance and the responsible Minister that is contemplated by **section 65J**.

4 Additional amount to be paid before net revenue is paid to Auckland Council

If an RFT scheme is established for Auckland under **section 65K** before 1 January 2021, then, before paying any amount to the Auckland Council under **section 65U**, the Agency must pay to the Crown out of the revenue from the RFT scheme the amount of $1,000,000.

Legislative history

22 March 2018	Introduction (Bill 38–1)
28 March 2018	First reading and referral to Finance and Expenditure Committee

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